



UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17342

HARD COPY

In the Matter of

RD LEGAL CAPITAL, LLC and
RONIDERSOVITZ

DIVISION OF ENFORCEMENT'S RESPONSE TO RESPONDENTS'
PROPOSED FINDINGS OF FACT

DIVISION OF ENFORCEMENT
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August 25, 2017

I. Background

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>1. Respondent Roni Dersovitz (“Dersovitz”) practiced personal injury law for fourteen years.</p>	<p>Ex. 1452-16 (“Having practiced personal injury law for 14 years, he launched RD Legal Funding (RDLF) in 1996, which originates and purchases receivables from contingency fee law firms.”); <i>see also</i> Division’s Proposed Findings of Fact (“Div. PFOF”) 1.</p>	<p>Admitted.</p>
<p>2. Dersovitz formed RD Legal Funding, LLC in 1997 to purchase law firm receivables and provide a source of funding for contingency fee-based law firms.</p>	<p>Ex. 64-23 (“With an understanding of the intricacies of the legal settlement process and an appreciation of the need for law firms to improve their cash flow, he created RDLF in 1997.”); <i>see also</i> Div. PFOF 16.</p>	<p>Admit that Dersovitz formed RD Legal Funding, LLC (“RDLF”) in 1997, but deny the portion of Respondents’ Proposed Finding of Fact (“Resp. PFOF”) ¶ 2 that states the reason Dersovitz formed RLDF as unsupported by the record Respondents cite, and aver that RDLF advertised itself as focused on funding contingency fee-based law firms “only from cases that are settled.” Ex. 252 at 58.</p>
<p>3. In September 2007, Dersovitz launched two hedge funds: RD Legal Funding Partners, LP, a Delaware limited partnership (the “Domestic Fund”), and RD Legal Funding Offshore Fund, Ltd., a</p>	<p><i>See</i> Div. PFOF 3-4.</p>	<p>Admitted.</p>

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Caymans Islands exempted company (the "Offshore Fund" and, together with the Domestic Fund, the "Funds").		
4. Respondent RD Legal Capital, LLC ("RDLC") is the General Partner of the Domestic Fund and the Investment Manager of the Offshore Fund.	See Div. PFOF 2.	Admitted.
5. RDLC does not receive any management fees from the Funds.	Ex. 1900-6 (DDQ) ("There is no management fee." Tr. 4497:6-14 (Hirsch) ("Q So does RD Legal Capital – what type of management fee does it charge? A None. The structure of the -- it's a very unique structure. Everything over 13.5 that's generated by the transaction is kept by RD Legal Capital in the GP's capital account. And that is then used for expenses, salaries, due diligence, legal fees, for running the firm, et cetera."))	Admitted.
6. RDLC only receives {	Ex. 66-8 (Domestic Fund) ("For the avoidance of doubt, the General	Admitted that, as set forth in the record evidence

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remuneration from its management of the Funds if investors in the Domestic Fund and/or investors in the Offshore Fund receive their full targeted cumulative return of 13.5% per annum.	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 ¹); Ex. 67-10 (Offshore Fund) (same).	Respondents cite at Ex. 66-8, RDLC ¹ only receives remuneration from its management of the Funds if investors in the Domestic Fund and/or Offshore Fund <u>are allocated</u> their full targeted cumulative return, but deny Resp. PFOF ¶ 6 to the extent it suggests RDLC only receives such remuneration after investors actually <u>receive</u> their return.
7. At the end of each month, the net profits and losses of the Funds are allocated to the accounts of their investors.	<i>See Div. PFOF 6</i>	Admitted.
8. Net profits in excess of the investors' targeted cumulative return of 13.5% per annum are allocated to the account	<i>See Div. PFOF 7</i>	Admitted.

¹ All capitalized terms not defined herein shall have the meaning ascribed to them in the Division's Posthearing Brief ("Div. Br."), the Division's Proposed Findings of Fact ("Div. PFOF"), and the Division's Response to Respondents' Inability to Pay Brief.

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of RDLC.		
<p>9. 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, if any, to cover any shortfall prior to RDLC receiving any further return.</p>	<p>See Respondents' Corrected Statement of Fact 8</p>	<p>Admitted.</p>
<p>10. All ordinary expenses of operating the Funds are borne by RDLC. The Funds bear responsibility for "all other expenses associated with the Partnership including</p>	<p>See Respondents' Corrected Statement of Fact 9</p>	<p>Admitted that, as Respondents stated in their Answer to the OIP, "[a]ll expenses of operating the Funds ... are paid out of the return to RDLC." See Division PFOF ¶ 9. The Division further admits the Flagship Funds' Offering Memoranda assign responsibility to the Funds for "all other expense associated with the Partnership," but deny Resp. PFOF ¶ 10 to the extent it purports to address what expenses the Funds</p>

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<p>legal (including, but not limited to, legal fees related to the Partnership's investments), accounting (including third-party accounting services), administration, auditing and other professional expenses and tax return preparation expenses.”</p>		<p>actually paid.</p>
<p>11. Investors in the Flagship Funds are permitted to withdraw all or part of their capital account attributable to a particular capital contribution, as long as that capital contribution has been invested in the Funds for at least 12 months.</p>	<p>See Respondents' Corrected Statement of Fact 10</p>	<p>Admitted, subject to liquidity constraints, to the quarterly redemption schedule, and to the holdback. <u>See</u> Div. PFOF ¶ 14; Ex. 69 at 8, 9.</p>

II. Hedge Funds

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>12. Investors who choose to allocate their capital to hedge funds such as the Funds intend to place their faith in the manager with respect to investment decisions.</p>	<p>Tr. 312:16-313:8 (Ishumaru) (“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 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 a person, it’s important that -- the character of the person and the integrity of the person.”)</p> <p>Tr. 2102:16-21 (Furgatch) (“Q Was this your understanding at the time you invested in the RD Legal that Mr. Dersovitz, first off, was the principal of the general partner? A I was certainly relying on Mr. Dersovitz’s personal wisdom and judgement to handle the investments.”)</p> <p><i>Id.</i> at Tr. 2102:22-2103:1 (“Q And as the general partner, he would make the decisions as to what he believed - what investments he believed were in the best interest of the fund? A I would hope so.”)</p> <p>Tr. 1018:13-23 (Condon) (“Q</p>	<p>Admitted, except to the extent the PFOF suggests that investors “intend to place their faith” in the manager investing in anything other than what the manager told investors he would invest in; the PFOF does not address how investors’ intentions interact with other representations may be funds or their agents.</p>

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	<p>Right. And you already testified, of course, that you're not a lawyer. Right, sir? A Right, happily. Q Even more so after today, I'm sure. But you don't have background experience in looking at different legal cases and evaluating them is that right? A Yes. Q And you relied upon Mr. Dersovitz, as the manager of the fund, to do that work and make those kinds of decisions; is that right? A Yes.")</p> <p>Tr. 4567:21-4568:3 (Hirsch) ("[You] also met with Mr. Dersovitz? A Yes. Q And you met with him, because you wanted to hear what the fund is doing, right? A I wanted to meet with him, because I want to meet with everyone we're giving money to and look them in the eye and determine if I could trust them or not. Q Right. And trust them when he tells you what the fund is doing, right? A Trust him, period.")</p> <p>Tr. 217:10-19 (Burrow) ("Q But with all these receivables RD Legal originated, Peterson and others, you relied on his expertise to understand the legal process and make those decisions? A Correct. Q Because he, as the chief investment officer and manager of the fund, he's the person your investors are placing authority in to make investment decisions for the fund? A That's correct.")</p> <p>Tr. 3753:8-54 (Young) (discussing flexibility clause) ("Q What does this mean to you? A Well, if you've read enough of these, you know that that's boilerplate, particularly -- probably the 1990s and on. It's</p>	

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	<p>probably been tied up subsequent. I haven't seen a legal document lately that has this kind of latitude for managers. But basically, what it's saying is you're trusting this person as a professional. And should they find an opportunity, that may not be literally within the guardrails that was in the summary receipt page, 21, that they have some latitude to go outside of that. It's a red flag for every investor. . . . [H]e has the latitude -- at the end of the day, he's the professional money manager. I'm trusting him to be a professional money manager. He's got the latitude to do, per this document, whatever he wants. I've got to be the big boy that says, look, dude, I've given you my money, I'm trusting you here.")</p>	
<p>13. Hedge funds are typically structured to give the manager substantial flexibility and discretion to (i) take advantage of unique opportunities that the manager has the experience and resources to identify</p>	<p>Ex. 2396 (Amended Expert Report of Leon M. Metzger ("Metzger Report")) ¶¶ 61-62 ("At least as early as 1987, around the time at which my association with the hedge-fund industry began, hedge fund PPMs often gave managers broad investment discretion and allowed them the flexibility to change investment focus 2003 SEC Staff report cites the flexibility provided by broad investment mandates as a benefit of hedge fund investing, and indicates that most hedge-fund advisers find the broad investment flexibility 'necessary in order to effectuate their absolute return strategies.'").</p> <p>Tr. 4634:16-4635:13 (Hirsch) ("Q In response to some questions, Ms.</p>	<p>Admitted that the record supports that funds' offering materials frequently include the kinds of "flexibility clause" found in the Funds Offering Memoranda. Otherwise denied, as the evidence Respondents cite does not support their PFOF ¶ 13; in particular, PFOF ¶ 13 does not account for how flexibility clauses interact with other representations made by funds or their agents.</p>

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<p>and exploit for the benefit of investors; and (ii) where necessary, deal with and attempt to mitigate losses from delinquent assets.</p>	<p>Hirsch, you mentioned flexibility clause. A Yes. Q So when you see this language as an investor doing due diligence, what does it say to you? A This flexibility clause is in almost every single hedge fund document that exists. Because the purpose of a hedge fund – and if -- there’s no little “d” at the end of hedge fund. It’s not a hedge[d] fund. The purpose of a hedge fund is to be able to move quickly typically and be flexible with the opportunities that seasoned the market. So every attorney that I’ve ever talked to puts this in to their clients. So it gives them the ability, if they see a different instrument, or they see a different opportunity, to be able to do it and do it fast. And they can’t go back to their clients every time they see an opportunity and get a look or that opportunity is gone. That’s why these clauses exist.”)</p> <p>Tr. 2839:6-23 (Hutchinson) (“Q Sir, I asked you to look at page 0017. There’s a section “Flexibility” and a paragraph underneath there. Do you recognize what this is, sir? A Yes, I do. Q What is it? A Talks about how the investment manager has the flexibility to make change in the strategy, to capitalize on attractive opportunities. Q What does that mean to you as someone analyzing initial investment? A It’s a catchall phrase we see in many documents that gives the investment manager quite a bit of leeway. Q What does that tell you when you are evaluating an investment for a client? A I think at this point it’s become expected to see this, where virtually</p>	

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	<p>all investment, investment managers like to have flexibility and we need to know we are trusting them with our assets.”)</p> <p>Tr. 377:1-10 (Ishimaru) (“Q And other types of investments that might be different, right? That was in the offering memorandum? A The offering memorandum I believe had language which a lot of hedge fund managers have that allows -- gives the manager flexibility to do many things. Q And you knew that when you invested? A Yes. Q And that’s the contracts you made with RD Legal, right? A Yes.”)</p> <p>Tr. 636:12-20 (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?”)</p> <p>Tr. 5552:4-13 (Dersovitz) (“JUDGE PATIL: . . . What was the purpose of keeping funding Mr. Osborn? THE WITNESS: To get repaid at the end of the day. It’s easy to give somebody money. It’s always harder to collect it back. And in the finance industry, you always have assets that have problems, unexpected problems. And this is a decision that any manager has to make from time to time. What was the purpose of keeping funding Mr. Osborn? THE</p>	

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	<p>WITNESS: To get repaid at the end of the day. It's easy to give somebody money. It's always harder to collect it back. And in the finance industry, you always have assets that have problems, unexpected problems. And this is a decision that any manager has to make from time to time.")</p> <p>Tr. 3752:23-3753:18 (Young) ("Q Let's turn to 1266, underscore, 33. There's the header at the top of the page. It says "Flexibility." It says, "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." Do you recognize this language? A I sure do. Q Did you review this before investing? A I sure did. Q What does this mean to you? A Well, if you've read enough of these, you know that that's boilerplate, particularly -- probably the 1990s and on. It's probably been tied up subsequent. I haven't seen a legal document lately that has this kind of latitude for managers. But basically, what it's saying is you're trusting this person as a professional. And should they find an opportunity, that may not be literally within the guardrails that was in the summary receipt page, 21, that they have some latitude to go outside of that.")</p> <p>Tr. 5643:20-5644:14 (Dabbah) ("Q Mr. Dabbah, will you please turn forward to. There's a header near the bottom of the page that says "flexibility" -- A Right. Q -- and the language says, "The</p>	

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	<p>partnership will not be limited with respect to the types of investment strategies it may employ or the markets or investments in which it may invest.” (Sic.) A Right. Q “Over time, markets change, and the general partner will cease to capitalize on attractive opportunities wherever they might be.” As an investor in hedge funds, what does this language mean to you? A This is pretty standard with most hedge funds. They basically have great leeway in what they can and cannot do. In some cases there is specific language in long-short hedge funds or other strategies that can limit a specific type of thing. But this is pretty standard.”)</p>	
<p>14. Hedge fund managers seek to gain an information advantage that allows them to outperform market returns for the benefit of investors.</p>	<p>Ex. 2393 (Expert Report of David X. Martin (“Martin Report”)), ¶¶ 51-57 (“Information advantage is a key investment concept . . . Investment firms that have an information advantage may appear to be taking greater risks, but often times the risks are actually lower than perceived . . . That RD Legal was able to exploit this information advantage to the benefit of its investors is evidenced by the results of the analysis presented in Exhibit 9.”).</p> <p>Tr. 5727:16-5728:6 (Dersovitz) (“Now, if you think about what we heard yesterday, it reduced the overall -- and before -- it reduced the overall risk concentration in the fund because there was less risk in those trades. It’s really -- it’s not what people appreciate. It’s the best trade I’ve ever done. If I’m saying it’s the best trade I’ve ever done, it’s the one that</p>	<p>Admitted.</p>

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	<p>had the -- despite everyone's impression, it was the one that had the least risk. It's that simple. There were multiple legal ways to get at the Clearstream money. And we, quite simply, had an information advantage to get there. I doubt that I will ever have a trade as good as that. And that's what funds are about. And that's why people entrusted us with their money.")</p> <p>Tr. 208:25-209:5 (Burrow) ("Q And your understanding from doing diligence on various funds is that a fund manager uses his expertise and understanding in a particular area within the stated objective strategy to pursue opportunities for the fund, right? A Correct.")</p>	
<p>15. Investing in a hedge fund requires a minimal level of due diligence that includes reviewing the fund's offering documents and audited financial statements and questioning the fund manager</p>	<p>Ex. 2396 (Metzger Report), ¶ 52 ("[W]hen dealing with accredited investors, a hedge fund manager can reasonably expect that prospective investors will conduct a level of due diligence that is appropriate to their circumstances. A thorough due diligence process would generally include reviewing all information made available by the fund. Simply put, due diligence requires investors to do their homework. And, if investors find inconsistencies between documents, they should inquire.")</p> <p><i>Id.</i> at ¶ 53 ("Scrutiny of an accredited investor's due diligence process may undermine a claim by that investor that he or she was misled by information that was made available by the fund's manager regarding the investment opportunity. Discussing the investment opportunity with</p>	<p>Denied. Resp. PFOF ¶ 15— in particular, the use of the word "requires"—is not a proposed finding of fact but a proposed legal conclusion for which Respondents cite no authority in their proposed findings of fact or accompanying brief.</p>

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	<p>friends or family, or basing one's investment decision on the past performance of the fund, would not constitute adequate due diligence. For example, the only investor Respondents have deposed, Arthur Sinensky, testified that before investing in the Offshore Fund he did "Arthur's version of due diligence," which typically includes discussions with his wife and colleagues, but rarely includes review of the PPM.")</p> <p>Tr. 196:18-197:4 (Burrow) ("Q Before you invested or recommended investments for any of your clients, would you ever make an investment in a private fund based on the pitch book without reading the offering document? A Is the question have I ever, or would I ever? Q Would you. A No, I wouldn't. Q Would you recommend that any of your advisory clients make an investment in a private fund without reading the offering memorandum? A I wouldn't recommend the client not read it, no. They have to read the offering memorandum.")</p> <p>Tr. 363:3-23 (Ishimaru) ("Q And I believe you said a couple of times the offering document, that was the contract between you and RD Legal; isn't that right? A I don't recall saying exactly that it was the contract. Q But it is the contract between you and RD Legal; isn't it? A Yes. That is a contract, yes. Q It is the bargain under which you made your investment with RD Legal, right? A Yes. Q And, in fact, it has all of the terms under which RD Legal is allowed to operate, correct? A Yes. Q</p>	

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	<p>And you are a sophisticated investor. That's something that you read before you engage in an investment with a hedge fund, right? A Yes. Q And it was important for you to understand it, correct? A Yes.")</p> <p>Tr. 465:21-466:6 (Garlock) ("Q And you are familiar with the notion of a sophisticated investor? A I am. Q Someone who invests in alternative funds? A Yes. Q And you understand it is the responsibility of the sophisticated investor to conduct due diligence in those alternative funds? A I am. Q And that's true? A That's true.")</p> <p><i>Id.</i> at 468:9-17 ("Q Have you ever invested in any alternative fund, either on behalf of yourself or any client, without reading the offering memorandum? A Have I invested -- Q Yes. A -- without reading it myself? Q Yes. A I can't say for certain I have read every offering memorandum myself, but someone on my team has.")</p> <p>Tr. 747:3-10 (Mantell) ("Q I think so. So if you were ever going to invest that private fund or advise one of your clients to invest a private fund, you would read the offering memorandum in its entirety? A I would. Q Would you also read the subscription documents for the fund? A I would.</p> <p>Tr. 1007:2-10 (Condon) ("Q Did you ask to see some historical statements as part of your diligence? A Yes. Q Why did you do that?</p>	

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	<p>A I always do that. I want -- I first want to make sure that the investments I make are audited independently, and then I like to review them and see if there are any things that jump out at me as causes for concern.”)</p> <p>Tr. 5611:21-5612:9 (Dabbah) (“Q Do you review any documents when you’re conducting due diligence? A Yeah. I, generally speaking, will ask -- depending on the strategy, but at minimum three years of audited financials. You have due diligence questionnaires. You have -- depending if a particular fund is registered with the SEC as an investment advisor, there are further documents that can be obtained. You have external documents, such as an audit. And sometimes you have internal documents, which could be, you know, PowerPoint presentation, marketing materials. You know, generally the more information, the better.”)</p> <p><i>Id.</i> at Tr. 5622:5-19 (“Q When you receive the PPM -- or the -- whichever version of the document depending on the type -- A Right. Q -- of the fund, what do you do? A Well, it’s a laborious process, because some of them can run several hundred pages. It’s the most -- among the documents, it is basically one of the documents that goes through basically everything from the name of the fund, the location of the fund, the principals of the fund, the strategy of the fund, the fee structure of the fund, tax implications, you know, things -- redemption policies, capital</p>	

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	<p>contribution forms, contribution forms.”)</p> <p>Tr. 4427:1-19 (Hirsch) (“Due diligence means everything from a half an hour meeting where you say, No, I don’t want to go any further with this; to full-blown due diligence, which would include a complete review of the firm, a review of how the manager takes money out of the market or makes profit, how they control risks and how everything flows into my NAV, my net asset value, at the very end. And to do that, you start by looking at all of the documents that any manager has. You look at the operating agreement, the OM, the prospectus. You look at the subdoc. And those would tell you what the -- what the manager can do and what your rights are as an investor. And the factors are housed in those two documents. Then you look at the financials. And depending upon what type of fund it is, you look at a variety of years of financials.”)</p> <p><i>Id.</i> at Tr. 4429:24-4430:10 (“A You know, I have always taught my investors, and they have taught me, that you look at everything. Due diligence is a mosaic of information. And it is called: Connect the dots. So you want to look at as much information as you can to put a whole picture together. I would say, at a minimum, if I had to say a minimum, the offering memorandum, the subdoc, the financial statements. I would look at the portfolio. And I would look at the returns and how they’re generated. Not just look at the numbers, but look at underneath how</p>	

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	<p>they were generated.”)</p> <p><i>Id.</i> at Tr. 4429:6-17 (“Q So I interrupted you. You were naming some of the types of documents that you would review when you conduct diligence. A So offering docs, subdocs. You look at all of the financial statements that you can get. You look at the marketing material in its various forms. You try to get any historical letters that were sent to investors. There are thousands of documents. I mean, the most critical things to me are, again, the OM, the prospectus, the subdoc, the financials.”)</p> <p><i>Id.</i> at Tr. 4431:12-23 (“Q You’ve already listed -- so we’re talking about due diligence. Generally you listed the kind of documents that you would look at. What else would you do besides looking at those documents and looking at the portfolio? A You would talk to the people in the organization, and not just the head people. You want to talk to the accountant or the guy in the back office. You want to get a sense for the feel of the firm and how they’re treated, and what they -- what they have to say.”)</p> <p>Tr. 4047:17-4048:23 (D. Martin) (“I mean, this is a hedge fund. It’s risk-return. It’s understanding -- you know, if you’re an accredited investor -- accredited investor -- this was no -- you know, you’re supposed to have a minimum net worth. You’re supposed to do the due diligence. You’re supposed to be sophisticated, right? I don’t -- you know, I don’t-</p>	

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	<p>you know -- people who go into this shouldn't be 75 years old, you know, ready to retire and, you know, thinking that, This is a good asset for my retirement. You know, this is the right kind of asset that I would do if someone wants to retire. It's got a beautiful income of 13 and a half percent in an environment at that time that was paying much lower. It's high risk. It's in a structure that's high risk. If you read any of the materials in these hedge funds, you know, it says "Do not rely" -- you know, you have -- there's disclosures on everything. "Do not rely on verbal disclosures." You know -- the offering memo is the one that you should go back to, even if there's a discrepancy. I mean, to get a pitch, you know, a 20-minute or 30-minute elevated pitch and think that that's all the diligence that you have to do, and then be surprised when you read about a position in the Wall Street Journal, that's not doing due diligence. That's not doing what you're supposed to do when you're an accredited investor trying to make an investment in a hedge fund.")</p>	
<p>16. A hedge fund is not an appropriate investment vehicle for anyone who is unable or unwilling to perform due diligence before</p>	<p>Tr. 3974:11-3975:2 (D. Martin) ("Q And you mentioned due diligence? A Yes. Q And I think you said it was a way for an investor to do the diligence? A Right. Due diligence -- I mean, at the end of the day, a lot of the hedge funds managers have clauses that they can do whatever they want in the interest of the investors. And one -- if you -- you know, in this kind of business, if you don't take care of business,</p>	<p>Denied. Resp. PFOF ¶ 16 is not a proposed finding of fact but a proposed legal conclusion for which Respondents cite no authority in their proposed findings of fact or accompanying brief.</p>

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investing	<p>business takes care of you. So you really have to do the due diligence to understand what you're buying and what's involved with the fund manager and what his positions are and what his approach is. So due diligence is pretty -- I actually wrote two books. There's a chapter in one of my books on due diligence of hedge funds.")</p> <p><i>Id.</i> at Tr. 4047:17-4048:23 ("I mean, this is a hedge fund. It's risk-return. It's understanding -- you know, if you're an accredited investor -- accredited investor -- this was no -- you know, you're supposed to have a minimum net worth. You're supposed to do the due diligence. You're supposed to be sophisticated, right? I don't -- you know, I don't -- you know -- people who go into this shouldn't be 75 years old, you know, ready to retire and, you know, thinking that, This is a good asset for my retirement. You know, this is the right kind of asset that I would do if someone wants to retire. It's got a beautiful income of 13 and a half percent in an environment at that time that was paying much lower. It's high risk. It's in a structure that's high risk. If you read any of the materials in these hedge funds, you know, it says "Do not rely" -- you know, you have -- there's disclosures on everything. "Do not rely on verbal disclosures." You know -- the offering memo is the one that you should go back to, even if there's a discrepancy. I mean, to get a pitch, you know, a 20-minute or 30-minute elevated pitch and think that that's all the diligence that you have to do, and</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>then be surprised when you read about a position in the Wall Street Journal, that's not doing due diligence. That's not doing what you're supposed to do when you're an accredited investor trying to make an investment in a hedge fund.")</p> <p>Ex. 2396 (Metzger Report), ¶ 19 ("Hedge funds are generally intended as investment options for wealthy and sophisticated investors who can assess their exposure to risk and who wish to diversify their portfolio of investments.")</p> <p><i>Id.</i> ¶ 48 ("It is reasonable for an investment manager to expect that an investor—who claims to have such knowledge and experience in financial and business matters—will be capable of evaluating the merits and risks of a prospective investment and will read disclaimers and disclosures. Moreover, it is reasonable for a fund to rely on such certifications absent a suspicion that the investor is being deceitful or is just plain ignorant about the subject.").</p> <p>Tr. 4509:24-4510:7 (Hirsch) ("Q Do you ever hear Mr. Dersovitz say anything to an investor that you thought was not complete in any way? A No. If someone asked a question, he gave them an answer. Q What if an investor doesn't know what question to ask? A They shouldn't be investing in hedge funds if they don't know what to ask.")</p>	
17. Investing in a ☉	Tr. 3756:1-12 (Young) ("Q When you invest in hedge funds with this	Denied. Resp. PFOF ¶ 17 is not a proposed finding of fact

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>hedge fund with a broad and opportunistic investment strategy requires ongoing diligence during the pendency of the investment.</p>	<p>type of [flexibility] clause, do you do continuing due diligence? A You have to. You have to, yeah. And that was part of talking to KatarinA There were different marketing people all the time. There was Kevin Mallon. It doesn't matter. I would just call and check on the portfolio. You want to know about the portfolio like concentration risk and things like that and is the duration staying where it is. So, yeah, you have to stay on top of that. And if something bothers you, a big boy has to makes a decision about what he's going to do. I could be a big girl, a big boy.")</p> <p>Tr. 2829:19-2830:10 (Hutchinson) ("Q Now, you said that after the investments were made in RD Legal, you continued to do due diligence? A Yes. Q What type of ongoing diligence did you do? A Reviewing updated quarterly investment, I can't remember what they are called. Quarterly statement that goes out with RD Legal significant portion of our ongoing due diligence was direct contact with Katarina and Roni doing phone calls. Q What type of access did you have to RD Legal? A Direct access. Unlike many of the very large mutual funds we invest in where we can't speak to the specific top level managers in this case, we were able to speak directly with Roni and KatarinA Q Were they accessible to you when you had questions? A Certainly.")</p> <p>Tr. 5665:8-17 (Dabbah) ("Q So you mentioned that when you're invested in a hedge fund, you do ongoing due diligence? A Yes. Q Is this</p>	<p>but a proposed legal conclusion for which Respondents cite no authority in their proposed findings of fact or accompanying brief.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	document part of your ongoing due diligence? A Well, not everybody - not everybody creates this document. The fact that you have an entity, RD Legal Capital, that is going out to a third-party to create such a document is a positive thing, because many people do not do that.”)	

III. Offering Documents

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
18. The Confidential Private Offering Memorandum and the Confidential Explanatory Memorandum (collectively the “Offering Memoranda”) set forth the terms governing the Domestic Fund and the Offshore Fund, respectively, including the scope of RDLC’s	Ex. 2396 (Metzger Report), ¶ 37 (“Market practice is that hedge funds provide more in-depth written information to their serious prospective investors in the form of a private offering memorandum or private placement memorandum (“PPM”). A hedge fund typically prepares an offering memorandum, or PPM, that describes the fund’s investment strategy and objectives, risk factors, a summary of partnership terms, regulatory compliance requirements, and additional information.”) Tr. 186:9-20 (Burrow) (“You said earlier today that the offering memorandum is the terms of the deal. Do you recall saying that? A Yes. Q And for any investor in the funds the terms of that deal are found in the offering memorandum; is that right? A Yes. Q And you said before lunch that everything the investor needs to know is contained in the offering memorandum; is that right? A I believe I said that.”)	Admit that the Offering Memoranda set forth certain terms that, when read in conjunction with other representations to investors and relevant law, set forth the terms governing the Flagship Funds. Denied to the extent Respondents propose a finding that the Offering Memoranda exclusively set forth the terms governing the Flagship Funds. Respondents fail to point to any language in any offering memorandum supporting their PFOF ¶18 or legal support for this proposed conclusion of law.

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
investment authority.	<p>Tr. 363:3-16 (Ishimaru) (“Q And I believe you said a couple of times the offering document, that was the contract between you and RD Legal; isn’t that right? A I don’t recall saying exactly that it was the contract. Q But it is the contract between you and RD Legal; isn’t it? A Yes. That is a contract, yes. Q It is the bargain under which you made your investment with RD Legal, right? A Yes. Q And, in fact, it has all of the terms under which RD Legal is allowed to operate, correct? A Yes.”)</p> <p>Tr. 467:24-468:8 (Garlock) (“Q What is the controlling document, sir? A The offering memo. Q That’s the one that is the contract between the investor and the fund, right? A If you invested, yes. Q Well, to the extent that someone wanted to engage in an investment in an alternative fund, it is the offering memorandum that describes what a fund manager can do and what a fund manager can’t do, right? A Yes.”)</p> <p>Tr. 4566:20-4567:5 (Hirsch) (“Q And when you do due diligence, there’s always differences between the marketing documents and the offering documents, correct? A There will always be differences, because they -- the offering document is the Bible basically, and the marketing document is the abbreviated version of the introduction of the Bible. Q So the offering document, if you had a question, that’s where you would go to answer it? A Yes.”)</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>19. The Offering Memoranda permitted Respondents to (i) purchase from law firms receivables representing legal fees derived from “litigation, judgments and settlements”; (ii) purchase from plaintiffs receivables representing proceeds from final judgment awards or settlements; (iii) provide loans to law firms through secured lines of credit; and (iv) provide capital to law firms to pursue certain other opportunities that do not fall within the</p>	<p><i>See, e.g., Ex. 66-5</i> (June 2013 Domestic Offering Memorandum) (“The Partnership’s investment objective is to generate attractive and stable current returns while preserving its capital. The Partnership will (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’), (ii) purchase from certain plaintiffs accounts receivable representing the plaintiff’s portion of proceeds arising from final judgment awards or settlements (‘Plaintiff Receivables’, together with the Legal Fee Receivables, the “Receivables”), (iii) provide loans to such Law Firms through secured line of credit facilities (‘Lines of Credit’) and (iv) provide capital to Law Firms through opportunities that do not lend themselves to the constraints of either the Receivables or Lines of Credit products (‘Other Advances’).”)</p> <p>Ex. 67-7 (June 2013 Offshore Explanatory Memorandum) (same)</p>	<p>Denied.</p> <p>Additionally, Resp. PFOF ¶ 19 seeks a conclusion of law for which they offer no legal support here or in their brief.</p> <p>Respondents cite only to language in the “Summary of Terms” contained in Exhibits 66 and 67. That summary should be read in conjunction with the balance of the offering memoranda, as well as other representations made to potential investors in the Flagship Funds. <i>See, e.g.,</i> Division PFOF ¶ 193 (quoting February 2011 Onshore Offering Memorandum: “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”); ¶ 195 (quoting substantially identical language from other Fund Offering Memoranda).</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
categories above.		
<p>20. The Offering Memoranda also included flexibility provisions stating that Respondents will “not be limited with respect to the types of investment strategies [they] may employ or the markets or instruments in which [they] may invest,” will “seek to capitalize on attractive opportunities, wherever they might be,” and “may pursue other objectives or employ other techniques [they] consider[] appropriate and in the best interest</p>	<p><i>See, e.g., Ex. 66_17</i> (June 2013 Domestic Offering Memorandum) (“Flexibility. 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.”) .</p> <p>Ex. 67_21 (June 2013 Offshore Offering Memorandum) (same)</p>	<p>Admitted.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
of the [Funds].”		
21. The Offering Memoranda disclosed that “[c]ertain investments of the Partnership could become delinquent and go into default or foreclosure.”	<p><i>See, e.g., Ex. 66-19</i> (“Certain investments of the Partnership could become delinquent and go into default or foreclosure. In addition, certain of the Law Firms with whom the Partnership enters into factoring or financing arrangements whether directly or through participation can default, go into bankruptcy and reorganize. Under these circumstances, the Partnership could lose its entire investment in those transactions or may have to rely upon the other collateral underlying the investment in those transactions to recoup its investment, which recourse could be costly, time consuming and even unsuccessful.”)</p> <p>Ex. 67-25 (same)</p>	Admitted.
22. The Offering Memoranda referenced an investor website created and maintained by Respondents, and also alerted investors to the existence of an “Independent Accountant’s Report On Applying Agreed-	<p><i>See, e.g., Ex. 66_10</i> (June 2013 Domestic Offering Memorandum) (“Each monthly report will be available to download on a secure web page of www.rdlegalcapital.com.”); 66-16 (“Agreed Upon Procedures”).</p> <p>Ex. 67_11, 18-19 (June 2013 Offshore Confidential Explanatory Memorandum) (same).</p> <p><i>See also Exs. 1186, 1246, 1263, 1431, 1490, 1544, 1712, 1796, 1892, 2018, 2055, and 2092</i> (AUPs).</p>	<p>Admitted that the Offering Memoranda referenced an investor website and identified an “AUP” report to be generated by Wiss & Company.</p> <p>Denied that the AUPs provided sufficiently detailed or accurate information concerning workouts and problem assets in the Flagship Funds’ portfolios. <i>See, e.g.,</i> Div. PFOF ¶¶ 220-228; <i>see also</i> Respondents’ Brief in Response to the Division’s Posthearing Br. at 40 (acknowledging “instances in which the AUPs incorrectly described the ONJ cases as settlements”).</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>Upon Procedures” that was prepared by third party Wiss & Company LLP on a quarterly basis and provided detailed information concerning workouts and problem assets in the Funds’ portfolios, including the investments in the Osborn ONJ cases and the Cohen cases (“AUP reports”)</p>		
<p>23. Every investor received the applicable Offering Memoranda, subscription agreement, and Limited Partnership Agreement before investing with the</p>	<p>Ex. 350 (6/18/2013 email to Wils attaching offering documents)</p> <p>Exs. 252 and 1333 (9/1/11 and 3/9/12 emails to Burrow attaching offering documents)</p> <p>Ex. 2742 (2/3/10 email to Ishimaru attaching offering documents)</p> <p>Tr. 279:5-15 (Ishimaru) (“Q Okay. Now, if I can direct your attention to Division Exhibit 57, please. So do you recognize this document, ma’am? A Yes. Q What is this one? A This is the offering memorandum to</p>	<p>Denied. The Division admits that the individuals identified in Respondents’ “Supporting Evidence” for their PFOF ¶ 23 received Offering Memoranda, a subscription agreement, and limited partnership agreement before investing in the Flagship Funds (though Mr. Garlock did not make any such investment).</p> <p>Respondents do not offer record evidence sufficient to support a finding that “every”</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
Funds.	<p>the domestic LP. Q Okay. And did you receive this document? A I believe so. Q Okay. And did you read it? A Yes.”)</p> <p>Ex. 2772 (8/28/12 email to Garlock attaching offering memorandum for Domestic Fund)</p>	investor received such documents.
<p>24. Investors and prospective investors who signed a nondisclosure agreement could also access the Offering Memoranda on Respondents’ investor website</p>	<p>Ex. 2355A-1 (screenshot of website showing, among other documents, links to subscription documents, including offering memoranda).</p> <p>Ex. 2360A-1 (screenshot of website showing Flagship Funds’ documents, including offering memoranda).</p> <p>Ex. 3095 (RD Legal investor website, screenshot showing General Fund Info page with fully expanded archive libraries).</p> <p>Tr. 4347:7-20 (Hakim) (“Q Now, Mr. Hakim, I would like you to turn to -- it is actually the third document in your binder, and it is marked 2355-A And let me know when you’re there. A Okay. I’m there. Q Okay. Do you recognize this document? A Yes. Q And what is it? A It’s after you log into the website, you’re presented with this home screen. Q And could anyone with Internet access view this web page? A No. You need some access code to get in here.”)</p> <p>Tr. 101:10-18 (Burrow) (“Q Did Ms. Chandarana tell you anything about the website that is referenced in this e-mail? A My understanding was the website was something with specific reference to the NDA, meaning</p>	Admitted.

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>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.”)</p> <p>Ex. 42-3 (FAQ describing transparency and documents available on website).</p>	
<p>25. Investors understood that the Offering Memoranda gave RDLC significant flexibility in making investment decisions for the Funds.</p>	<p>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 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 [sic] 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</p>	<p>Admitted that investors understood that the Offering Memoranda gave RDLC flexibility in making investment decisions for the Funds.</p> <p>Denied to the extent Respondents seek a finding of “significant” flexibility as vague. Investors testified they understood Respondents’ flexibility to make investment decisions to be constrained by Respondents’ other representations, both in the Offering Memoranda and elsewhere. <u>See, e.g., Div. FOF ¶¶ 417(a) (Dersovitz telling investors Ishimaru and Craig to trust his representations over those in the Offering Memoranda”); 653(a, b) (flexibility clause was a “boilerplate disclosure”); 654 (flexibility clause operated within certain “guardrails”); 657 (investor Levenbaum understood the flexibility clause to be informed by other representations); <u>see also id.</u></u></p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>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.”)</p> <p>Tr. 2855:5-20 (Hutchinson) (“Q Are you aware of how concentrated the RD Legal funds the RD Legal domestic fund and the RD Legal offshore fund became in Peterson related positions? A I am. Q Approximately what was that concentration? A They get the highest point. I believe 70 percent plus range. Q Did you form any view at any time about whether the manager of the RD Legal funds had authority under the governing documents of the fund to invest in the assets he did and concentrate the fund as it became? A I believe the operating memorandum allowed him quite a bit of discretion in that areA Q The offering memorandum gave him the discretion to make those decisions? A Yes.”)</p> <p>Tr. 4699:9-19 (Lowe) (“Q And this flexibility clause, what does that tell you as a potential investor looking at this fund? A Again it tells me that the -- that the managing partner has the ability to invest in other types of strategies or assets, rather than the description that was given as to the type of business they were in. It also says to me that I need to make sure I know what they’re continuing to invest in, if they start to investing in other type of strategies, I have to make a new decision as to whether we want to continue with that fund or not.”)</p>	<p>¶ 656 (Dersovitz believed there were limits to the flexibility afforded by the Offering Memoranda).</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Tr. 4634:16-4635:13 (Hirsch) (“Q In response to some questions, Ms. Hirsch, you mentioned flexibility clause. A Yes. Q So when you see this language as an investor doing due diligence, what does it say to you? A This flexibility clause is in almost every single hedge fund document that exists. Because the purpose of a hedge fund – and if -- there’s no little “d” at the end of hedge fund. It’s not a hedge[d] fund. The purpose of a hedge fund is to be able to move quickly typically and be flexible with the opportunities that seasoned the market. So every attorney that I’ve ever talked to puts this in to their clients. So it gives them the ability, if they see a different instrument, or they see a different opportunity, to be able to do it and do it fast. And they can’t go back to their clients every time they see an opportunity and get a look or that opportunity is gone. That’s why these clauses exist.”)</p> <p>Tr. 5602:9-24 (Dabbah) (“Q What is a hedge fund? A Hedge fund basically is an investment vehicle that started popping up originally in the 1950s. It’s usually for credited investors that have a specific financial condition. It’s an entity that gives liberty to the manager to engage in various types of investments. So hedge fund, you know, there is 10,000-plus of them with different strategies, so. But essentially it’s an investment vehicle that has greater flexibility than the mutual -- the regular mutual fund. And there are plus and minuses in terms of</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	liquidity, in terms of trading flexibility and also the type of client that you can have.”)	
<p>26. The flexibility provisions in the Offering Memoranda permitted RDLC to enter into arrangements whereby the Funds would advance additional money in order to preserve their ability to collect on troubled portfolio assets (“workouts”).</p>	<p>Ex. 2396 (Metzger Report) ¶¶ 61-62 (“At least as early as 1987, around the time at which my association with the hedge-fund industry began, hedge fund PPMs often gave managers broad investment discretion and allowed them the flexibility to change investment focus 2003 SEC Staff report cites the flexibility provided by broad investment mandates as a benefit of hedge fund investing, and indicates that most hedge-fund advisers find the broad investment flexibility ‘necessary in order to effectuate their absolute return strategies.’”).</p> <p><i>Id.</i> at ¶ 13(i) (“the flexibility provided to the funds’ investment manager under the terms of the offering memoranda—which investors agreed to—included the ability to pursue investments in plaintiff and judgment-based legal receivables, as well as other receivables”).</p> <p>Tr. 781:16-19 (Mantell) (“Q Right. Isn’t it intrinsically true that any finance company of any size is going to have some positions that don’t perform? A I would say it’s a safe assumption.”)</p> <p>Tr. 4637:4-14 (Hirsch) (“Q How would describing your strategy fit at all if -- as to describe the workouts? A It’s not your strategy. It’s a workout. You know, intent and result are different things. You -- I never intended for something to be a</p>	<p>Denied. Resp. PFOF ¶ 26 is not supported by the evidence they cite. Furthermore, the question of what the flexibility provisions in the Offering Memoranda—in combination with Respondents’ other representations to investors—“permit” Respondents to do is a question of law not properly the subject of a proposed finding of fact.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>workout. I'm not going to put that in my strategy. My strategy is to get the best transactions I can and make them profitable for my clients. So I'm going to describe my strategy as in my general strategy.”)</p> <p>Tr. 4634:16-4635:13 (Hirsch) (“Q In response to some questions, Ms. Hirsch, you mentioned flexibility clause. A Yes. Q So when you see this language as an investor doing due diligence, what does it say to you? A This flexibility clause is in almost every single hedge fund document that exists. Because the purpose of a hedge fund – and if -- there’s no little “d” at the end of hedge fund. It’s not a hedge[d] fund. The purpose of a hedge fund is to be able to move quickly typically and be flexible with the opportunities that seasoned the market. So every attorney that I’ve ever talked to puts this in to their clients. So it gives them the ability, if they see a different instrument, or they see a different opportunity, to be able to do it and do it fast. And they can’t go back to their clients every time they see an opportunity and get a look or that opportunity is gone. That’s why these clauses exist.”)</p> <p>Tr. 2839:6-23 (Hutchinson) (“Q Sir, I asked you to look at page 0017. There’s a section “Flexibility” and a paragraph underneath there. Do you recognize what this is, sir? A Yes, I do. Q What is it? A Talks about how the investment manager has the flexibility to make change in the strategy, to capitalize on attractive opportunities. Q What does that</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>mean to you as someone analyzing initial investment? A It's a catchall phrase we see in many documents that gives the investment manager quite a bit of leeway. Q What does that tell you when you are evaluating an investment for a client? A I think at this point it's become expected to see this, where virtually all investment, investment managers like to have flexibility and we need to know we are trusting them with our assets.")</p>	
<p>27. All of the Funds' investments were permitted under the Offering Memoranda</p>	<p>Ex. 66_5 (June 2013 Domestic Offering Memorandum) ("The Partnership will (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"), (ii) purchase from certain plaintiffs accounts receivable representing the plaintiff's portion or proceeds arising from final judgment awards or settlements ("Plaintiff Receivables", together with the Legal Fee Receivables, the "Receivables"), (iii) provide loans to such Law Firms through secured line of credit facilities ("Line of Credit") and (iv) provide capital to Law Firms through opportunities that do not lend themselves to the constraints of either the Receivables of Lines of Credit products ("Other Advances").")</p> <p><i>Id.</i> at 17 ("Flexibility 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</p>	<p>Denied.</p> <p>Resp. PFOF ¶ 27 seeks a conclusion of law for which they offer no legal support here or in their brief.</p> <p>Furthermore, the Offering Memoranda should not be read in isolation, and Respondents other written and oral statements precluded the purchase of investments Respondents told investors they did not make. See Div. Reply Br. at 3-4.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>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.”)</p> <p>Ex. 67_7 (June 2013 Offshore Offering Memorandum) (“The Fund will indirectly (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”), (ii) purchase from certain plaintiffs accounts receivable representing the plaintiff’s portion of proceeds arising from final judgment awards or settlements (“Plaintiff Receivables”), (iii) provide loans to such Law Firms through secured lines of credit facilities (“Lines of Credit”) and (iv) provide capital to Law Firms through opportunities that do not lend themselves to the constraints of either the Receivables or Lines of Credit products (“Other Advances”).”)</p> <p>Id. at 21 (“<u>Flexibility</u> The Fund 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 Investment Manager will seek to capitalize on attractive opportunities, wherever they might be. Depending on conditions and trends in securities</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>markets and the economy generally, the Investment Manager may pursue other objectives or employ other techniques it considers appropriate and in the best interest of the Fund.”)</p> <p>Tr. 2758:9-2759:10 (Geraci) (“Q Having been in the fund now for a period of 10 years, what is your view as to how the fund is investing in the assets it has matches up with what you were told in 2012? A I think they fall within the document. Q Sir, if you look at page 0040, the paragraph “Investment Strategy General, “The general partner will make all decisions as partnerships factoring contracts, lines of credit and other advances.” Do you see that? A Yes. Q What did you take this language to mean? A It allows the manager to make the decisions with regard to what type of investments they will make. Q It goes on to say “Identifies Roni Dersovitz as the principal manager.” Do you see that, sir? A Yes. Q “As such, he controls all of the partnership investment activities.” Do you see that? A Yes. Q What does that mean, as an investor what does that meant? A Roni Dersovitz has the ability to select the types and/or individual investments that comprise the fund. Q Were you comfortable with that at the time you invested? 10 A Yes.”)</p> <p>Tr. 2855:5-20 (Hutchinson) (“Q Are you aware of how concentrated the RD Legal funds the RD Legal domestic fund and the RD Legal offshore fund became in Peterson related positions? A I am. Q Approximately what was that</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>concentration? A They get the highest point. I believe 70 percent plus range. Q Did you form any view at any time about whether the manager of the RD Legal funds had authority under the governing documents of the fund to invest in the assets he did and concentrate the fund as it became? A I believe the operating memorandum allowed him quite a bit of discretion in that area. Q The offering memorandum gave him the discretion to make those decisions? A Yes.”)</p> <p>Ex. 2396 (Metzger Report) ¶ 13(iii) (“The investment strategy undertaken by RDLC fell within the strategy disclosed to investors. Respondents did not misrepresent the type or diversification of assets under management in the funds.”)</p>	
<p>28. Investors understood that Respondents’ investment decisions were within RDLC’s authority under the Offering Memoranda</p>	<p>Tr. 1141:13-1142:3 (Schaffer) (“Q The PPM. And you said you read that, and you determined it was your understanding that Mr. Dersovitz could invest in plaintiffs cases, right? A That was my layman’s interpretation. I thought the language was pretty clear. Q I’m just asking your interpretation of it. A Yes. Q Your understanding. A Yes. I understand you’re not a lawyer. Q I mean, I understand you’re not a lawyer. A I found fairly clear evidence that said he may do that. Q And then you also had an understanding from your review of the PPM that Mr. Dersovitz could be concentrated in the investment, correct? A Yes.”)</p> <p>Tr. 2814:14-22 (Geraci) (“Q Now,</p>	<p>Denied that Respondents’ investment decisions were within RDLC’s authority for the reasons set forth in the Division’s response to Resp. PFOF ¶ 27.</p> <p>The Division further denies Resp. PFOF ¶ 28 as unsupported by the evidence they cite and contrary to other evidence in the record. That Mr. Geraci knew Peterson was in the fund does not state whether he came to the conclusion that the investment was within “RDLC’s authority,” and the cited testimony shows Geraci believed that the investment presented “some deviation”</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>you knew Peterson was in the fund when you invested; is that correct? A Yes. Q And you do you have a view one way or another whether RD Legal in fact deviated from the core strategy, as you understood it from the documents you received? A It was some deviation, but in our perception as part of our due diligence it seemed to be allowed within the deal documents that we examined.”)</p> <p>Tr. 3753:8-54 (Young) (discussing flexibility clause) (“Q What does this mean to you? A Well, if you’ve read enough of these, you know that that’s boilerplate, particularly -- probably the 1990s and on. It’s probably been tied up subsequent. I haven’t seen a legal document lately that has this kind of latitude for managers. But basically, what it’s saying is you’re trusting this person as a professional. And should they find an opportunity, that may not be literally within the guardrails that was in the summary receipt page, 21, that they have some latitude to go outside of that. It’s a red flag for every investor. . . . [H]e has the latitude -- at the end of the day, he’s the professional money manager. I’m trusting him to be a professional money manager. He’s got the latitude to do, per this document, whatever he wants. I’ve got to be the big boy that says, look, dude, I’ve given you my money, I’m trusting you here.”)</p> <p>Ex. 2396 (Metzger Report) ¶ 65 (“Since the Funds’ offering documents disclosed that the investment manager may exercise its discretion to invest in a broad range</p>	<p>from the strategy. Moreover, Mr. Geraci’s and Mr. Schaffer’s conclusions (in Mr. Schaffer’s case, arrived at after discovering that the <u>Peterson</u> investment was in the Funds contrary to Respondents’ representations to him), do not provide support for the <i>legal</i> conclusion that this PFOF seeks.</p> <p>Mr. Metzger was not an investor, and his interpretation of the Offering Memoranda also does not serve as a substitute for what investors understood the documents to mean.</p> <p>Nor does the citation to Mr. Young’s testimony support this PFOF, given that Mr. Young specifically testified that he viewed the <u>Peterson</u> investments to be outside the purview of the Offering Documents’ “guardrails.” Div. PFOF ¶ 654.</p> <p>Additionally, Dersovitz himself acknowledged that even the flexibility clause upon which Respondents rely did not provide Respondents with unlimited investment discretion. Div. PFOF ¶ 656.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>of assets or strategies, investors, who were concerned with such a broad mandate, could have simply declined to invest. After all, not every hedge fund will appeal to every investor.”)</p> <p>Tr. 5150:14-21 (Metzger) (“Q What is your view as an industry professional who has looked at other offering documents as to what the fund was authorized to invest in? A I think the fund was authorized to invest in litigation, judgments and settlements of -- related to legal fees derived by lawyers and law firms.”)</p>	
<p>29. Investors in the Funds were required to execute a subscription agreement affirmatively confirming that (1) they are accredited and qualified investors with a minimum net worth; (2) they have made “an investigation of the pertinent facts relating to the operation of the Partnership” to the</p>	<p><i>See, e.g., Ex. 591_68, 71</i> (9/19/2011 email to Torres at Athens Capital attaching subscription documents)</p> <p>Ex. 686_7, 12 (2/19/2015 email to Ballentine Partners attaching subscription documents)</p>	<p>Admitted, except to clarify that Resp. PFOF ¶ 29(2) should end “fully informed with respect to the terms of the Partnership Agreement.” Ex. 686-12.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>extent they deem necessary to be “fully informed”; and (3) they have the knowledge and experience necessary to evaluate the merits and risks of investing in the Funds.</p>		

IV. Strategy

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>30. Respondents described the Funds’ primary strategy as accelerating legal fees on settlements and judgments that have an obligation to pay.</p>	<p>Exhibit 216 (Cobblestone call) at 9:15-16 (“Now we accelerate legal fees on settlements and judgments that are collectible.”)</p> <p>Exhibit 1900_9 (DDQ) (“The primary focus is on purchasing the aforementioned receivables of settled cases, or non-appealable judgments”)</p> <p>Ex. 44-1 (July 2013 FAQ) (“The primary focus is on purchasing the aforementioned receivables of settled cases, or non-appealable judgments.”)</p> <p>Ex. 218-4 (April 27, 2011 Form ADV Part-2A (“The Domestic Fund will purchase from law firms and attorneys certain of their accounts receivable representing legal fees derived by the law firms and attorneys from litigation, judgments</p>	<p>Admitted that one way Respondents described the Funds primary strategy is as accelerating legal fees on settlements and judgments.</p> <p>Denied that Respondents ever described the strategy as accelerating legal fees on “judgments that have an obligation to pay.” The phrase “that have an obligation to pay” does not appear in any of the support cited by Respondents.</p> <p>In addition, denied to the extent Resp. PFOF ¶ 30 is meant to suggest Respondents did not describe the Funds’ primary strategy in other ways at other times.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>and settlements.”)</p> <p>Tr. 4632:12-17 (Hirsch) (“THE WITNESS: Sure. The basic strategy that RD has always employed is: Accelerating receivables from litigation, typically from law firms, and then later on from plaintiffs. But that hasn’t changed. That’s always has been what he has done.”)</p>	<p><u>See, e.g.</u>, Div. PFOF ¶¶ 160 (December 2011 marketing presentation describing “Settled Cases Only”); 163 (Alpha Presentation stating investments were in cases past the point of any potential appeals or other disputes); 166 (DDQ stating 95% of investments involved cases where a “settlement has been reached and the legal fee is earned”); 461 (Cobblestone call: Dersovitz claiming Funds invested in “primarily, 100 percent, are settled cases [with] no litigation risk.”).</p>
<p>31. Respondents’ “post-settlement” strategy has three necessary components: (1) an absolute obligation to pay; (2) an identifiable source of funds to make that payment; and (3) some duration between the imposition of the obligation to pay and the payment of the</p>	<p>Tr. 3521:20-3522:12 (Dersovitz) (“THE WITNESS: You have to think of it as a matrix. You start with your entitlement. That’s at the top of the triangle. Your risk that you’re controlling for is theft. So you have control of cash. Now you have your obligor. What is the bond rating of the obligor? And what happens if you’ve got cash sitting in a bankruptcy remote vehicle where you have -- and you’re getting payment directly from the administrator. So those three things in tandem form our guidelines and allow us to either increase from what we would normally consider advancing to a particular -- on a particular obligor or perhaps decreasing. It revolves around entitlement to a legal fee, control the cash because if I have control of the cash, I’m not worried about a lawyer stealing money. That whole question becomes irrelevant. Now you look at the corpus. Who’s paying it and do I have a bankruptcy</p>	<p>Denied.</p> <p>The “three necessary components” described in Resp. PFOF ¶ 31 are not described in any of the many marketing or offering materials in the record and were not described by any investor as part of Respondents’ explanation of Respondents’ claimed strategy. Respondents, therefore, cannot cite any support for their PFOF ¶ 31 beyond Dersovitz’s self-serving hearing testimony.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
receivable.	<p>concern? If I don't have a bankruptcy concern, it's golden.")</p> <p><i>Id.</i> at 3535:13-22 ("A . . . So it all comes down to: Is the attorney entitled to a legal fee? And can I achieve control of cash and mitigate theft, attorney theft? That's what this trade is about. You've got a settlement. You've got a judgment. You've got an entitlement to a legal fee. You've got an attorney who's getting it. So your issue is: Can you bypass the attorney? If you can bypass the attorney, now what you're doing is looking at the control -- now you're looking at the corpus of money, who's paying you.")</p> <p><i>Id.</i> at 5450:3-22 ("Q And starting with this, the lower left-hand side of the screen, what is depicted there on the screen? A It's -- the first thing that I -- so the premise of the business is this -- this touches on what I've already spoken about. The premise of the business is the right to the legal fee. Think of it as an entitlement to a legal fee. If a lawyer can demonstrate to me or my office that they have an entitlement to a legal fee, assuming it's not payable tomorrow -- because if it's payable in 15 to 30 days, which is the law for instance in New York, you don't need me. If you've litigated a case for three to five to seven years and you're getting paid 30 days out, there's no -- there's no value -- there's no real incremental value there. So if there's going to be a payment delay, which gets to duration, that's when I become valuable.")</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>32. Investors were told and understood that all legal receivables purchased by the Funds were subject to intervening legal proceedings.</p>	<p>Tr. 488:11-24 (Garlock) (“Q ‘So the risks are twofold: Duration and theft. The first -- I’ll get into duration first. So there’s a court. The reason for the delay is the court approval process. There’s -- there is no black magic with that. Every type of case that has a post settlement delay has a legal process that needs to follow.’ Do you see that, Mr. Garlock? A I do. Q That was told to you during the course of this phone call as well? A It was. Q That there was a legal process for every investment that RD Legal made? A Correct.”)</p> <p>Ex. 263 at 4-5 (November 29, 2011 email from Chandarana to Condon, stating: “[t]he primary cause of payment delays is court appeals and other operational issues”).</p> <p>Ex. 336-29 (January 2013 FAQ) (“These delays can range 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. .”)</p>	<p>Denied.</p> <p>Mr. Condon testified about Exhibit 263 to which Respondents cite and made clear that he “was very clear to ask” whether there cases “could be overturned or re-enter litigation” because he wanted “to be real clear there’s no risk of the litigation going back into court, being appealed, et cetera.” Div. PFOF ¶ 632(c) and Ex. 263-5 (item 10). In text Respondents omit from their purported “Supporting Evidence,” respondents told Mr. Condon, in writing, that while final court approval may at times be pending, the Funds “are only purchasing receivables after a settlement agreement has been signed by all the parties.” Ex. 263-5.</p> <p>Respondents also selectively excerpt testimony from Mr. Garlock, who explained that Respondents’ representations to him, including Dersovitz’s statement the Funds invested in “100 percent” “settled cases,” meant “there is no litigation risk in the strategy” and that “the cases are all settled.” Div. PFOF ¶¶ 461-62.</p> <p>Denied to the extent the term “legal proceedings” is vague, given that Respondents described to investors the type of legal proceedings that</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
		in some cases could remain, and described those as ministerial or pro forma in nature. <u>E.g.</u> , Div. PFOF ¶¶ 399, 467.
33. Investors in the Funds neither understood nor cared about the distinction between settlements and judgments.	<p>Tr. 198:24-199:10 (Burrow) (“Q And did you view those things as distinct: A settlement from a judgment or litigation? A I didn’t view them as distinct, I viewed them as opportunities for a future accountants receivable, to give them money today. So whether it’s a judgment or a settlement, I didn’t understand the distinction. Q Right. And your understanding is it was a strategy that had certain characteristics: That there was a payment, a receivable that was going to be made, but was going to be made at some point in the future; is that right? A Right.”)</p> <p>Tr. 278:4-14 (Ishimaru) (“Q Okay. From your perspective, is there a difference between a law firm that’s won judgments or settlements? A Not really. Q Why not? A I’m not a lawyer. I thought they were like the same thing. Q Okay. Was the fact that the plaintiffs had won something in the proceeding important to you? A Well, for me it was really that the plaintiffs had won a settlement.”)</p> <p>Tr. 491:21-491:25 (Garlock) (“Q Was there any particular distinction between a settlement and judgment to you at the time? A No. Q No distinction at all? A None.”)</p> <p>Tr. 735:10-18 (Mantell) (“Q -- right? So as an investor and also an</p>	<p>Denied.</p> <p>Numerous investors testified that Respondents’ representations that the Funds invested in “settled” or “finalized” cases were important to them. <u>See, e.g.</u>, Div. PFOF ¶¶ 634-637.</p> <p>While some investors did not focus on the legal distinction between “settlements” and judgments” beyond the point of potential disputes, investors testified that they found particularly important Respondents’ representations that the cases in which the Funds invested to be “finalized” or past the point of potential disputes. <u>See, e.g.</u> Div. PFOF ¶¶ 197, 485, 623.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>attorney, whether the receivable arose from a settlement or a judgement was not material to you; is that right? A That's fair. Even though there may be some distinctions, because, I guess, in the settlement cases there might be some complexities about the divvying up of things. But my sense was, no, it's no different.")</p> <p>Tr. 874:5-18 (Wils) ("Q And in terms of the word "settled," which you've used -- or Mr. Dersovitz used at the time -- A Yes. Q -- what did you understand "settled" to mean? A My understanding of settlement was that a judgement 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 judgement 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.")</p> <p>Tr. 1020:18-1021:6 (Condon) ("Q Now, this payment, this -- the word "settlement" was used sometimes. Your understanding was there could be a settlement of a case and then there's going to be -- a payment would come later; is that correct? A Right. Q : What if there had been a legal judgment and then there's a payment that was going to come from that judgment? Would that make a difference to you on how you understood the investment? A I don't understand the difference. Q Okay. So settlement or judgment is not something as an investor that you looked to? A No. It's not</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>something I looked to.”)</p> <p>Tr. 1154:17-25 (Schaffer) (“Q Okay. And I believe one of the questions that was asked by Mr. Tamara was whether you had any understanding of a distinction between judgments and settlements during the course of your due diligence. You viewed them as interchangeable, correct? A I didn’t understand the distinction. So, yeah. Q To you, they were essentially the same thing, right? A Yes.”)</p> <p>Tr. 1497:17-23 (Ashcraft) (“Q Let me -- it’s an important question. I just want to make sure I get it right. In your mind, there’s no distinction, material distinction at all between a settlement and a judgment for this investment? A For this investment, that’s not – that was my understanding.”)</p> <p>Tr. 2831:6-11 (Hutchinson) (“Q Now, legal fee comes from a judgment or from a judgment -- sorry, if the legal fee receivable comes from a settlement as opposed to a judgment, what distinction does that make to you in considering the investment? A I don’t think that it really makes much of a distinction to us.”)</p> <p>Tr. 3807:18-3808:2 (Young) (“Q Did you pay attention in documents to whether a case was settled, whether there was a judgment? A The honest answer is I’m not sure in my mind, I would have made a distinction if a judgment has been made and a settlement has been made.</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Y'all would know that there's a distinction there. In my mind, I don't think I would have made a distinction. I would have read a judgment. And I would have assumed a judgment's a judgment. But apparently, there may be another stage where there's a settlement. That's my only answer.")</p> <p>Tr. 4485:8-14 (Hirsch) ("Q What about legal fees arising from a judgement? A Again, we don't distinguish -- as an investor, I don't care if you call it a judgement or a settlement. As long as there is a corpus of money there that is tied to that settlement, I don't care what you call it.")</p>	
<p>34. Respondents and investors differentiated the Funds' primary strategy from "pre-settlement" litigation financing strategies based on whether any uncertainty remained regarding liability and damages.</p>	<p>Ex. 49-2 (July 2014 FAQ) ("<i>How is this strategy different from your competitors that execute legal fee strategies? We are the only significant sized entity that we are aware of with a 'post settlement' strategy. There are many groups doing pre-settlement funding to varying degrees of success.</i>")</p> <p>Tr. 267:24-268:16 (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</p>	<p>Denied.</p> <p>The evidence Respondents cite as "Supporting Evidence," does not support Resp. PFOF ¶ 34.</p> <p>Respondents distinguished their strategy in numerous ways including claims that there was "no litigation risk." See, e.g., Div. FOF ¶¶ 461 (Dersovitz statement on recorded Cobblestone call); 629 (Respondents' investor witness Hutchinson explaining his interpretation of the Funds' FAQ).</p> <p>Ms. Markovic claimed the Funds' post-settlement "niche" is for "only those cases that ... have some sort of delay attached" and that</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>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.”)</p> <p>Tr. 605:23-606:5 (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.”)</p> <p>Tr. 1070:1-1070:14 (Schaffer) (“Q Okay. Did that mean anything to you, that the cases were already settled? A Yes. 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.”)</p> <p>Tr. 2010:8-21 (Furgatch) (“Q And the first bullet begins, “We are the only significant-sized SEC registered entity that we are aware of with a,”</p>	<p>the Funds invested in “only settled claims.” Div. PFOF ¶ 465.</p> <p>Respondents further distinguished their strategy as having limited risks— primarily duration and attorney theft (Div. PFOF ¶¶ 342, 469)—not political risks, the risk that one might not prevail in a turnover action, or might not achieve a favorable settlement.</p> <p>Moreover, Respondents’ artificial distinction between litigation risk at the liability stage and at the collection to stay is nowhere to be found in the record, <u>see</u> Div. Response to Resp. PFOF ¶ 32, and there is no evidence that investors understood there to be a difference between the two. To the contrary, they testified that they cared about litigation risk in both <u>Peterson</u> (which had litigation risk at the judgment enforcement stage) and in the ONJ Cases. <u>See</u> Div. Br. at 20-21; Div. PFOF ¶¶ 441, 557, 631, 632, 637, 640.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>quote, “post-settlement,” closed quote, “strategy. There are many groups doing pre-settlement funding to a varying degrees of success.”</p> <p>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.”)</p> <p>Tr. 4471:24-4472:16 (Hirsch) (“Q It says, “We are the only significant-sized SEC registered entity that we are aware of with a post-settlement strategy.” Do you see that? A Yes. Q And you talked earlier about there’s some litigation funds that give money to go get a case, right? A Yes. Q And what does this mean here? A It means that we don’t do that. We’re not out chasing cases and funding attorneys who think they might have a shot of winning some case in Texas. That’s not what we do. And that’s what most investors in our industry thought of as pre-settlement. And we wanted to be clear that that’s not what we were doing.”)</p>	
<p>35. Investors understood Respondents’ statements that the Funds invested in</p>	<p>Tr. 633:18-634:3 (Mantell) (“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</p>	<p>Denied.</p> <p>Investors did not understand “no litigation risk” to mean only that the parties’ rights had been determined, but also that there were no additional disputes standing in the way of collection.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>“settled cases” with no “litigation risk” to mean that there was no risk of a legal determination that the attorney or plaintiff is not entitled to the purchased fees or award.</p>	<p>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.”)</p> <p>Tr. 2014:21-2015:17 (Furgatch) (“Q And you’ll see in the first paragraph under the firm, “RD Legal Capital, LLC” there’s a sentence that reads, “The funds principally consist of purchased legal fees associated with settled litigation.” Do you see that? A Sorry. Is this the first sentence of paragraph 2? Q Sorry. It’s the last sentence of the first paragraph, “The funds principally.” A Yes. 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.”) (emphasis added)</p> <p>Tr. 3603:6-24 (Gumins) (“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. Q What did you understand that to mean, settled court cases? A That</p>	<p>For example, Respondents asked Mr. Condon—whose testimony they cite here—to agree with their proposed finding of fact at the hearing, and he declined, explaining that he was not simply concerned about Respondents’ “right to payment,” but wanted to be sure the cases were not subject to <u>any</u> legal proceedings that might threaten actual payment: “I wanted there to be no risk that the case [could] be continued, reheard, could be appealed, could be held up in court indefinitely... and I wanted to make sure ... 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.” Tr. at 1021:14—1022:8.</p> <p>The idea that cases were “done” and that parties had already agreed came directly from Dersovitz’s representations. <u>See, e.g., Div. PFOF ¶ 468; see also ¶¶ 156, 163</u> (marketing materials describing cases “past the point of any potential appeals or other disputes”).</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>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.”)</p> <p>Tr. 967:11-22 (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 here: “Is there any chance that the allocation of a judgment can be overturned or reentered into litigation?”)</p>	<p>Moreover, Respondents’ artificial distinction between litigation risk at the liability stage and at the collection to stay is nowhere to be found in the record, <u>see</u> Div. Response to Resp. PFOF ¶ 32, and there is no evidence that investors understood there to be a difference between the two. To the contrary, they testified that they cared about litigation risk in both <u>Peterson</u> (which had litigation risk at the judgment enforcement stage) and in the ONJ Cases. <u>See</u> Div. Br. at 20-21; Div. PFOF ¶¶ 441, 557, 631, 632, 637, 640.</p>
<p>36. Respondents disclosed to investors that the Funds’ investment strategy was subject to collection risk and duration risk.</p>	<p>Ex. 216 (Cobblestone Transcript) at 17:4-10 (“RONI: Okay. So the risks are two-fold: duration and theft. The first -- I’ll get into duration first. So there’s a court -- the reason for the delay is the court approval process. There’s -- there is no black magic with that. Every type of case that has a post-settlement delay has a legal process that needs to follow.”)</p> <p><i>Id.</i> at 20:8-10 (“RONI: Okay. The second risk, which can be tremendously mitigated as well, too,</p>	<p>Admitted that Respondents disclosed to investors that the Funds’ investment strategy was subject to duration risk and <u>certain kinds</u> of collection risk—in particular, collection risk relating to potential attorney theft and bankruptcy. <u>See</u> Div. PFOF ¶¶ 342, 469.</p> <p>Respondents’ investor witness Mr. Geraci explained, for example, that</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>ties to one of the first comments that I made. It's the risk of theft.”).</p> <p>Ex. 38-12 (August 15, 2012 Alpha Generation and Process disclosing, collection risk, concentration risk, and duration risk).</p> <p>Ex. 42-4 (July 2013 FAQ addressing, <i>inter alia</i>, collection risk and duration risk).</p> <p>Ex. 66-18 (June 2013 Domestic Offering Memorandum) (Counterparty and Credit Risk).</p> <p>Tr. 6701:22-25 (Markovic) (“Question: The two prime – the two primary risks, what were those? . . . Answer: Duration and, control of case.”)</p>	<p>he understood the Flagship Funds’ risks to include the risk that an obligor would go bankrupt, but not the risk that an obligor may not want to pay. Div. PFOF ¶ 584.</p>
<p>37. Respondents’ decisions to enter into “workouts” were outside of, and immaterial to, the Funds’ primary strategy.</p>	<p>Ex. 610 (11/20/2012 email from Dersovitz to Hirsch and Markovic) (“[Osborn] is a workout and explained in AUP’s for quite some time That is absolutely not what we do and was only necessary because of need to work out of a situation.”)</p> <p>Tr. 2680:3-16 (Dersovitz) (“Q Is it your testimony that the Osborn advances RD Legal made did not fit into any of the categories described in this document as well? A I’ve called it a factoring transaction. I’ve called it an other transaction. It is what it is. It’s a workout. And we’ve disclosed it in our AUPs since at least 2010. Q And why didn’t you use the word “workout” in your December 2011 marketing materials? A Because if a [financial] firm didn’t have a workout, it would be a fraud. This</p>	<p>Admitted that Respondents investments in what they called “workouts” were outside what they represented to investors as their primary investment strategy.</p> <p>Denied as to the proposed legal conclusion that Respondents’ continued funding of unsettled cases, whether called workouts or simply ongoing litigation, were “immaterial.” Investors testified to the materiality of such investments. <u>See, e.g.</u>, Div. PFOF ¶¶ 552, 632(a-d), 634.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>marketing piece is only intended to be used as -- to elicit someone's interest. Then they have to look at the other documents as part of the package.")</p> <p>Tr. 781:16-19 (Mantell) ("Q Right. Isn't it intrinsically true that any finance company of any size is going to have some positions that don't perform? A I would say it's a safe assumption.")</p> <p>Tr. 4637:4-14 (Hirsch) ("Q How would describing your strategy fit at all if -- as to describe the workouts? A It's not your strategy. It's a workout. You know, intent and result are different things. You -- I never intended for something to be a workout. I'm not going to put that in my strategy. My strategy is to get the best transactions I can and make them profitable for my clients. So I'm going to describe my strategy as in my general strategy.")</p> <p><i>See also PFOF 43.</i></p>	
<p>38. While endeavoring to diversify the Funds' portfolio as much as possible, Respondents reserved the right to exceed their self-imposed concentration</p>	<p>Exs. 14-25 and 1878-25 (2012 and 2013 audited financial statements) ("The Investment Manager may make exceptions increasing the portfolio exposure above the above limits on a case by case basis.")</p> <p>Ex. 1900-10 (DDQ) ("From time to time there will be concentration in the portfolio on a temporary basis. Due to the private nature of the market and time sensitivity of the opportunities, the manager will take advantage of exceptional opportunities in size, then diversify with new allocations and</p>	<p>Denied.</p> <p>Respondents offer no support for their proposed finding that they endeavored to diversify the Funds' portfolio as much as possible. To the contrary, the Dersovitz testimony they cite admits the Funds "had concentrations since day one. That is the strategy. It will never change. I try to avoid it, but it will never change."</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>guidelines to the extent necessary to take full advantage of the opportunistic nature of the Funds' investment strategy.</p>	<p>recycled capital.”)</p> <p>Ex. 39-13 (2012 Due Diligence Questionnaire) (“Portfolio risk is managed by limiting the level of portfolio exposure based on the obligor’s (the financial party responsible for the payment of the settlement) creditworthiness . . . policy exceptions are posted on the investor web site.”)</p> <p>Ex. 1324 (Citibank Memorandum) (“Due to a large increase in the amount of advances for Citibank, N.A., we now have a need to increase its concentration limitations This matter has manifested itself as a new opportunity for our portfolio . . . We are confident that the monies frozen in the Citibank accounts will be paid to claimants and thusly, our advances. The only risk in the foreseeable future is time. As such, it remains a very lucrative prospect for receivable purchases as we have a strong history with the attorneys pursuing this matter Going forward, we will be enacting a 30% limitation for Citibank exposure.”)</p> <p>Ex. 277-2 (3/12/12 Dersovitz email to Ishimaru, Gumins and Craig) (“I appreciate the fact that lumpiness is to be avoid [sic], but having said that if you look at the business’ history over the last ten, you’d see that we’ve always been lumpy.”)</p> <p>Ex. 287-1 (6/10/12 Dersovitz email to Ishimaru) (“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</p>	<p>Furthermore, the language in the DDQ Respondents cite at Exhibit 1900 was not in existence until 2014. Compare Ex. 1900-10 with Ex. 39-13.</p> <p>The Division also denies Resp. PFOF ¶¶ 38 to the extent it calls for a legal conclusion that (i) their false and misleading disclosures about the Funds’ supposed diversification were permitted and/or (ii) that the general “reservations” cited by the Respondents trumped the specific limitations represented to investors.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>more than 30%. Having said that we're anticipating to launch an offshore vehicle (since that's where the current interest lies) and the domestic vehicle will probably have to season assets for that vehicle. If that's the case and we raise as much as I believe we're going to raise offshore, than the concentrations for this asset could significantly increase in the domestic fund as we ramp up that exposure (seasoning process) for the new vehicle. I know what it is today, but not tomorrow. Furthermore, once 503 passes, it's a new game and this might be where we disagree.")</p> <p>Tr. 333:17-23 (Ishimaru) ("Q Did you get any kinds of assurances? A We were told as in the previous statement by Mr. Dersovitz that it will be -- you know, in the future that concentration would go down, but he did explain that, you know, at -- I believe he explained that there is going to be times when the concentration may end up being even higher.")</p> <p><i>Id.</i> at 342:15-23 ("Q 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.")</p> <p>(Tr. 5597:1-5598:14 (Dersovitz) ("Q And you mentioned not</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>understanding why you're here with this information. Does that apply to people complaining about not knowing about concentration? A Absolutely. Q Why? A I wish you could -- can you open 12/31/2013, you know, the financial? You'll see the top five positions. We've been concentrated historically at -- in the stub period for 2007, maybe it was 2008, we had a 58 percent concentration in Merck. We've had concentrations since day one. That is the strategy. It will never change. I try to avoid it, but it will never change. Q The phrase lumpiness? A Yes. Q What does that mean to you, that phrase "lumpiness"? A We're an opportunistic strategy, so you either take advantage of the situation if you have the capital or it passes you by. Once you take advantage of the situation, you can either grow yourself out of it and dilute the position or try to sell it off. But you don't forego a good deal. Q Are these year-end financials for 2013, are they the only financials that are available to investors on the website? A If you scroll down, you'll see that there is an archive document section where a whole list of older documents will come up, including historical financials, Wiss reports, and so on and so on. Q Why are those there? A It's the repository of all information. It's so that all information possible is communicated to the investors, and they have the opportunity to make the best informed decision that they can.")</p>	
39. Respondents	Ex. 66_19 (June 2013 Domestic Offering Memorandum)	Admitted to the extent that "concentration risk" is

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>addressed concentration risk in the Offering Memoranda and marketing materials for the Funds.</p>	<p>(“Investment Concentration. The Partnership intends to invest the assets of the Partnership in either Receivables, Lines of Credit or Other Advances to Law Firms. By investing solely in these instruments, the assets of the Partnership will be exposed entirely to the risks of such investment without the protections against loss afforded by diversification. Concentration in a certain type of investment has the effect of exposing a significant portion of invested capital to the same or similar risks, as well as return or other characteristics, and thereby increases investment risk as well as the portfolio volatility. Accordingly, the value of a Partnership investment may fluctuate more widely given this concentration, as compared with the fluctuation expected in a broadly diversified portfolio.”)</p> <p>Ex. 67_25 (June 2013 Offshore Explanatory Memorandum) (same)</p> <p>Tr. 3054:17-22 (Levenbaum) (discussing Ex. 528-18) (“Q And in the second risk, what does that say? A “Portfolio concentration.” Q So the marketing deck identified portfolio concentration as a risk associated with RD Legal? A Yes.”)</p> <p>Ex. 38-12 (August 15, 2012 Alpha Generation and Process disclosing, collection risk, concentration risk, and duration risk); <i>see also, e.g., Ex. 28-16</i> (2010 Alpha Generation and Process), <i>31-16</i> (2011 Alpha Generation and Process), Ex. 43-12 (2013 Alpha Generation and Process).</p>	<p>limited to the concentration of “Receivables, Lines of Credit or Other Advances to Law Firms” as opposed to other asset types (e.g., equities).</p> <p>Denied to the extent that “concentration risk” contemplated concentrations within specific cases or law firms as contradicted by the specific representations of Respondents to investors. Div. PFOF ¶¶ 201-218.</p>

V. Marketing Materials and Presentations

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>40. Respondents warned potential investors repeatedly in the Offering Memoranda that only sophisticated and accredited entities and individuals with the capacity to tolerate the risk that their investment would become lost or illiquid should consider investing in the Funds.</p>	<p><i>See, e.g., Ex. 66-11</i> (“The Partnership is designed only for sophisticated persons who are able to bear a substantial loss of their capital contributions in the Partnership”);</p> <p><i>Id.</i> at 20 (“In light of the foregoing, investment in the Partnership should be considered only by persons financially able to maintain their investment for a substantial period of time and who can afford a loss of a substantial part of their investment.”);</p> <p><i>Id.</i> at 23 (“Admission as a limited partner in the Partnership is not open to the general public. The Partnership is not intended as a complete investment program and is designed only for persons who are able to bear the economic risk of the loss of their entire investment in the Partnership, who have a limited need for liquidity in their investments, and who are either sophisticated persons in connection with financial and business matters, or are represented by such a person in connection with their investment in the Partnership. Interests in the Partnership generally will be sold only to persons who are both “accredited investors” as defined in Regulation D of the Securities Act of 1933 and “qualified clients” within the meaning of Rule 205-3 under the Investment Advisors Act of 1940.”).</p> <p>Ex. 67-2 (“AN INVESTMENT IN THE FUND MAY BE DEEMED SPECULATIVE AND IS NOT</p>	<p>Admitted.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>INTENDED AS A COMPLETE INVESTMENT PROGRAM. IT IS DESIGNED ONLY FOR EXPERIENCED AND SOPHISTICATED PERSONS WHO ARE ABLE TO BEAR THE RISK OF THE SUBSTANTIAL IMPAIRMENT OR LOSS OF THEIR INVESTMENT IN THE FUND.”)</p> <p><i>Id.</i> at 13 (“The Fund is designed only for sophisticated persons who are able to bear a substantial loss of their investment in the Fund.”)</p> <p><i>Id.</i> at 26 (“In light of the foregoing, investment in the Fund should be considered only by persons financially able to maintain their investment for a substantial period of time and who can afford a loss of a substantial part of their investment.”)</p> <p>Ex. 2396 (Metzger Report, ¶ 21) (“The accredited investor concept was developed to “identify persons who can bear the economic risk of an investment in unregistered securities, including the ability to hold unregistered (and therefore less-liquid) securities for an indefinite period and, if necessary, to afford a complete loss of such investment.”) (citing Net Worth Standard for Accredited Investors, 76 Fed. Reg. 81793, 81794 (Dec. 29, 2011), https://www.gpo.gov/fdsys/pkg/FR-2011-12-29/pdf/2011-33333.pdf).</p>	
<p>41. Respondents further warned potential investors that the marketing materials</p>	<p>Ex. 43_15 (Alpha Generation and Process) (“All investors should read the risk disclosure in the offering memorandum before investing”)</p> <p>Tr. 369:19-370:14 (Ishimaru) (“Q Let’s take a look at page 7. If you look at the middle of this disclosure,</p>	<p>Admitted that Respondents informed potential investors that certain marketing materials should not be relied on as the sole source of information regarding the Funds.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>for the Funds should not be relied on as the sole source of information regarding the Funds, and that the Offering Memoranda had more specific information about the terms of the investment.</p>	<p>this is the first real text page of the marketing materials, correct? A Yes. Q The middle of this disclosure, it says here, with the word according, “accordingly, this document should not be relied upon in making your investment decision.” Do you see that? A Yes. Q Essentially, it is saying that there would be more detailed information in the offering memorandum, including applicable risk disclosures; do you see that? A Yes. Q Do you find this language unusual? A No. This is standard language. Q That the marketing presentation itself isn’t the complete picture of the fund? A Yes. Q It shouldn’t be relied upon in making your decision, should it? A Not -- it shouldn’t be the sole source.”).</p> <p>Tr. 4454:6-4455:1 (Hirsch) (discussing disclosures in Ex. 1454 (Alpha Generation and Process)) (“This was a -- well, first of all, you put disclosures in everything. That’s just normal practice in our industry. And you put disclosures in so that people understand that this is not a standalone document. This is the “Hello. How are you? Would you like to get to know me a little better” document. Please don’t think that this is going to contain everything. It’s not. It’s just going to give you an example of how we lived our lives and what we do basically. So that’s what the disclosure is for. The disclosure is there to say, Please do not look at this as a standalone document. You have to look at everything. Due diligence. This came from -- probably Scott Gottlieb would be my guess, who was the compliance officer at the time. And it</p>	<p>Denied that Respondents informed investors that the Funds’ Offering Memoranda had more specific information about the terms of the investment, as this proposed finding of fact is not supported by any evidence Respondents cite. Ms. Ishimaru, for example, simply testified that yes, she saw the language to which counsel directed her—she took no position as to whether she agreed with counsel’s interpretation of the language.</p> <p>Also denied that the Offering Memoranda actually had more specific information about the terms of the investment. While this is true as to some aspects of the Offering Memoranda, it is also true that other of the materials distributed to investors included details not set forth in the Offering Memoranda, such as Respondents false representations in their DDQs and other materials about the percentage of investments made in “factoring” cases where a settlement had already been reached. Div. PFOF ¶¶ 166, 173.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>was probably a compilation of disclosure documents that we had from other places as well.”)</p> <p>Ex. 686-12 (2/19/2015 Ballentine Partners subscription documents) (“The New Limited Partner is entering into this Subscription Agreement {the “Agreement”} relying solely on the facts and terms set forth in this Agreement, the Confidential Private Offering Memorandum of the Partnership, as amended from time to time (the “Memorandum”), and the Partnership Agreement and it has received copies of all such documents and the General Partner has not made any representations of any kind or nature to induce the New Limited Partner to enter into this Agreement except as specifically set forth in such documents.”)</p>	
<p>42. Marketing materials and presentations are not designed to provide a comprehensive explanation of a hedge fund’s investment strategy, portfolio composition, or historic performance, but</p>	<p>Tr. 466:19-467:13(Garlock) (“Q When you were asked about 278, which was the -- I’m sorry -- 276 -- I misspoke -- which was the first time you asked about an email or marketing deck, this was an essentially out of the blue email that you got and you asked for the deck. I believe you testified you didn’t pay much attention to it at the time; isn’t that right? A I believe I testified that I don’t recall paying much attention to it. Q Isn’t that because -- you also testified, I am going to say, that you wanted to receive more information to learn more about the strategy that the entity would be investing in, correct? A Right. Q Because the marketing pitch isn’t really the full picture of the strategy? A Not generally. Q In fact, the full picture of the strategy is</p>	<p>Denied. Each marketing document and presentation serves its own purpose, including providing a comprehensive explanation of a fund’s investment strategy (e.g., Div. PFOF ¶ 166 (DDQ described strategy “in as much detail as possible”)), portfolio composition (e.g., <i>id.</i> ¶ 166, 169 (DDQ stating that portfolio is comprised of 95% fee acceleration positions and 5% LOC positions)), and historic performance (e.g., Ex. 267 (showing historic performance of funds)).</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>instead to serve as an introduction to the manager and the fund.</p>	<p>laid out in other documents such as the offering memorandum? A Right.”)</p> <p>Tr. 4607:10-16 (Hirsch) (“Q You said you give the marketing documents, like the alpha presentation, or the overview, or the FAQs, or the DDQs, you give them little weight, correct? A Individually and separately, I give them very little weight. Again, due diligence is a mosaic of information.”)</p> <p><i>Id.</i> at 4454:11-13 (Hirsch) (discussing Ex. 1454 Alpha Generation and Process)) (“This is the ‘Hello. How are you? Would you like to get to know me a little better’ document.”)</p> <p>Ex. 2396 (Metzger Report), ¶ 35 (“Hedge fund marketing documents are typically snapshots of information that the investment manager believes provide a general overview of the fund’s basic strategy and whets the appetite of an investor to seek out more information about the fund. As such, the initial documents—by their very nature and brevity—provide only summary information.”)</p> <p><i>Id.</i> at ¶ 41 (“During the course of due diligence, many hedge fund managers do not like to disclose to prospective investors the specific positions held by the fund. A 2014 SEC Risk Alert observed that “while some managers were willing to provide additional transparency, others were reluctant to share detailed information about their alternative investments. In particular, these managers were sensitive to sharing position-level information, which they felt may compromise their ability to execute their strategies.”)</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p><i>Id.</i> at ¶ 50 (“Thus, the SEC’s own guidance to investors places little weight on marketing materials and highlights that some funds may take concentrated positions; give their managers significant discretion in valuing illiquid securities; and may invest in securities that are relatively illiquid and difficult to value. And, the SEC emphasizes that investors should ask questions and assume the risk of their investment.”).</p>	
<p>43. It would not have been appropriate for Respondents to address workouts when discussing the Funds’ primary strategy in marketing materials and presentations.</p>	<p>Tr. 4610:22-4611:5 (Hirsch) (JUDGE PATIL: Excuse me. So why – what’s the reason why one wouldn’t include a workout position in the due diligence questionnaire? THE WITNESS: It’s kind of like including an error in a trading desk in a due diligence questionnaire. It’s a workout position. It’s not a predominant type of investment that’s being done. It’s something that occurred that’s being worked out.)</p> <p><i>Id.</i> at 4614:10-15 (“Again, first of all, no manager affirmatively puts workout positions in their marketing materials. Again, you don’t put workout positions in your marketing materials. You don’t give specifics about positions, which is what I explained before.”)</p> <p><i>Id.</i> at 4637:4-14 (“Q How would describing your strategy fit at all if -- as to describe the workouts? A It’s not your strategy. It’s a workout. You know, intent and result are different things. You -- I never intended for something to be a workout. I’m not going to put that in my strategy. My</p>	<p>Denied.</p> <p>First, Resp. PFOF ¶ 43 is vague as to what is meant by “workouts.” The Hirsch testimony Respondents cite speak of “something that occurred”—i.e., past tense—but Respondents invested many millions of dollars in the unsettled Osborn ONJ cases for many years after the Funds early investments to the Beatie & Osborn firm first became problematic. Ex. 5 (list of Osborn ONJ positions in the Funds’ portfolio).</p> <p>Second, investors testified that they would have wanted to know if Respondents were investing in unsettled cases, and made no distinction for unsettled cases Respondents deemed to be “workout” situations. <u>See, e.g.,</u> Div. PFOF ¶ 632(a-d).</p> <p>Third, Resp. PFOF ¶ 43</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>strategy is to get the best transactions I can and make them profitable for my clients. So I'm going to describe my strategy as in my general strategy.")</p> <p>Tr. 3042:3-13 (Levenbaum) ("Q So you have some experience in what the purpose of marketing is, right? A Yes. Q Kind of to put your best foot forward to gain some interest from the general public, right? A Yes. To generate general cases and clients. Generate cases and clients. Do you ever advise your clients to put in their advertisements all about the cases they lose? A No.".)</p>	<p>seeks a conclusion of law for which they offer no legal support here or in their brief.</p>
<p>44. It is inappropriate to identify individual portfolio positions in marketing materials, particularly for hedge funds with broad and flexible investment mandates.</p>	<p>Tr. 4476:18-24 (Hirsch) ("Again, ... these documents, these marketing documents are a basic, a basic explanation of how the firm has historically run its business and what it has done. But they're not going to talk about positions.").</p> <p><i>Id.</i> at 4550:10-15 ("Q And in fact, RD Legal's marketing documents described what investments were in its portfolio, correct? A It did not specifically talk about its portfolio, no. Marketing documents typically do not describe their portfolio positions.")</p> <p>Tr. 5362:10-5363:21 (Metzger) ("Q Okay. Are you aware that Mr. Dersovitz had offering documents for the special purpose vehicle you describe in this report? A Yes. Q And are you aware that in the offering documents, Mr. Dersovitz -- or I should say RD Legal describes one of the risks relating to that fund to be the political risk attendant to the Iran</p>	<p>Denied.</p> <p>First, Resp. PFOF ¶ 44 seeks a conclusion of law for which they offer no legal support here or in their brief.</p> <p>Second, Respondents cite no support that the RD Legal Funds had a "broad and flexible investment mandate."</p> <p>The Division has not taken the position that Respondents, as a general matter, were required to identify all individual portfolio positions in their marketing materials. As set forth in the Division's posthearing brief, however, Respondents are not permitted to distribute marketing materials that contain false and otherwise</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>investment? A Yes. Q And are you aware in that same document there are risks set forth relating to -- the potential failure of the turnover action? A Yes. Q Okay. Did you consider those disclosures when writing your report? A So my view was that if I compared the two documents, the SPV was more -- was more of a marketing style document compared to the PPM of the flagship fund. Q I'm sorry. I want to make sure. When you say "the SPV," do you mean the SPV PPM or do you mean the SPV other documents? A No. The PPM. Q So you're saying in the SPV -- the SPV PPM was more of a marketing document than the flagship fund PPM? A That's how I saw it. I saw that -- you know, you have to put down risks. This is a single-type strategy. It doesn't have a broad investment mandate. And, in fact, if I'm not mistaken, I believe there was testimony that -- maybe it was Mr. Dersovitz who testified, I don't recall, but I'm going to have to say something after I wrote my report -- that the risk was de minimis. The risks that were described were de minimis risk.")</p>	<p>misleading material representations as to the Funds' existing portfolio or strategy. Div. Br. at 23; <u>see also</u> Div. Prehearing Br. at 26.</p>
<p>45. It was appropriate for Respondents to describe the Funds' investment strategy and potential risks broadly, and to trust that</p>	<p>Ex. 2396 (Metzger Report) ¶ 65 ("Since the Funds' offering documents disclosed that the investment manager may exercise its discretion to invest in a broad range of assets or strategies, investors, who were concerned with such a broad mandate, could have simply declined to invest. After all, not every hedge fund will appeal to every investor.")</p> <p>Ex. 2396 (Metzger Report) ¶ 48 ("It is reasonable for an investment manager</p>	<p>Denied.</p> <p>Resp. PFOF ¶ 45 seeks a conclusion of law that is contrary to the unrefuted caselaw cited by the Division in its Posthearing Brief rejecting the notion that investment managers may mislead potential investors about their funds' investment strategy and risks and leave it to investors to figure out the</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>prospective investors who were interested in learning about individual positions within the portfolios would take advantage of the Funds' transparency to perform due diligence and ask whatever questions they wanted about those specific investments.</p>	<p>to expect that an investor—who claims to have such knowledge and experience in financial and business matters—will be capable of evaluating the merits and risks of a prospective investment and will read disclaimers and disclosures. Moreover, it is reasonable for a fund to rely on such certifications absent a suspicion that the investor is being deceitful or is just plain ignorant about the subject.”). Tr. 4047:17-4048:23 (D. Martin) (“I mean, this is a hedge fund. It’s risk-return. It’s understanding -- you know, if you’re an accredited investor -- accredited investor -- this was no -- you know, you’re supposed to have a minimum net worth. You’re supposed to do the due diligence. You’re supposed to be sophisticated, right? I don’t -- you know, I don’t -- you know -- people who go into this shouldn’t be 75 years old, you know, ready to retire and, you know, thinking that, This is a good asset for my retirement. You know, this is the right kind of asset that I would do if someone wants to retire. It’s got a beautiful income of 13 and a half percent in an environment at that time that was paying much lower. It’s high risk. It’s in a structure that’s high risk. If you read any of the materials in these hedge funds, you know, it says “Do not rely” -- you know, you have -- there’s disclosures on everything. “Do not rely on verbal disclosures.” You know -- the offering memo is the one that you should go back to, even if there’s a discrepancy. I mean, to get a pitch, you know, a 20-minute or 30-minute elevated pitch and think that that’s all the diligence that you have to do, and then be surprised when you</p>	<p>truth through their due diligence. <u>See</u> Division’s Posthearing Br. at 23-27.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>read about a position in the Wall Street Journal, that's not doing due diligence. That's not doing what you're supposed to do when you're an accredited investor trying to make an investment in a hedge fund.")</p> <p><i>See</i> PFOF 15.</p>	
<p>46. It would not have been appropriate for a potential investor to rely exclusively on marketing materials and presentations when deciding to invest in the Funds.</p>	<p>Ex. 2396 (Metzger Report) ¶ 54 ("Consistent with established industry practice, reasonable accredited investors would have understood that the Funds' marketing materials—in this case, the 2011 marketing presentation and subsequent "Alpha Generation and Process" presentations, Due Diligence Questionnaires ("DDQ"), and Frequently Asked Questions ("FAQs") documents—were meant to provide a brief summary of the investment opportunity only, and did not purport to contain all relevant terms that may be of interest to prospective investors.")</p> <p>Tr. 196:18-24 (Burrow) ("Q Before you invested or recommended investments for any of your clients, would you ever make an investment in a private fund based on the pitch book without reading the offering document? A Is the question have I ever, or would I ever? Q Would you. A No, I wouldn't.").</p> <p>Tr. 465:21-466:6 (Garlock) ("Q And you are familiar with the notion of a sophisticated investor? A I am. Q Someone who invests in alternative funds? A Yes. Q And you understand it is the responsibility of the sophisticated investor to conduct due diligence in</p>	<p>Denied.</p> <p>Resp. PFOF ¶ 46 seeks a conclusion of law that assumes reliance is an element the Division must prove. As set forth in the Division's Posthearing Brief, reliance is not an element of the Division's fraud claims. <u>See</u> Division's Posthearing Br. at 24.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>those alternative funds? A I am. Q And that's true? A That's true.")</p> <p>Tr. 476:18-477:12 (Garlock) ("Q Mr. Garlock, a couple of questions I want to get to with regard to the interchange between you and RD Legal. You asked a lot of questions of Ms. Markovic during the course of your due diligence, correct, I believe you said? A Yes. Q Ms. Chandarana, correct? A If you include electronic, yes. Q And Mr. Rowella, correct? A Yes. Q And then subsequently on the phone with Mr. Dersovitz, correct? A Correct. Q And you asked questions and you got answers to those questions, correct? A Correct, right. Q And during the course of your dialogue, you learned that RD Legal was invested in this Iran Peterson case, correct? A Correct.")</p> <p>Tr. 746:1-8 (Mantell) ("Now, you indicated this morning, Mr. Mantell, that before you actually decided to invest in a fund, you would read the private placement memorandum in its entirety? A Yes. Q Would you ever invest in a private fund based only on looking at a marketing document? A No.")</p> <p>Tr. 2827:15-22 (Hutchinson) ("Q Now, what if you are looking at a fund. What role would a document like a frequently asked questions presentation play? A I think before a person takes a number of hours to read the operating agreement, they will read the frequently asked questions and get</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>an understanding of the fund, find out if they have an appetite to do further due diligence.”)</p> <p><i>Id.</i> at 2828:11-19 (“Q Would you ever make an investment in a private fund based solely on looking at investor dec? A No. Q Why is that? A There is typically a lot more to it. This is a marketing piece to generate interest. Given general understanding I think proper due diligence would take more time and attention and focus on other parts of the detail.”)</p> <p>Tr. 4457:16-4458:14 (Hirsch) (“A Marketing documents are an introduction to the firm. They’re not meant to be anything other than, This is basically who we are. It’s typically – this is who our organization is. This is who the people are. This is basically what we do. It’s not meant to be anything other than that. It’s a – I refer to it as the cocktail napkin that you put down on the bar, and then you say, What would you like to drink? That’s how we refer to it. It gets you in the door. We look at it in due diligence, and then we go, Okay, let’s get this on the side. Let’s look at the real stuff. Q Or you look at it and decide it’s not your cup of tea and -- A Yeah. I mean, marketing materials in any walk of life is just that. I wouldn’t buy a car from marketing material either. I would drive the car; I would test the car; I would take it to my mechanic. Due diligence. This is just really meant to say, Would you like to know more about our organization? Our strategy? Come visit.”)</p> <p><i>Id.</i> at 4468:9-18 (“Q How are FAQ</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	documents used in the hedge fund industry? A FAQs are used by a lot of different hedge funds just to answer the basic questions that marketing hears over and over again. Just try to codify it and put it into material so that they can get a jump on having to answer the question later on. It's a simple document. Again, it's not a standalone document. It's meant to be part of a mosaic of marketing.")	
47. Respondents' marketing materials described the Funds' principal strategy as purchasing legal fees in cases that had been fully adjudicated such that "the dollar value of the minimum legal fee can be accurately determined."	<p>Ex. 32_4 (2012 Alpha Generation and Process) ("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.")</p> <p><i>See also, e.g., Ex. 38-4</i> (August 15, 2012 Alpha Generation and Process); Ex. 43-4(2013 Alpha Generation and Process); 50-4 (2014 Alpha Generation and Process).</p>	<p>Denied.</p> <p>In the 2012 Alpha Generation and Process language cited by Respondents, the phrase "dollar value of the minimum legal fee can be accurately determined" is modifying "fees which arise from <i>settled litigation</i> [which] are past the point of any potential appeals or other disputes" (emphasis added). There is no language concerning "cases that had been fully adjudicated."</p> <p>In addition, the 2012 Alpha Generation and Process language cited by Respondents is part of a description of how the "Fund portfolio is principally comprised"—i.e., what exists in the Fund—not the Funds' "strategy." <u>See</u> Ex. 38-4, 43-4.²</p>

² Exhibit 32, cited by Respondents above, was not admitted into evidence, but Exhibit 38 and 43, also cited by Respondents, includes the language attributed to Exhibit 32.

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
		To the extent Resp. PFOF ¶ 47 refers to “marketing materials” other than the Alpha Generation and Process documents, they offer no support for their proposed finding.
48. This description of the Funds’ principal strategy is consistent with Respondents’ statements that the Funds’ strategy focused on “post-settlement legal fee receivables” that did not have any “litigation risk.”	Ex. 1900_9 (DDQ) (“What makes your strategy unique? We have not identified any registered entities that traffic solely in post-settlement legal fee recievables. [sic] There are entities that lend money to contingency fee attorneys, but they take litigation risk, which we don’t. Furthermore, the investment manager is a former litigator and is extremely well versed in case settlement.and settlement distribution issues.”).	Denied for the same reasons set forth in the Division’s response to Resp. PFOF ¶ 47. As set forth in the Division’s response to Resp. PFOF ¶ 47, the language to which Respondents appear to refer does not describe a “strategy.”
49. Respondents retained and paid a number of industry professionals to review and comment on the marketing materials in an effort to ensure that they were as accurate	Ex. 1831-1 (October 2013 email from Scott Gottlieb to RD Legal employees) (Dear All, I believe we do this already, but just a reminder tlqat any changes to our marketing material (e.g., presentations, DDO,, FAO,, etc.), our web site or any other marketing material must be approved by the Chief Compliance Officer (e.g., yours truly). Yes folks, there is a new Sheriff in town. Thanks, Scott). Tr. 4489:7-20 (Hirsch) (“JUDGE PATIL: Excuse me. With respect to the last sentence, “Yes, folks, there’s a new sheriff in town,” written in	Admitted that Respondents retained and paid “a number” of industry professionals to review and comment on their marketing materials. Denied that the individuals Respondents identify in their PFOF ¶ 49 reviewed such materials for accuracy or to comport with Respondents’ undefined “industry standards.” Mr. Gottlieb, for example, testified that he did not

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>as possible and comported with industry standards.</p>	<p>October of 2013, what was the procedure before then? THE WITNESS: That’s a great question, Your Honor. I don’t really have a great answer for you. This has always been a really collaborative effort at the firm. And I think that this was his way of saying, Okay, I know we’ve always been collaborative, but from now on, I’m the final say here. The buck stops with me. I think that’s what he was referring to. He has a really great sense of humor.”)</p> <p>Ex. 210 at 23:25-24:11 (Markovic April 21, 2016 deposition testimony) (“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 the 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.”)</p> <p>Tr. 4468:19-24 (Hirsch) (“Q Did you review the FAQ document at RD Legal when you were working as a consultant? A At some point, yes. Q Did you make recommendations and suggestions regarding the FAQ? A Yes.”)</p> <p><i>Id.</i> at 4445:7-20 (“Q And you had seen RD Legal’s marketing materials that</p>	<p>understand his role to include reviewing marketing materials with an eye toward determining their accuracy; rather, he viewed his role as looking for “grammatical and drafting errors.” Div. PFOF ¶ 702.</p> <p>Ms. Hirsch and Ms. Markovic likewise did not review marketing materials for accuracy. Div. PFOF ¶¶ 703, 704.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>existed at the time you were doing due diligence; is that right? A I had. Q Did you have a view about how those materials met up with what you deemed to be institutional quality? A I did. Q What was that view? A My view was that they were not institutional quality. Q Okay. And that was one of the services you offered to provide to Mr. Dersovitz? A Yes.”)</p> <p>Tr. 5503:14-5504:8 (Dersovitz) (“Q The date at the bottom of this page, page 13 of the exhibit, is that December of 2010? A Yes. Q Does that indicate to you that this was an approved due diligence questionnaire as of December of 2010? A Yes, it is. 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. Q But it doesn’t go out without you approving it, does it? A Correct.”)</p>	

VI. Transparency

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
50. Respondents were transparent about the	<p>(a):</p> <p>Tr. 5011:8-16 (Franiak) (“Q Mr. Franiak, Exhibit 2148 is an email distributing the 2014 financial</p>	Denied that Respondents were transparent about the Funds’ investments and operations. <u>See generally</u> Div. Br. and Div. PFOF in

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>Funds' investments and operations:</p> <p>(a)</p> <p>Respondents' third party administrator, Woodfield, provided investors with annual audited financial statements that identified the Funds' top positions and the concentration of its investments in those positions;</p> <p>(b)</p> <p>Woodfield also provided investors with quarterly AUP reports that were prepared by third party Wiss & Company LLP and</p>	<p>statements for RD Legal Funding Partners, LP to investors. Do you know how often the financial statements were sent by Woodfield to investors? A You're referring to the annual audit report? Q Yes. A It would be once a year.)</p> <p>Exs. 1261, 1262, 1369, 1370, 1675, 1676, 1938, 1939, 2148, 2149, 2887, and 3052 (emails from Woodfield to investors attaching financial statements for the Funds from 2010 through 2015)</p> <p>Tr. 371:25-372:4 (Ishimaru) ("Q And you also saw in the case of your investment with RD Legal that you were provided transparency in the positions in the portfolio by getting the financial statements, correct? A Yes.")</p> <p>Tr. 5655:14-5657:11 (Dabbah) ("Q Below those headers, it says, "United States, payor, qualified settlement trust." And then if you look across to the right column, it says, "Percentage of partners' capital" 70.44 percent. A Right. Q Did you review this document? A I did. Q Do you know what qualified settlement trust stands for? A It's an entity created by the government. Q Do you understand whether this qualified settlement trust represents a particular position in the portfolio? A Yes. Peterson. Q You knew that at the time you reviewed it? A Of course. Q If you hadn't known, if you didn't know what it was when you reviewed it, what would you have done? A You can do two things. As I said before, you can either call the auditor for clarification -- some</p>	<p>support thereof.</p> <p>Admitted that Respondents' third party administrator, Woodfield, provided investors with annual audited financial statements, but denied that those financial statements adequately identified the Funds' top positions or concentration of investments in those positions. For example, different positions were aggregated where they shared an obligor, Div. PFOF ¶ 243, and certain entities were listed as "payors" even where they had no obligation to make any payment to the Funds. Div. PFOF ¶ 245.</p> <p>Admitted that Woodfield provided investors with quarterly AUP reports that were prepared by third party Wiss & Company LLP, but deny as unsupported by the record that anyone provided investors with detailed information concerning workouts and problem assets in the Funds' portfolios, including the investments in the Osborn ONJ cases and the Cohen cases.</p> <p>Admitted Respondents maintained a website that permitted investors and prospective investors who signed a nondisclosure agreement to access a number of documents</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>provided detailed information concerning workouts and problem assets in the Funds' portfolios, including the investments in the Osborn ONJ cases and the Cohen cases;</p> <p>(c)</p> <p>Respondents maintained a website that permitted investors and prospective investors who signed a nondisclosure agreement to access a number of documents pertinent to the Funds, including but not limited to the Offering Memoranda, subscription documents,</p>	<p>people aren't allowed to call the auditor. They're prevented to. Or you can speak to the investment manager to get clarification. Q And if you reviewed -- if you were invested in a hedge fund and you reviewed a document that listed a particular receivable with a concentration of 70 percent, and you didn't understand what that receivable was, would you call the manager? A I would. I mean, I can only speak for myself. JUDGE PATIL: Excuse me. Mr. Dabbah, how did you know that qualified settlement trust related to the Peterson case? THE WITNESS: Because I had conversations with Roni, and I -- you know, this is not the first time that this -- this particular word came up. I didn't have to wait for the audited financials to know about qualified settlement trust. JUDGE PATIL: Okay. So the source you're saying of that was Mr. Dersovitz? THE WITNESS: Yes. In finding out in previous years about the Peterson case and anything else, you like to know exactly what the mechanism is especially if there was a high concentration. What's the exit strategy? How are people going to be paid out? Where is the money? Things like this.")</p> <p>(b): Tr. 5021:15-20 (Franiak) ("Q Mr. Franiak, are you familiar with a document called "The agreed-upon procedures for RD Legal Capital"? A Yes. Q Is that also a document that Woodfield would distribute to RD Legal's investors? A Yes, it is. Q Did Woodfield.")</p>	<p>pertinent to the Funds, including but not limited to the Offering Memoranda, subscription documents, current and historical financial statements and AUP reports, and certain investor correspondence.</p> <p>Admitted that Respondents, at certain times, provided investors and prospective investors who signed a nondisclosure agreement with access to certain documents on Respondents' Lotus Notes database, but denied that all such investors and prospective investors were provided with access to the "RDLF Document Library." Of the limited number of investors and prospective investors who sought access to a Lotus Notes database, many were provided access to only a "Demo Library." Div. PFOF ¶¶ 256, 257. Also, remote access to the Lotus Notes libraries was withdrawn from Flagship Fund investors in approximately September 2013. Div. PFOF ¶ 266.</p> <p>Denied that Respondents provided all investors and prospective investors with access to the RDLF Document Library, for the reasons set forth in the Division's PFOF ¶¶ 272, 275, 276. Moreover, Ms. Ishimaru and Mr.</p>

Proposed Fact	Supporting Evidence	Division Response
<p>current and historical financial statements and AUP reports, and investor correspondence;</p> <p>(d) Respondents provided investors and prospective investors who signed a nondisclosure agreement with access to the “RDLF Document Library” on Respondents’ Lotus Notes database, which contains all underwriting documents for every transaction considered or executed by the Funds;</p> <p>(e) Respondents referenced the investor</p>	<p>Exs. 1186, 1246, 1263, 1431, 1490, 1544, 1712, 1796, 1892, 2018, 2055, and 2092 (emails from Woodfield to investors attaching AUP reports from Q1 2011 to Q3 2014 and indicating that the reports and other information about the Funds are also available on the investor website)</p> <p>Tr. 372:17-24 (Ishimaru) (“Q The AUPs, though, were provided to you? A Yes. Q Quarterly independent CPA review, which included mail audit confirmations, are distributed directly to each investor by the fund administrator? A Yes. Q And you got that, right? A Yes.”)</p> <p>Tr. 4611:19-4612:1 (Hirsch) (“THE WITNESS: Well, in the case of RD, they’re[the workout positions are] all in the AUP, which is the agreed-upon procedure where they go through. They have a third-party that comes in and looks at all of the positions that have hair on them, if you will, or in a workout. And it gets disclosed to the investors on the website.”)</p> <p>(c):</p> <p>Ex. 3095 (RD Legal investor website screenshot showing General Fund Info page with fully expanded archive libraries)</p> <p>Ex. 2355A-1 (screenshot of website showing, among other documents, links to subscription documents, including offering memoranda).</p>	<p>Levenbaum were given access to the RDLF Document Library <i>after</i> they became investors. Div. PFOF ¶ 286.</p> <p>Admitted that Respondents referenced the investor website, historical financial statements, and AUP reports, in their Offering Memoranda and marketing materials, but deny as unsupported by the record to which Respondents cite that they specifically recommended that investors access this information.</p> <p>Denied that Respondents referenced the “RDLF Document Library” in any of their materials as none of the cited evidence supports that fact—the evidence showed that the documents referenced a “Lotus Notes database” but did not specify which of the two libraries investors would be given access to.</p> <p>Admitted that Respondents ordinarily responded to investor questions and requests for information, but deny this proposed finding to the extent “responsive” is meant to convey that Respondents responded truthfully.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>website, historical financial statements, AUP reports, and RDLF Document Library in their Offering Memoranda and marketing materials, and specifically recommended that investors access this information ; and</p> <p>(f) Respondents were responsive to investor questions and requests for information.</p>	<p>Ex. 2360A-1 (screenshot of website showing Flagship Funds’ documents, including offering memoranda).</p> <p>Ex. 2354A-1 (screenshot of website showing, among other documents: (1) 02.28.12 Citibank Temporary Limit Increase; and (2) 05.30.12 Temporary Limit Increase to Novartis Exposure Memo).</p> <p>Ex. 3096 at Rows: 193 & 212 (showing Citibank memo uploaded on 3/12/2012 and Novartis memo uploaded on 6/4/2012).</p> <p>Tr. 5598:2-14 (Dersovitz) (“Q Are these year-end financials for 2013, are they the only financials that are available to investors on the website? A If you scroll down, you’ll see that there is an archive document section where a whole list of older documents will come up, including historical financials, Wiss reports, and so on and so on. Q Why are those there? A It’s the repository of all information. It’s so that all information possible is communicated to the investors, and they have the opportunity to make the best informed decision that they can.”)</p> <p>Tr. 930:14-930:24 (Wils) (“Q And then the next paragraph goes on to describe information that is available on an investor website, and it describes how -- A Yes. Q -- you can get credentials -- A Correct. Q -- to access that website? Did you ever go on the website that is referenced in Exhibit 1796? A Perhaps I did, perhaps I didn’t. I don’t have a recollection of</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>it.”)</p> <p>Tr. 189:12-225 (Burrow) (“Q Okay. When you went on the website, I think you said maybe two or three times this morning, did you understand that copies of the audited financial statements were on the website? A Yes. Q Including historical copies of the financial statements for prior years? A Yes. Q Did you understand that copies of the offering memorandum for the funds were on the website? A I did, yes.</p> <p>Tr. 5669:21-5670:12 (Dabbah) (“Q If we turn back to page 1712-2 -- A Right. Q -- this -- the email says, “Please note that this compliance review and other RD Legal fund information is also available at the fund’s investor website at www.rdlegalcapital.com.” Did you understand that the funds had an investor website? A Yes, we were aware of that. Q Did you have access? A We did. Q Did you access the website? A If it wasn’t myself, I have a staff of a few people that -- not only this website, but all our investments constantly monitoring. Every month, any developments, you get customer information, statements.”)</p> <p>(d):</p> <p><i>See generally</i> Ex. 3163.</p> <p>Tr. 4776:8-13 (Haider) (“Q Have you ever been present when someone else at RD Legal Funding showed an investor how to navigate the RDLF document library? A I’ve sat in</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>with Barbara once or twice when she would give an investor a walk-through of Lotus.”)</p> <p>Tr. 271:13-272:1 (Ishimaru) (“Q Okay. The part in this document that’s a lot further up that says -- it’s the first bullet point, and it says, “24/7 electronic access for each investor of every document associated with each position within the fund. In effect, the fund can be audited remotely.” Do you see that, ma’am? A Yes. Q Were you given electronic access to all the positions in the fund? A Yes, I recall receiving access and receiving a password and looking at the site. Q And what did you see on the site? A A lot of cases that related to the loans that RD Legal had made.”)</p> <p><i>Id.</i> at 371:21-24 (“Q You found in this case that you could -- I’ll break it up a little bit -- that you could go online and take a look at the positions in the portfolio, correct? A Yes.”)</p> <p><i>Id.</i> at 383:2-383:13 (“Q You mentioned briefly, and I don’t want to get into it, that you also had a chance to take a look at the portfolio database, something called Lotus Notes, during the course of your investment? A Yes. At the beginning, yes. Q You requested that access, right? A They offered it. Q They offered it to you and you accepted? A Yes. Q And you then got access to their Lotus Notes database, right? A Yes.”)</p> <p>Tr. 4434:17-21 (Hirsch) (“A Lotus Notes is best to think of as a gigantic</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>file cabinet. And in that file cabinet, you house all of the information on every deal in a methodology so that you can go to -- you can pull up any transaction.”)</p> <p><i>Id.</i> at 4435:13-23 (“Q And I was going to ask, when you did your diligence on RD Legal on behalf of your client, did you access Lotus Notes? A Yes. Q How did you know about it? A Well, when you do due diligence, you say, ‘How do you store your information?’ Everyone is different. They say, ‘Well, we keep everything in Lotus Notes.’ So I said, ‘Can I have access?’ And they said ‘Yes.’”)</p> <p>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.”)</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>(e):</p> <p><u>Investor Website</u></p> <p><i>See, e.g., Ex. 66-10</i> (June 2013 Domestic Offering Memorandum) (“Each monthly report will be available to download on a secure web page of www.rdlegalcapital.com.”)</p> <p><i>Id.</i> at 29-30 (same)</p> <p>Ex. 67-11, 43 (June 2013 Offshore Offering Memorandum) (same)</p> <p>Ex. 1564-3 (January 2013 FAQ) (providing that quarterly AUP reports are “posted on Firm website”).</p> <p><i>See, e.g., Ex. 1186-1</i> (June 22, 2011 email from Woodfield distributing AUPs) (“Please note that this compliance review and other RD Legal Fund information is also available at the Fund’s investor website of www.rdlegalcapital.com. To view the report you must log into the website; you can receive your login information from Meesha Chandarana by sending her an email at mchandarana@rdlegalcapital.com.”)</p> <p>Ex. 39-13 (2012 Due Diligence Questionnaire) (“Portfolio risk is managed by limiting the level of portfolio exposure based on the obligor’s (the financial party responsible for the payment of the settlement) creditworthiness . . . policy exceptions are posted on the</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>investor web site.”)</p> <p><u>Financial Statements</u></p> <p>Ex. 66-29 (June 2013 Domestic Offering Memorandum) (“Limited partners will be furnished annually with audited year-end financial statements, including a statement of profit or loss for such fiscal year.”); Ex. 67-43 ((June 2013 Offshore Offering Memorandum) (same).</p> <p>Ex. 1564-3 (January 2013 FAQ) (providing that audited financials are “posted on Firm website”).</p> <p><u>AUP Reports</u></p> <p>Ex. 66_16 (June 2013 Domestic Offering Memorandum) (“Agreed Upon Procedures”); Ex. 67_18-19 (June 2013 Offshore Confidential Explanatory Memorandum) (same).</p> <p>Ex. 278-2 (3/13/2012 email exchange between Dersovitz, Ishimaru, Craig, and Gumins) (“[W]e’re trying to be the most forthcoming manager you can deal with and while there is always room for improvement, 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 update it three times a quarter.”).</p> <p><u>RDLF Document Library</u></p> <p>Ex. 1564-3 (January 2013 FAQ) (“RDLC has always been a paperless</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>firm, and therefore houses all documentation for the fund in a database on its main server. Each investor may request login access that allows for complete transparency to all of the documentation for each position in the fund”).</p> <p>Ex. 39-15 (September 2012 Due Diligence Questionnaire) (“Investors are given access to our main database, Lotus Notes once a confidentiality agreement is signed. This allows investors to see all of our positions and the underlying documentation.”)</p> <p><u>(f)</u></p> <p>Tr. 212:16-22 (Burrow) (“Q When you had questions of RD Legal, you would call Ms. Markovic or someone, and they would answer your questions? A Correct. Q They were always available for you in that regard? A They were.”)</p> <p>Tr. 351:23-352:18 (Ishimaru) (“Q Something that you just testified about really kind of stuck with me. You were asked a lot of questions during the course of your dealings with RD Legal, and many of them centered on the Iran case; isn’t that right? A Yes. Q And you got answers to those questions, didn’t you? A I’m sorry? Q You got answers to those questions, correct? A I -- well, not -- not -- some of them -- yes, I guess I did get answers, yes. Q You didn’t like some of those answers, right? A Yes. Q I believe you said some of that information wasn’t what you had hoped for, right? A Yes, that’s</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>correct. Q But it was true, right? A Yes. Q And then based on that information, you made investment decisions for yourself, right? A Yes.”)</p> <p>Tr. 476:18-477:12 (Garlock) (“Q Mr. Garlock, a couple of questions I want to get to with regard to the interchange between you and RD Legal. You asked a lot of questions of Ms. Markovic during the course of your due diligence, correct, I believe you said? A Yes. Q Ms. Chandarana, correct? A If you include electronic, yes. Q And Mr. Rowella, correct? A Yes. Q And then subsequently on the phone with Mr. Dersovitz, correct? A Correct. Q And you asked questions and you got answers to those questions, correct? A Correct, right. Q And during the course of your dialogue, you learned that RD Legal was invested in this Iran Peterson case, correct? A Correct.”)</p> <p>Tr. 1011:18-1012:5 (Condon) (“Q In all your dealings with RD Legal, from when you first heard of them until you made your investment, was there any information that you asked for that you were not provided? A Not that I recall. Q Did you feel that you had full access to the information you needed to make an informed investment? A Yes. I mean, they gave me a lot of documents. I reviewed them all, to the best of my ability. Where I was in doubt of things, I asked for clarification. And when it came right down to it, I got very specific in terms</p>	

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	<p>of my questions, to be sure that what I thought I was investing in was the case.”)</p> <p>Tr. 1145:14-1146:2 (Schaffer) (“Q And during the course of those meetings, I believe when you were asked about them in general, you said that his team was straightforward in telling you about the terms and the issues that you requested him, correct? A Yes. Q You asked a lot of questions, correct? A Yes. Q And you got a lot of answers, right? A Yes. Q And during the course of the due diligence, you were basically made comfortable with the investment that you were putting your clients into, correct? A Yes.”)</p> <p>Tr. 2212:15-2213:2 (Demby) (“Q You talked about Katarina Markovic a little bit during your direct examination. Do you recall that? A Yes. Q And I believe you said she was very helpful? A Yes. Q And she responded quickly to your questions? A Consistently. Q Consistently. You asked a question, and you got an answer from her, correct? A Yes.”)</p> <p>Tr. 2766:23-2767:6 (Geraci) (“Q How was the access to information at RD Legal; how was your access to RD Legal? A You mean with respect to what? Q Your ability to access information. A Pretty readily available. Q Did you ever have questions or information you sought that you weren’t able to obtain? A You know, I don’t remember any particular point, but</p>	

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	<p>again the flow of information was pretty open.”)</p> <p>Tr. 2830:3-10 (Hutchinson) (“Q What type of access did you have to RD Legal? A Direct access. Unlike many of the very large mutual funds we invest in where we can’t speak to the specific top level managers in this case, we were able to speak directly with Roni and KatarinA Q Were they accessible to you when you had questions? A Certainly.”)</p> <p>Tr. 3769:15-17 (Young) (“Q Did you ever request any information from RD Legal, Mr. Dersovitz, that you did not receive? A No.”)</p> <p><i>Id.</i> at 3785:13-15 (“Q If you asked questions about the portfolio, were they answered? A Yes.</p> <p>Tr. 4687:3-10 (Lowe) (“Q Now, in your experience as an investor in RD Legal, how was the flow of information between the foundation and the company? A Any time I asked for something, I got it. Q Did you ever have any difficulty in obtaining information from the company? A No, sir, there was never any reluctance to provide what I asked for in a relatively prompt manner.”)</p> <p>Tr. 5673:9-5674:5 (Dabbah) (“Q Did Mr. Dersovitz typically answer your questions? A Always. Q Did he provide you with information you requested? A Well, he never not provided anything that I asked him. Q In all of your dealings</p>	

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	<p>with Mr. Dersovitz, has he ever told you anything that you know to be untrue? A No. Q Do you feel like he ever failed to disclose anything that was necessary to your understanding of the investment? A No. The opposite. He didn't try and hide. Some portfolio managers try and hide that they don't take write-offs or they don't disclose. And here, even though it's uncomfortable sometimes to disclose things or admit to things, this was done, which is quite admirable on Wall Street. You have some very, very high-profile managers that don't disclose and don't do things, and, you know --")</p> <p>Tr. 4509:24-4510:3 (Hirsch) ("Q Do you ever hear Mr. Dersovitz say anything to an investor that you thought was not complete in any way? A No. If someone asked a question, he gave them an answer.)</p> <p>Id. at 4615:13-16 ("And to date, everything that I have seen from this firm confirms that that question was asked; the answer was given. And if it wasn't given, I found it somewhere in Lotus Notes.")</p> <p>Id. at 4615:19-4616:5 ("Q So if an investor asked Mr. Dersovitz what was in a portfolio, he should have mentioned the workout positions, right? A If you ask for what is in the portfolio, he will tell you what's in the portfolio. I was present at meetings with Barbara, for example, when we would be at a conference room and an investor would come in, and we would just go through the portfolio, and she would take them</p>	

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	through each of the positions. So it would be disclosed. Nothing was hidden from anybody.”)	
51. This high level of transparency is unusual for a hedge fund.	<p>Ex. 2396 (Metzger Report) ¶ 42 (“Respondents offered total position transparency to prospective and current investors. Upon signing an NDA, investors would receive access to a Lotus Notes database that contained all of the underlying documents for the positions held in the Funds. This degree of position transparency, while not unprecedented, is, in my experience, highly unusual and beneficial to investors.”)</p> <p><i>Id.</i> at ¶ 41 (“During the course of due diligence, many hedge fund managers do not like to disclose to prospective investors the specific positions held by the fund. A 2014 SEC Risk Alert observed that “while some managers were willing to provide additional transparency, others were reluctant to share detailed information about their alternative investments. In particular, these managers were sensitive to sharing position-level information, which they felt may compromise their ability to execute their strategies.”)</p> <p>Ex. 252-58 (RDLFP – Executive Summary) (“The structure of the Funds since formation have provided investors total transparency and ongoing asset confirmation by several independent third parties as summarized below”)</p> <p>Tr. 4597:2-5 (Hirsch) (“A I don't think there was any lack of transparency about the Iran trade. Mr.</p>	<p>Denied.</p> <p>First, for the reasons set forth above in response to Resp. PFOF ¶ 50, the Division rejects the premise that Respondents provided “[t]his level of transparency.”</p> <p>Second, the amount of false and misleading information contained in the documents upon which Respondents rely undermines any claim of transparency. <u>See, e.g.</u>, Div. PFOF ¶¶ 222 (misleading information in AUPs); 236-37 (audited financial statements); 315-19 (Citibank Memorandum).</p>

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	<p>Dersovitz talked about it incessantly. There wasn't a person that he'd met that he didn't say the word "Iran."")</p> <p>Tr. 4614:1 – 1615:16 (Hirsch) ("JUDGE PATIL: You were speaking to a question of why a 10 percent workout position was not disclosed in marketing materials. And the last thing you said before we got cut off is, it was irrelevant in a fund that's completely transparent. And I wanted you to explain to me what you meant by that in relation to his question about not disclosing a 10 percent workout position. THE WITNESS: Again, first of all, no manager affirmatively puts workout positions in their marketing materials. Again, you don't put workout positions in your marketing materials. You don't give specifics about positions, which is what I explained before. Anything that you wanted to find out about this fund, you could find out through asking a question; through looking at financials; looking at Lotus database; sitting down with anyone in the firm. You're not going to find a hedge fund out there that is affirmatively telling you about a workout position in their book. It's not – it doesn't happen. Back to what I've said again and again, marketing materials are introductory. They're not to be used separately. Everything has to be looked at together. That's why due diligence takes so long. Because you really have to deep dive. And I've never, ever met a manager, and the first thing they tell me, or the last thing they tell me is, Oh, by the way, did I tell you about this trade and it went south? Or I did this trade</p>	

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	<p>and it went south? I tried to get a short on that, but they took it away from me. These are questions that you have to ask. That's the way our business is. And to date, everything that I have seen from this firm confirms that that question was asked; the answer was given. And if it wasn't given, I found it somewhere in Lotus Notes.”)</p> <p>Tr. 212:1-22 (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. Q Sure. A So there was never an opportunity for them to ask me or tell me that I needed to go to the website. Q When you had questions of RD Legal, you would call Ms. Markovic or someone, and they would answer your questions? A Correct. Q They were always available for you in that regard? A They were.”)</p> <p>Tr. 370:23-371:6 (Ishimaru) (“Q One of the things you talked about and you certainly participated in is this full investor transparency to portfolio positions. Do you see that? A Yes. Q That was important to</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>you? A Yes. I mean, I liked the fact -- I mean, it is not totally important, because I have invested with hedge fund managers that don't provide it, but it is nice that a manager would do that.")</p> <p>Tr. 371:21-372:11 (Ishimaru) ("Q You found in this case that you could -- I'll break it up a little bit -- that you could go online and take a look at the positions in the portfolio, correct? A Yes. Q And you also saw in the case of your investment with RD Legal that you were provided transparency in the positions in the portfolio by getting the financial statements, correct? A Yes. Q And you got those because they were delivered to you by RD Legal, correct? A The financials that -- in the AUPs? Q The audited statement. A The audited statements, yes. Q The AUPs as well, correct? A Yes.")</p> <p>Ex. 278-2 (3/13/2012 email exchange between Dersovitz, Ishimaru, Craig, and Gumins) ("[W]e're trying to be the most forthcoming manager you can deal with and while there is always room for improvement, 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 documents and we update it three times a quarter.").</p>	
52. Despite this transparency, many	Tr. 787:16-788:20 (Mantell) ("Q -- what diligence did you conduct? Did you read the financial statements for the fund? A This is an important	Denied. As set forth above, the Division denies Respondents

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>investors called as witnesses by the Division did not conduct even a basic level of due diligence before investing in the Funds.</p>	<p>question. Q This is pretty much a straight forward yes. A So I'm -- (Simultaneous conversations.) THE WITNESS: And I'm going to answer you. I did not register -- this is strange. I did not register when I read this that this fund was entering into an existing portfolio. I thought this was a new fund that was going to create new investments. So I did not believe that what I had was the opportunity to go and look at an existing portfolio to then see whether it was or was not concentrated. And, therefore, I did not go to seek -- to look at the existing portfolio. BY MR. HEALY: Q You thought when you invested in the RD Legal Offshore Fund in 2013 -- A That it was newly created. Q What made you think the fund was newly created? A I can't answer you now. I can only tell you what happened to me at the time. That's just a fact of what I did. Which is why, for example, I never had any awareness that the Peterson case existed in the fund, if it did.")</p> <p>Tr. 915:18-916:8 (Wils) ("Q If we look at Exhibit 350 again of the Division. A Yes, correct. I have it. Q Okay. And this cover email is dated June -- A Hold on, yes. Q The cover email is dated June 18, 2013? A Uh-huh. Q Correct? A Correct. Q And that is before the time you invested? A That is correct. Q And you said, Mr. Wils, you received the memo, but you didn't read it in full; is that right? A That is correct.")</p> <p>Id. at Tr. 929:4-10 ("Q Mr. Wils,</p>	<p>proposed finding of "this transparency." See supra Response to Resp. RFOF ¶ 50.</p> <p>The Division also denies, as unsupported by Respondents' citations, that investors failed to do "a basic level of due diligence" or that they had any duty to do so. See also Div. PFOF ¶¶ 349-53, 355, 357, 368, 370-72, 377-83, 564-70, 573, 590, 594 (detailing extensive due diligence by investors).</p>

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	<p>before the time you invested, what due diligence did you do on the funds besides the meetings you described and receiving the offering documents and the subscription documents that we discussed a moment ago? A Apparently not enough. You just named what I did.”)</p> <p>Tr. 1510:13-1511:4 (Ashcraft) (“Q Okay. Mr. Ashcraft, did you look at any audited financials of the company before you made a decision to invest in RD Legal? A Not audited, no. Q Did you ask to look at any audited financials before you made the decision to invest in RD Legal? A No. Q Okay. You understand that RD Legal does have audited financials for the years from two thousand -- at least 2009 going forward, if not earlier? A I received them later in the years, being an investor, but I was not aware at that time. I didn’t ask. Q You didn’t ask at the time? A Right.”)</p> <p>Ex. 2396-14 (Metzger Report) ¶ 53 (“Discussing the investment opportunity with friends or family, or basing one’s investment decision on the past performance of the fund, would not constitute adequate due diligence. For example, the only investor Respondents have deposed, Arthur Sinensky, testified that before investing in the Offshore Fund he did “Arthur’s version of due diligence,” which typically includes discussions with his wife and colleagues, but rarely includes review of the PPM.”)</p> <p>Tr. 3349:23-3351:9 (Sinensky) (“Q Mr. Sinensky, when you invest in a</p>	

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	<p>hedge fund like RD Legal, you conduct a certain level of due diligence; is that right? A Yes. Q And the due diligence you collect, you described as Arthur's version of due diligence; is that right? A Yes. Q And Arthur's version of due diligence is that you read some of the materials provided by the sponsor; is that right? A Yes. Q And you talk to people, including people at Tiger 21; is that right, sir? A That's correct. Q And most importantly, you discuss it with your wife? A I do discuss it with my wife. Q You understand that private funds, like RD Legal, offer a private placement memorandum; is that right, sir? A Yes. Q And you very rarely actually review all of the private placement memorandum before you invest in a fund? A That's correct. Q And you said earlier today that -- I think the word you used -- well, when you receive a private placement memorandum, you typically just skim it; is that right? A That is correct. I tend to spend most of my time on the executive summary. But I do skim. Q And you understand that the private placement memorandum explains the investment you're considering and how it works? A Yes. Q Is that right? A Yes.")</p>	
<p>53. It was appropriate for Dersovitz to rely on others to provide answers to investors so that he could focus on</p>	<p>Tr. 5709:17-5710:8 (Dersovitz) (7 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. I can't be a jack of all trades. That's why --</p>	<p>Denied.</p> <p>Respondents' proposed finding as to what was "appropriate" calls for a conclusion of law for which they offer no support.</p> <p>Furthermore, Dersovitz was responsible for</p>

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<p>the Funds' investments, which inured to the benefit of investors.</p>	<p>that's why you hire professional -- that's why I hire competent professionals in various -- in varying areas that I would rely upon. And my CFO is one of them. And who better to give -- refer a question to than to my CFO? He's got, on an interim basis, month-to-month, he's the closest in time to receiving the Pluris numbers. So he would theoretically be able to calculate as of the most recent month-end what the numbers are.")</p> <p>Tr. 5720:19-5720:7 (Dersovitz) ("Q In general, why do you refer investors to the CFO or the audited financials instead of just, if you are sitting at your desk, calling up the dashboard? A That is -- I don't work with the numbers every day. Why wouldn't I refer someone to the best source of information possible? That's not what I do. I wouldn't feel comfortable giving numbers. I would rather my CFO do it. Or I would rather someone refer to the financials. That's -- my responsibility is to give accurate information. When I can't provide accurate information, I believe my responsibility is refer them to someone in my organization who can. And that was my practice.")</p> <p>Tr. 4437:2-22 (Hirsch) ("Q What else can you recall that you haven't already described about the diligence that you conducted on RD Legal? A I would say that we did a very extensive due diligence, which we do for every manager. We did reference checks. We called some of the RD's counterparties to ask them about their relationship with the manager and</p>	<p>communications with investors and potential investors. <u>See</u> Div. PFOF ¶¶ 697-98.</p>

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	<p>how they felt he dealt professionally. And we not only looked at Roni, we looked at Rick Rowella, who was the marketing person at the time. We asked about Michael Gulliani, who was the CFO at the time. And I spent a lot of time with Barbara Laraia, I think more than anyone during the due diligence, and Mr. Dersovitz. Q Why did you spend time with Barbara Laraia? A Because she had the best insight into the portfolio as far as what the deals were, when they were transacted, how they were transacted, what the documentation was, et cetera.”)</p> <p>Tr. 2068:19-2069:7 (Furgatch) (“Q Well, did you ask during this diligence phase to review the audited financial statements for the fund you were going to invest in? A Well, we typically do ask. And I remember specifically wanting to meet their financial chief. I’m not sure if CFO was his title, but their financial person. So, yes, whatever they presented. Q You asked to meet the CFO of RD Legal? A Yes. Q Did you meet the CFO? A Well, I met a gentleman who I described earlier, an older gentleman formerly of Wiss & Company. He was held out as the financial officer.”)</p>	
<p>54. Respondents disclosed to investors that the Funds, like all legitimate investment</p>	<p>See, e.g., Ex. 1431-5 to 6 (March 31, 2012 AUP disclosing and describing the advances to Osborn for the ONJ cases); Ex. 1544-5 to 6 (September 30, 2012 AUP disclosing and describing same); Ex. 1712-7 to 8 (March 31, 2013 AUP disclosing and describing same).</p>	<p>Denied.</p> <p>Resp. PFOF ¶ 54 is not supported by their record citations. Neither the Offering Memoranda nor the AUPs to which Respondents cite make any mention of any “workouts,” a term</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
vehicles, had workouts	<p>Ex. 66-16 (June 2013 Domestic Offering Memorandum) (“Agreed Upon Procedures”); Ex. 67_18-19 (June 2013 Offshore Confidential Explanatory Memorandum) (same).</p> <p>Tr. 4732:4-18 (Lowe) (“Q As a financial professional, do you have an understanding of the term “workout”? A Workout? Q Workout. A Unfortunately, I do. Q And what is that understanding? A It means the borrower or debtor has not performed as you expected him to, and you are trying to salvage your relationship and obtain your money back. Q Did you ever learn whether RD Legal had any workouts in the various positions it had funded? A Yes, sir, we did. And in those cases, I’m not saying in every case, but in many of the cases, Roni would talk to us about them, if they were of any consequence, or if we asked about them.”)</p>	<p>Respondents do not define; the AUPs were not ordinarily sent to prospective Fund investors, Div. PFOF ¶ 220, and other of the Funds’ AUPs identified the Osborn and Cohen investments as “settled.” Div. PFOF ¶ 222.</p> <p>Additionally, Respondents offer no support for what “all legitimate investment vehicles” have, or do not have, in their portfolios.</p>
55. Providing a single concentration percentage for any of the Funds’ specific investments was complicated because the Domestic Fund and the Offshore Fund had different concentration	<p>Tr. 5703:2-5704:15 (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,</p>	<p>Denied.</p> <p>Respondents maintained records, including “dashboard” spreadsheets, that calculated concentrations for the Domestic Fund and the Offshore Fund, permitted the user to determine the “combined” concentration simply by clicking “Combined – Fund” on a dropdown menu, and further allowed users to select “Fair Value,” “Net Book Value” or “Original Dollars Deployed.” See, e.g., Ex. 418A.</p>

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<p>numbers, and because concentration could be calculated in a variety of ways, including based on dollars deployed, net book value, or fair value.</p>	<p>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. 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.”)</p> <p><i>Id.</i> at 5713:17-5716:17 (“Q Mr. Dersovitz, you mentioned this moving target and also that you travel when you’re on the road. I want to focus your attention on Exhibit 422. 422, the middle email is an email from yourself to Mr. Mrkonic, copies to others, including yourself, with regard to, I think, precisely the question back in June 25, 2015, where you put in writing in this middle paragraph something with regard to how you view questions as to concentration and how you describe them. Is this email accurate in terms of how you view them and how you</p>	<p>Moreover, Respondents did in fact routinely provide “a single concentration” for the Funds’ <u>Peterson</u> investments. <u>E.g.</u>, Div. PFOF ¶¶ 665(a), (d), 670(a-d),</p>

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	<p>would describe them? A This is a simplified version of what I just tried to explain to the Court. Q So you think of the overall position generally in absolute dollars deployed? A Correct. I always have. Q Is that easier for you to keep track of in your head? A Correct. MR. BIRNBAUM: Objection. Leading. JUDGE PATIL: Overruled. THE WITNESS: Sorry. JUDGE PATIL: That's fine. BY MR. WILLINGHAM: Q And, obviously, there are different funds, domestic and offshore. Does that complicate what's in one particular fund that an investor might call about? MR. BIRNBAUM: Objection. JUDGE PATIL: Sustained. BY MR. WILLINGHAM: Q How does the existence of a domestic – the two different funds, domestic and offshore, or in this stage the special purpose vehicle, complicate your ability to track what assets are in what when you're out to lunch? A Or using a Mac or traveling. You're participating assets to different vehicles. So when you're moving assets around, it just -- and I'm not -- not in a bad way, God forbid, but when you're transferring assets from one entity to another, it's -- and not knowing the specific day that it's happening on, you could be wrong consequentially when you make a representation to an investor. And I simply thought it was best practice to either talk in dollars deployed or refer people to my CFO. JUDGE PATIL: Why didn't you refer Allen to the CFO? BY MR. WILLINGHAM: Q What did you</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>refer Allen to -- JUDGE PATIL: I'm sorry. There's a question pending. 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.")</p> <p>Ex. 308-3 (11/3/2012 Dersovitz email to Markovic) "I have another issue to discuss with you regarding the concentrations, etc. You need to look into the if [sic] you're comparing apples to oranges. I suspect that you are. What do I mean? The dollar limiters that we employ are dollars out of the door, and I believe that it's done on a dollar deployed basis as it relates to the total equity across both funds. When you are for instance telling me that the concentration of USA exposure that we have is 47%, I suspect that Kevin is using the adjusted NAV, which are the numbers</p>	

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	<p>after the Pluris adjustment. Is that possible? If he's using the pluris number for instance with regard to the Marines cases, there's a significant markup. If what I suspect is correct, then I would think you have to adjust the position amounts to the pre pluris numbers, so that you get a more meaningful number. Furthermore, there's another issue as well, after we purchase a position, it begins to accrete income and after several years, it also has a marked impact. At the end of the day, what I think your struggling with is delta between dollars deployed (which is what triggers our limiters) followed by layering on not only the intervening incremental income, but also pluris adjustment. I believe that is what is messing with your ratios and compounding the problem that your anticipating with investors. Note we've run into this type of issue before and simply chased to explain that you can't truly compare the initial dollars deployed limiters with the ultimate composition in the portfolio because the longer the receivable the more pronounced the impact becomes, plus the bump in the NAV that we're currently receiving from Pluris.")</p> <p><i>Id.</i> at 2 ("I'm pretty sure that's it. You're using the pluris valuation numbers for portfolio concentration %, but the deployment of dollars is done on a different basis (meaning before fair value adjustment). So what happens on case like Iran, with a high rate of return and long duration, you get a huge bump in value and that is what I believe is causing that</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>concern your [sic] facing.”)</p> <p><i>Id.</i> at 1 (“The take away is this. When you’re discussing concentration with investors, you’re approaching it after it’s been adjusted for fair value, which as I thought about it is greatly distorted in cases like Iran where you’re underwriting for a longer period (4 years) and a high ROI (26%). That’s huge! The flip side of that is when you’re initially deploying dollars it’s merely looking at the total pool and establishing a limit. So if everything were written for the same term & ROI, that might not have a huge impact, but when you start varying those numbers, your [sic] clearly entering the realm of comparing apples to oranges and things will get distorted.”)</p> <p>Ex. 387 (January 30, 2014 email between Markovic and Chandarana, discussing request for “Iran numbers as a % of AUM, and noting the dashboard does not calculate that, but instead has fair value and net book value); <i>see also</i> Response to Division’s Fact 680.</p>	

VII. Peterson

A. ! Peterson Fell Within the Scope of the Funds’ “Post-Settlement” Investment Strategy

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
56. Investments in the	Ex. 1020 (9/7/2007 final judgment in <i>Peterson v. Islamic Rep. of Iran</i>).	Denied. Respondents have

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>Peterson judgment were not subject to litigation risk because the attorneys and plaintiffs whose fees and awards were purchased had obtained a final and non-appealable judgment conclusively establishing liability and damages.</p>	<p>Ex. 1108 (5/28/2010 Master Agreement between The Perles Law Firm, PC and the Domestic Fund)</p> <p>Ex. 1109 (5/28/2010 Schedule A-2 to Master Service Agreement between The Perles Law Firm, PC and RD Legal Funding Partners, LP re Peterson Judgment for legal fee of \$6,467,635.95, with supporting documentation listed as “Memorandum Opinion dated September 07, 2007 resulting in a separate Court-Order and Judgment”).</p> <p>Tr.1559:13-17 (Perles) (“Q Okay. Did you obtain a final judgement in this lawsuit at some point? A Yes. We obtained a final judgement that was served under U.S. law on the Iranian Foreign Minister in Teheran.”)</p> <p>Tr. 1662:9-23 (Perles) (“Q Now, I’ll ask you, sir, to look at Exhibit 1020, which will be on the screen. It’s also in the stack in front of you under one of the binder clips. Whatever is easier. You can look on the screen, Mr. Perles, if you can read easily. I’m not asking you a lot of questions about this document. But, Mr. Perles, do you recognize this as the judgement that was entered by the District of Columbia District Court on behalf of Peterson Plaintiffs? A Yes. Q Now, was this judgement ever appealed? A It was not.”)</p> <p>Tr. 2429:11-23 (Fay) (“Q Can I ask you to turn to Exhibit 1020 in your binder. A Uh-huh. Q Do you recognize this as the \$2.6 billion</p>	<p>acknowledged that investments in the <u>Peterson</u> default judgment were subject to “the success or failure of the Turnover Litigation.” Div. PFOF ¶¶684-85.</p> <p>Additionally, attorneys hired by Respondents advised them that recovery on advances to <u>Peterson</u> plaintiffs “is the subject of litigation and therefore uncertain.” Div. PFOF ¶ 137.</p> <p>Respondents’ expert David Martin testified that <u>Peterson</u> was subject to litigation risk. <u>Id.</u> ¶ 134.</p> <p>Judge Forrest, presiding over the <u>Peterson</u> litigation, described it as “vigorously litigated.” <u>Id.</u> ¶ 112.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>judgement that you obtained in the damages phase of the Peterson case? A That is correct, yes. Q And it's also correct that this judgement was never appealed; isn't that correct? A That is correct. Q And, at a point in time, it became a non-appealable final judgement; isn't that correct? A That is correct.")</p> <p>Ex. 1455-1 (8/17/2012 Reed Smith Memorandum) ("In 2003, the district court found Iran liable for the attack, and, in 2007, it entered a judgment against Iran, awarding the Peterson Plaintiffs \$2.65 billion in compensatory damages. That judgment is now final.").</p>	
<p>57. Instead, like other post-settlement investments, purchases of fees and awards from the Peterson judgment had collection risk and duration risk</p>	<p>Tr 2455:16 -2456:14 (Fay) ("Q And when you learned that there were funds being held illicitly at Citibank, did that affect your view of whether that money was collectible? A You mean if it changed my view from one of lacking in optimism to one that was more optimistic, I was happier that we were close to collecting. I thought in this case in the beginning we were going to win and collect. And I've got to say, a lot of the people who worked with me on it, they wanted to help, and they put everything single thing in and they did. But several of them told me later, I never thought we'd collect anything out of this until we actually did. And the reason I thought was -- maybe my view is different than most trial lawyers. I think the clients win cases, not lawyers. And juries and judges tend to award people who they think are deserving. And I couldn't think of</p>	<p>Admitted that recovery from the <u>Peterson</u> investment had duration risk and collection risk, including the risk of an inability to collect due to potential adverse litigation outcomes, as well as due to geopolitical factors. <u>See</u> Div. PFOF ¶¶ 121-143.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>any group that would be more deserving than the Marine, soldiers and sailors and their families in this case. And that's why I thought in the end – I didn't know how long it was going to take. But, in the end, I thought we were going to collect.”)</p> <p>Tr. 1708:23-1709:2 (Perles) (“Q If the Supreme Court had reversed on the separation of powers issue under 8772, would that have changed the status of Judge Forrest’s turnover order? A I would think not.”)</p> <p>Tr. 2078:3-6 (Furgatch) (“Q And you understood that collection risk to be something that ran through any of the kind of receivables that RD Legal acquired? A Yes.”)</p> <p>Ex. 263-4 to 5 (Condon due diligence notes) (“Most delays are process driven. We might be waiting final judges 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 investment tenure talks about the duration of the deals. If we have a deal that may take one year to pay out, we count 2 years- to account for various delays. This is how we come up with the present value of the receivables and decide on an amount to pay. The primary cause of payment delays is court appeals and other operational issues.”).</p> <p><i>See Ex. 1455, 1456, 1677, 1691, 1770, 1906, 1907, 1916 (Reed Smith memos analyzing Peterson turnover</i></p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>action).</p> <p>Tr. 5653:6-14 (Dabbah) (JUDGE PATIL: Overruled. At any time, at all time. We'll do it that way. The question was: Was the Peterson case consistent with the strategy as presented to you by Mr. Dersovitz? And I want to know, was it ever inconsistent or was it consistent? THE WITNESS: No, it wasn't inconsistent. There was no style drift. That's the kind of thing that we gave him money to do.")</p>	

B. The Peterson Trades Had Less Overall Risk Than the Rest of the Funds' !

Portfolio

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>58. By the time the Funds first started investing in the Peterson Judgment in 2010, the likelihood that the restrained assets would be distributed to the Peterson plaintiffs and their lawyers was already very high</p>	<p>(a)</p> <p>Ex. 1020 (9/7/2007 final judgment in <i>Peterson v. Islamic Rep. of Iran</i>)</p> <p>Ex. 1455 (8/17/2012 Reed Smith Memorandum) ("In 2003, the district court found Iran liable for the attack, and, in 2007, it entered a judgment against Iran, awarding the Peterson Plaintiffs \$2.65 billion in compensatory damages. That judgment is now final.").</p> <p>(b)</p> <p>Ex. 1733-1 (<i>Peterson v. Islamic Republic of Iran</i>, United States District Court for the Southern District of New York, Case No. 10-cv-04518 (ECF No. 463)) ("[O]n or about June 16, June 23 and October</p>	<p>Denied.</p> <p>Respondents do not define what they mean by "very high."</p> <p>The Division admits that the <u>Peterson</u> plaintiffs (a) had obtained a final and non-appealable judgment; (b) had located and restrained billions of dollars in assets from which they believed they could potentially satisfy some portion of the <u>Peterson</u> judgment, subject to a legal proceeding known as a turnover action in which legal and factual determinations would have to be made to obtain those assets; and (c) had obtained evidence from a</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>because:</p> <p>(a) The Peterson plaintiffs had obtained a final and non-appealable judgment;</p> <p>(b) The Peterson plaintiffs had located and restrained billions of dollars in assets from which to satisfy the Peterson Judgment;</p> <p>(c) The Peterson plaintiffs had obtained compelling evidence from a deposition taken in a case pending in Italy confirming that the restrained assets belonged to the Iranian</p>	<p>27, 2008, the Peterson Judgment Creditors served writs and amended writs of execution and restraining and amended restraining notices on Clearstream in New York.”)</p> <p><u>(c)</u></p> <p>Tr. 1672:16-1674:3 (Perles) (“Q Okay. Now, Mr. Perles, what was the significance of the depositions taken in Italy as they relate to establishing the true ownership of the Citibank assets? A Prior to the entry of Bank Markazi into the proceeding, Clearstream was asserting that the beneficial owner, in fact, was Ubae, this Gaddafi -- what turned out to be a Gaddafi money laundering facility in Rome. And I believe the -- either the chairman or the president of the bank was an SDN. But it became clear very quickly that what had happened in Rome is what people in the creditor’s world -- I’m not in that world, but what people in the creditor’s world call a fraudulent conveyance. Effectively, the government of the Iran was paying Muammar Gaddafi’s bank to hide the real beneficial ownership of that fund. Q And did you at any time yourself review the transcripts from the depositions taken in Italy? A I did. Q Okay. And did those show to you that Clearstream had -- or Ubae had admitted the true ownership of the assets? A The officers and directors of Ubae are basically divided into two nationalities; Italian and Libyan. The Libyan officers and directors ran away from the proceeding. They didn’t -- they didn’t -- not a one of them showed up to be</p>	<p>deposition taken in a case pending in Italy confirming that the restrained assets belonged to the Iranian government and were connected to a money laundering operation (though the Division denies the characterization of such evidence as “compelling” for lack of support in the record to which Respondents cite).</p> <p>The Division denies (d) the risk that political developments in foreign relations between the United States and the Iranian government would interfere with the distribution of the restrained assets to satisfy the Peterson Judgment was <i>de minimis</i>. In fact, Respondents found political risks significant enough to include as a separate risk factor in the Iran SPV Offering Memorandum under a heading titled “U.S. Relations with Iran.” Ex. 69-25.</p> <p>The Division further denies that (e) “[t]he sympathetic nature of the Peterson plaintiffs made it unlikely that anyone would do anything to prevent them from recovering.” Respondents cite no support other than the opinion of Thomas Fay, who in the same cited testimony conceded that others who worked with him “never thought we’d collect anything</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>government and were connected to a money laundering operation;</p> <p>(d) The risk that political developments in foreign relations between the United States and the Iranian government would interfere with the distribution of the restrained assets to satisfy the Peterson Judgment was <i>de minimis</i>; and</p> <p>(e) The sympathetic nature of the Peterson plaintiffs made it unlikely that anyone would do anything to prevent</p>	<p>deposed in violation of Italian law. The Italian officers and directors did what they were required to do under Italian law. And they were quite forthcoming about the fact the Iranians paid the bank to change the name on the title. They also disclosed to us by sidebar, not shown in the proceedings, the existence of the additional \$1.67 billion at JPMorgan Chase.”)</p> <p><i>Id.</i> at 1681:17-1682:6 (Perles) (“Q You go on to tell Mr. Dersovitz, “Clearstream asserted that the funds no longer belong to Iran as the accounts had been retitled into the name of UBAE.” Is that right, sir? A That is what happened, yes. Q As you know, we dispensed with that defense through depositions conducted in Italy. A Yes. Q Is that right, sir? A That is correct. Q And that’s what you’ve been talking about a moment ago regarding the significance of the discovery taken in Italy? A That is correct.”)</p> <p>(d)</p> <p>Ex. 573-2 (October 5, 2013 Reed Smith Memorandum) (“we do not think it likely that any changes in U.S. relations with Iran would affect the Peterson Plaintiffs’ chances of recover”); <i>id.</i> (“Any action seizing the Peterson Plaintiffs’ property would raise takings and due process issues.”).</p> <p>Tr. 3891:9-24 (Dersovitz) (“THE WITNESS: People got frightened. People got nervous and frightened when the Wall Street Journal came</p>	<p>out of this until we actually did.”)</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>them from recovering.</p>	<p>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.")</p> <p>Ex. 367-5 (Memorandum of Terms for Iran SPV) ("Potential Risks: The United States normalizes relations with Iran by entering into a Treaty that nullifies the previous Congressional Acts. We believe this is unlikely as Section 502 of the Iran Threat Reduction and Syria Human Rights Act of 2012 specifically prevents the Executive Branch of our Government of unblocking the subject assets.")</p> <p>(e) Tr 2455:16 -2456:14 (Fay) ("Q And when you learned that there were funds being held illicitly at Citibank, did that affect your view of whether that money was collectible? A You mean if it changed my view from one of lacking in optimism to one that was more optimistic, I was happier that we were close to collecting. I thought in</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>this case in the beginning we were going to win and collect. And I've got to say, a lot of the people who worked with me on it, they wanted to help, and they put everything single thing in and they did. But several of them told me later, I never thought we'd collect anything out of this until we actually did. And the reason I thought was -- maybe my view is different than most trial lawyers. I think the clients win cases, not lawyers. And juries and judges tend to award people who they think are deserving. And I couldn't think of any group that would be more deserving than the Marine, soldiers and sailors and their families in this case. And that's why I thought in the end -- I didn't know how long it was going to take. But, in the end, I thought we were going to collect.")</p>	
<p>59. As time went on, the chances that the restrained assets would not be distributed to the Peterson plaintiffs and their attorneys became even remote:</p> <p>(a) In February 2012, President Obama signed Executive Order 13599, which</p>	<p>59 (a): <i>Bank Markazi v. Peterson</i>, 136 S. Ct. 1310, 1318 (2016).</p> <p>59(b) <i>Bank Markazi v. Peterson</i>, 136 S. Ct. 1310, 1318-19 (2016).</p> <p>59(c) <i>Peterson v. Islamic Rep. of Iran</i>, 2013 WL 1155576 (S.D.N.Y. Mar. 13, 2013).</p> <p>59(d) Ex. 1733-1 (<i>Peterson v. Islamic Rep. of Iran</i>, United States District Court for the Southern District of New York, Case No. 10-cv-04518 (ECF</p>	<p>Denied.</p> <p>Various events over time made recovery on the Funds' <u>Peterson</u> investments more and less likely. For example, <u>Peterson</u> attorney Steven Perles testified that his confidence in recovery diminished when the Supreme Court granted certiorari to review the <u>Peterson</u> matter in October 2015. Div. PFOF ¶ 125.</p> <p>The Division admits that (a) in February 2012, President Obama signed Executive Order 13599, which the <u>Peterson</u> plaintiffs argued had the effect of blocking the assets that had previously</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>blocked the assets that had previously been identified by the Peterson plaintiffs and restrained by the court in the Peterson collection action, facilitating their recovery under the Terrorism Risk Insurance Act (“TRIA”);</p> <p>(b) Later in 2012, President Obama signed the Iran Threat Reduction and Syria Human Rights Act of 2012, which included a provision (“Section 8772”) that provided express authority for the attachment and</p>	<p>No. 463)) (Order Entering Partial Final Judgment).</p> <p>59(e)</p> <p><i>Ex. 1734-1 (Peterson v. Islamic Rep. of Iran, United States District Court for the Southern District of New York, Case No. 10-cv-04518 (ECF No. 460)) (Order Approving Qualified Settlement Fund).</i></p> <p>59(f)</p> <p><i>Peterson v. Islamic Rep. of Iran, 758 F.3d 185 (2d Cir. 2014).</i></p>	<p>been identified by the Peterson plaintiffs and restrained by the court in the Peterson collection action, and which the Peterson plaintiffs argued eliminated defenses to turnover that Iran may have otherwise had, under the Terrorism Risk Insurance Act (“TRIA”);</p> <p>(b) Later in 2012, President Obama signed the Iran Threat Reduction and Syria Human Rights Act of 2012, which included a provision (“Section 8772”) that purported to provide express authority for the attachment and execution of the restrained and blocked assets to satisfy the Peterson judgment subject to the District Court in that action making certain factual and legal determinations that no other party had a legitimate claim to the assets, and purporting to supersede other federal laws and preempt inconsistent state laws;</p> <p>(c) In March 2013, the federal court presiding over the Peterson collection action granted partial summary judgment on behalf of the Peterson plaintiffs and ordered the turnover of the restrained and blocked assets;</p> <p>(d) In July 2013, the federal court issued a partial judgment that directed the United States Department of the Treasury, Office of Foreign Asset Control (OFAC) to issue a license</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>execution of the restrained and blocked assets to satisfy the Peterson judgment, superseding other federal laws and preempting inconsistent state laws;</p> <p>(c) In March 2013, the federal court presiding over the Peterson collection action granted partial summary judgment on behalf of the Peterson plaintiffs on multiple independent grounds, and ordered the turnover of the restrained and blocked assets;</p> <p>(d) In July</p>		<p>permitting transfer of the restrained and blocked assets into a trust established for the benefit of the Peterson plaintiffs (the “Qualified Settlement Fund”);</p> <p>(e) In August 2013, the restrained and blocked assets were transferred to the Qualified Settlement Fund; and</p> <p>(f) On July 9, 2014, the Second Circuit unanimously affirmed the District Court’s turnover order.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>2013, the federal court issued a partial judgment that directed the United States Department of the Treasury, Office of Foreign Asset Control (OFAC) to issue a license permitting transfer of the restrained and blocked assets into a trust established for the benefit of the Peterson plaintiffs (the “Qualified Settlement Fund”);</p> <p>(e) In August 2013, the restrained and blocked assets were transferred to the Qualified Settlement</p>		

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>Fund; and</p> <p>(f) On July 9, 2014, the Second Circuit unanimously affirmed the District Court’s turnover order.</p>		
<p>60. Everyone who had the expertise and performed the substantial due diligence necessary to properly understand the Peterson collection action—including the attorneys for the Peterson plaintiffs, the attorneys at Reed Smith that Respondents hired to assess the collection action, and Dersovitz himself—all were</p>	<p>Tr. 2459:6-23 (Fay) (“Q Subsequent to President Clinton, each president that’s come to office took action to help facilitate the collection of the assets to satisfy the Marine judgements; isn’t that correct? A. Well, yes. And President George W. Bush did later and so did President Obama. When we got to the Supreme Court, the Solicitor General. Who sets forth the position of the administration, filed a brief in support of us and gave a part of the oral argument in support of us. So that the Obama administration was solidly behind the turnover of the -- what’s called the Citibank assets. Q Ultimately, you had the executive branch, the congressional branch and the judicial branch all taking action to help collect these assets; isn’t that correct? A It made a very nice threesome, yes.)</p> <p>Tr. 2460:21-2461:4 (Fay) (“Q You always believed that you were going to collect a judgement in the Peterson vs. Iran case; isn’t that correct? A I’m sorry. Can you repeat that? Q Didn’t you always believe that you would be able to collect the judgement in the Peterson</p>	<p>Denied.</p> <p>As Respondents acknowledge above, attorneys working with <u>Peterson</u> attorney Thomas Fay “never thought we’d collect anything out of this until we actually did.” Tr 2455:16-2456:14 (Fay).</p> <p>Respondents also disregard the August 21, 2012 memorandum from Reed Smith to Dersovitz explaining that the authors—who were paid by Respondents to opine on advances to <u>Peterson</u> plaintiffs, so presumably are included in the category of individuals Respondents describe as having performed “due diligence necessary to properly understand the Peterson collection action”—believed there to be “a very real possibility that [the <u>Peterson</u> plaintiffs] will be unable to recover any part of their Awards.” Div. PFOF ¶ 137(b).</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>confident that it ultimately would succeed.</p>	<p>vs. Iran case? A Yes, I did. I didn't think that in the end that either -- either the public or any branch of the government was going to want to stand in the way of our clients obtaining justice. I really believe that we would see our way through because of them.)</p> <p>Tr. 2456:6-14 (Fay) (A . . . I think the clients win cases, not lawyers. And juries and judges tend to award people who they think are deserving. And I couldn't think of any group that would be more deserving than the Marine, soldiers and sailors and their families in this case. And that's why I thought in the end -- I didn't know how long it was going to take. But, in the end, I thought we were going to collect.)</p> <p>Tr. 1685:11-14 (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.)</p> <p>Tr. 1708:23-1709:2 (Perles) ("Q If the Supreme Court had reversed on the separation of powers issue under 8772, would that have changed the status of Judge Forrest's turnover order? A I would think not.")</p> <p>Tr. 1685:21-24 (Perles) ("Q Correct. But you were confident on the merits in November 2011, that the plaintiffs would succeed in the turnover case? A Absolutely, yes.)</p> <p>Tr. 1688:2-1690:5 (Perles) ("Q Now, Mr. Perles, did the Foreign Sovereign Immunities Act</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>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. Q If you look at the very last sentence on that page, page 13. A Uh-huh. Q It says "The FSIA does, however, provide exceptions to immunity in connection with legal proceedings seeking attachment to fulfill a judgment." Do you see that, sir? A I do. Q Then it goes on to take excerpts from different parts of the Foreign Sovereign Immunities Act. Do you see that, sir? A Uh-huh, yes. Q Including a provision which indicates that there would be no immunity -- or it says, "A foreign state shall not be immune for any injury or death that is caused by," quote, "an act of torture, extra judicial killing, aircraft sabotage, hostage taking or provision of material support or resources for such an act." Do you see that, sir? A I do. Q Now, is this part of the Flatow Amendment, the language we just looked at? A Yes. Q Okay. Is this one of the statutes that you helped enact in law to benefit the victims of</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>terrorism? A I would suppose, yes. Q You're being very modest. Now, separate from the Foreign Sovereign Immunities Act and New York State law, the Terrorism Risk Insurance Act also provided an avenue to turn over the assets; is that correct? A Yes. And that arises out of a controversy that we were involved in with the Justice Department during the enforcement of Flatow. Congress responded to that controversy by passing the Terrorism Risk Insurance Act.)</p> <p>Tr. 3409:23-3410:10 (J. Martin) ("Q Did you reach your conclusion about the plaintiffs' arguments? A Well, I think there's probably a lot of conclusions and many conclusions in this memo. But on balance, we believed as the memo indicates that the plaintiffs' arguments had merit, yes. Q And did you reach a conclusion about the defendants' arguments? A We certainly concluded that they weren't as good as the plaintiffs and felt, I think, probably in our own discussions that the plaintiffs were likely to prevail. I don't know if that was responsive. But that was definitely our view.)</p> <p>Tr.3415:18-3416:7 (J. Martin) ("Q The third paragraph on Exhibit 1677-01, it says, "The opinion and order appears to be comprehensive in its discussion of factual and legal issues, well-reasoned and generally consistent with our original evaluation of the merits of the Peterson turnover litigation. On balance, we believe Judge Forrest's rulings are likely to be</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>affirmed on appeal.” Do you see that? A Yes. Q Was that an accurate reflection of your opinion of the summary judgment order as of the time of this memo? A Yes. Q Do you stand by that analysis today? A Yes.)</p> <p>Tr. 3417:16-3418:8 (J. Martin) (“Q Even though there’s never a sure thing in judicial proceedings, were you confident in the opinions that you were providing to RD Legal? A Those opinions were the reflection of our best professional judgment. And they came with that degree of confidence. So I sit by what we did, how we did it and the conclusions we came to. And they reflect a degree of confidence that’s in the memos. Q You were confident at the time of the memos; is that correct? A Yes. Q And you remain confident in those opinions today; is that correct? A Yes. If you’re talking about the whole run of the process and all the evaluations that we gave, I probably should retract that for the U.S. Supreme Court. I didn’t call that one right. I called the outcome, actually when asked, but not the fact.)</p> <p>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</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>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.”).</p> <p>Tr.5951:20-5953:7 (Dersovitz) (“Q Mr. Dersovitz, “Financially based on the law what you are failing to appreciate, this was not a settlement issue. The law says we get the money and the significance Perles has to go through the motion. Yes, the Iranians can make it easier, but that is all. They cannot stop the enforcement process.” Did you write that to Mr. Davis in 2011? A Yes. Q Why did you write that to Mr. Davis in 2011? A It's the truth. Q Is that how you felt? A Yes. Q Is that what you believed? A Yes. Q What was the basis for your belief that they cannot stop the enforcement process? A The law and understanding that only questions of law were involved here, not questions of fact. Q And that you said in this e-mail consists that Perles has to go through the motions, do you see that? A Yes. Q What did you mean by that? A What we do is discount the intervening judicial process, that is what we do. the turnover action is no different than an intervening process. It's just a slightly different process than we</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>normally see, but it's a proceeding and that's what we do. Q And how does that play into Mr. Perles just having to go through the motions, when you wrote that what did you mean by that? A He would have to go through the various litigations steps to get to the pot of gold at the end of the rainbow. It was just a function of time and litigation and filing motions. That's all. 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.)</p>	
<p>61. Even in the extremely unlikely event that the Peterson collection action ultimately failed, Respondents had other available options for recovering the fees and awards purchased by the Funds:</p> <p>(a) The attorneys representing the Peterson plaintiffs, Steven Perles and</p>	<p>61(a)</p> <p>Ex. 1108 (May 28, 2010 Master Agreement between The Perles Law Firm, PC and RD Legal Funding Partners, LP re <i>Peterson</i> Judgment)</p> <p>Ex. 227-17 (Perles Guaranty)</p> <p>Tr. 1633:22-1634:3 (Perles) (“And if I could direct your attention to Division Exhibit 227-17. A Okay. Q Do you know what this document is, sir? A It's a -- it's a guaranty, a repayment guaranty.”)</p> <p>Ex. 238 (April 20, 11 Master Agreement between Fay Kaplan Law and RD Legal Funding Partners, LP re <i>Peterson</i> Judgment)</p> <p>Ex. 238-24 (Fay Guaranty)</p> <p>Tr. 2435:5-18 (Fay) (“Q I ask you to turn to Exhibit 238 at page 24. A Okay. Q Do you recognize this as a guaranty that you provided to RD Legal Capital? A Yes. Q If you look at page 238-28. Will you please</p>	<p>Denied.</p> <p>Respondents do not define what they mean by “extremely unlikely” to fail, but to the extent they mean extremely unlikely as compared to recovering on advances to fully resolved cases with “no litigation risk,” the Division denies that statement for lack of evidentiary support.</p> <p>The Division admits that in the event Respondents did not prevail in their turnover litigation against the Citibank assets, they had the other <i>potential</i> means of recovery Respondents identify in their PFOF ¶ 61, though each of those potential means of recovery faced its own risks. <u>See, e.g.,</u> Div. PFOF ¶¶ 92, 93 (describing risk that other paths to recovery might not be successful). The Fund set up by 42 U.S.C § 10609 was not available until 2016, years</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>Thomas Fay, signed guaranties and agreed that the Funds had recourse against all of the assets of their respective firms for any monies owed in connection with the Funds' purchase of their fees from the Peterson judgment;</p> <p>(b) The Peterson judgment could be satisfied by other Iranian assets, including an apartment building located at 650 Fifth Avenue in New York for which the United States Attorney for the Southern District of New York</p>	<p>confirm that your signature is on that page? A Yes. My signature appears twice. Q And it's correct that you guaranteed your obligations to RD Legal Capital, both personally and on behalf of the Fay Kaplan Law Group? A That is correct. It's the same law firm as now. It's just Kaplan has retired.")</p> <p>61(b)</p> <p><i>In re 650 Fifth Ave. & Related Props.</i>, United States District Court for the Southern District of New York, Case No. 08-cv-10934 (KBF) (ECF No. 1896).</p> <p>Tr. 1621:18 - 1623:18 (Perles) ("Q Can I -- are you familiar with litigation, you know, referenced -- referred to as 650 5th Avenue? A Yes. Q Can you explain to the Court what that is, please. A There is a marquee building at Rockefeller Plaza who's address is 650 5th Avenue. The Justice Department and a group of certain plaintiffs are involved in what could best be described as a joint venture to seize that building from the Iranian shell company that holds title to the building and to have the U.S. Marshal Service auction that building. And the prong of attack against that building is really two-tiered. The upper tier is the government's right to seize any asset that is materially used in support of the laundering of money. Again, it is analogous to the government seizes a vessel because it's used to run drugs. The government has the inherent authority to seize that building, because it was used in money</p>	<p>after Respondents first invested in Peterson, see Tr. 1733:23-1734:10 (Perles) ("Q: Mr. Perles, when was the Feinberg fund established? A: It was established roughly a year ago. Q: I'm sorry. A: Something under a year ago. Maybe something over a year ago. It's -- the fund is a relatively new statutory entity. Q: Okay. So was that fund available when you filed the turnover action in Clearstream 1? A: No. The fund was established this year, because we petitioned the Justice Department for a -- "we" meaning the U.S. Attorneys office here. The office of -- Rick Hartunian's office.").</p> <p>Finally, Mr. Perles and Mr. Fay, at the time of funding, did not have access to assets that could cover the advances made. <u>See, e.g., Ex. 474.</u></p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>recently obtained a forfeiture verdict following a jury trial, and approximately \$6.7 billion held in an account at J.P. Morgan, which is subject to a separate collection action currently on appeal; and</p> <p>(c) if all else failed, the receivables the Funds purchased could be partially satisfied from a \$1 billion fund set up by Congress for victims of terrorism pursuant to the United States Victims of State Sponsored Terrorism</p>	<p>laundering activities. We have the -- “we” meaning the terror victim judgement holders that are participating in this joint venture with the government -- have the inherent right to execute against the building in order to satisfy judgements against the Islamic Republic of Iran. What the joint venture does is it obviates the necessity for a priority battle between the government’s right to seize and our right to enforce our judgements. And, effectively, the government gets full credit for having done the seizure. And the victims of Iran’s terrorism receive 100 percent of the -- will receive 100 percent of the marshal’s sales -- proceeds of the marshal’s sale of the building less the government’s cost of litigation. Q And have you played any role with respect to this litigation? A I played some role, yes. Q What role? A We’re assisting the U.S. Attorney’s Office for the Southern District. Q Are your clients from the Peterson reparation action asserting any interest in this litigation, the 650 5th Avenue litigation? A The Peterson Plaintiffs are party to the sharing agreement with the government, which creates what I describe as a joint venture.”)</p> <p>Ex. 2065-1 to 2 (November 24, 2014 email from S. Perles to R. Dersovitz forwarding information regarding JP Morgan collection proceeding).</p> <p><u>61(c)</u> Tr. 1713:15 - 1714:18 (Perles) (“Q Now, are you familiar with something called a Feinberg fund? A Yes. Q</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>Act, 42 U.S.C. § 10609.</p>	<p>What is the Feinberg fund? A We helped create a fund which is at the Justice Department, but administered by an independent special master, currently Ken Feinberg, which would be composed -- which was to be composed of certain funds that the United States receives from the enforcement of AML proceedings against the launders of terrorist assets, money launderers of terrorist assets. Q And was the Feinberg fund provided proceeds from penalties that were assessed against BNP Paribas in its large, multi-billion dollar settlement with the government? A That is correct. Q And the first \$1 billion of the Feinberg fund came from that BNP Paribas money? A That is correct. Q Now, the Peterson Plaintiffs, if for any reason they could not collect against the QSF or had outstanding partial judgment not satisfied, would they be able to have petitioned the Feinberg fund? A Yes, they would have. Q They would have if they could not get the QSF money; is that right? A That is correct. Congress wanted to use those funds for individuals who were unable to enforce their judgments or obtain remedy from collateral source. So the plaintiffs ultimately having won Clearstream 1 are ineligible until the rest of the unenforced judgments catches up. Likewise, anyone holding judgments resulting in -- against Iran, for example, resulting from the 9-11 attack, because they received money from the 9-11 fund, has to wait for the rest of the victims' community to catch up.”)</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
62. Investments in the Peterson Judgment did not materially increase the average duration of the Funds' positions.	<p>Ex. 2393 (Martin Report) ¶¶ 32-33 (“Peterson receivables also reduced the duration risk of the entire RD Legal portfolio. For the first three years, June 2011 to June 2014, the duration impact was relatively minor, as Peterson receivables lengthened the overall portfolio duration by 5 to 12 months. For most of the later period, from February 2015 to September 2016, the Peterson receivables in aggregate had a shorter duration than the rest of the portfolio, lowering the overall portfolio duration by 1 to 7 months.”);</p> <p><i>Id.</i> at Exhibit 3 (2393-36) (graph showing impact of Peterson receivables on portfolio duration).</p>	<p>Denied as unsupported by the evidentiary record. In fact, as Respondents’ expert concedes, from June 2011 to June 2014, the Peterson receivable <i>lengthened</i> the expected duration by 5 to 12 months.</p> <p>The Division also notes that Martin’s conclusion was based not on the <i>actual</i> collection of the <u>Peterson</u> assets, but on Respondents’ <i>estimates</i> of the day of collection, Tr. at 4021:5—4022:24, a fact Martin assumed to be correct.</p> <p>Martin did not purport to opine on the actual duration of collection for the <u>Peterson</u> receivables. As Respondents ask the Court to find, <u>see</u> Resp. PFOF ¶ 130, the Funds are still awaiting collection of a significant portion of the <u>Peterson</u> receivables.</p>

C. Respondents Properly Assessed and Managed the Risks of the Peterson Trades

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
63. Respondents dedicated substantial resources and expertise to	<p>63(a)</p> <p>Tr. 5881:13-15 (Dersovitz) (“Q You already had a business relationship with Mr. Perles before you began discussing the Peterson case? A Yes, I did.”)</p> <p>Tr. 5879:16-5880:5 (Dersovitz) (“Q</p>	<p>Denied.</p> <p>Reed Smith counsel James Martin testified that he was hired to conduct an analysis of the “merits” of the <u>Clearstream I</u> matter and provided no opinion as to the likely outcome of the case.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>understanding the opportunities and risks associated with investing in the Peterson Judgment:</p> <p>(a) Dersovitz was able based on his relationship with Steve Perles to gain an information advantage regarding the likelihood that the Peterson collection action would succeed.</p> <p>(b) Dersovitz used his experience as a litigator to closely analyze the Peterson collection action and assess for himself the likelihood that it would be successful.</p>	<p>And when did you first learn about the Peterson case? A Probably early -- late 2009/early 2010. Q One moment. And how did you become aware of it? A Through Steven Perles. 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.”)</p> <p>Tr. 5882:12-21 (Dersovitz) (“Q Did you form a relationship with Mr. Perles? A Yes. Intellectually it fascinated me. Q With regard to the Peterson case, was it Mr. Perles that approached you or did you approach Mr. Perles? A Could have been a -- it could have been both of us. I was fascinated in the work he was doing. He might have thought that it was coming to a point in time with the Italian deposition that it might be something suitable for me to advance on.”)</p> <p>63(b)</p> <p>Ex. 1452-16 (“Having practiced personal injury law for 14 years . . .”)</p> <p>Tr. 5883:23-5885:14 (Dersovitz) (“Q And what was the significance of the fund to you, of the funds that were housed at Citibank being laundered</p>	<p>Div. PFOF ¶ 136.</p> <p>Dersovitz does not claim to have had any information advantage over Mr. Perles, who acknowledged the Supreme Court granting certiorari in Peterson shocked him, Div. PFOF ¶ 125, or James Martin’s colleagues at Reed Smith, who expressed their uncertainty as to the potential outcome of the Peterson Turnover Litigation in an August 2012 memorandum addressed to Dersovitz. Div. PFOF ¶ 137.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>(c) Dersowitz also hired attorneys at Reed Smith to prepare multiple legal memoranda assessing the chances that the Peterson judgment would ultimately be satisfied through the blocked and restrained assets.</p>	<p>into the country? A If you're familiar with that area of the law -- I'm not so I come to learn this: There's a Supreme Court case called NML versus Argentina. There's also an exception to the immunity provided under the Foreign Sovereign Immunities Act. Monies that belong to a sovereign that are domiciled in America have to be -- to preserve their immunity, they have to be declared funds with the treasury and they can't be for commercial purposes. These monies were invested in bonds and not declared with the treasury. Q By nature of being laundered in the country? A I'm sorry. Q Because they were laundered in the United States? A Yes, as the term is commonly used. Q In terms of the review, the Italian transcript formed your view whether that could be proven? A Along with the communication from the treasury, which I believe a court would also take judicial notice of it. Q I'm going to point you to Exhibit 3109. You reference a communication from treasury, is that OFAC? A Yes. Q Is 3109 the communication from treasury that you were discussing? A Yes. Q And it's an e-mail from Mr. Perles to you dated April 29, 2010? A Yes, it is. Q And Mr. Perles writes, "Roni, here is the letter transmitted to us by the treasury." Do you see that? A Yes, I do. Q And reviewing this in conjunction with the depositions, is that what you are saying informed your -- began the information basis of your opinion to Peterson was an appropriate investment for the funds? A Yes, because I have done some other research also.")</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Ex. 2392 (Martin Report) ¶ 53 (“RD Legal gained this information advantage based in part on the personal expertise of its principal, Roni Dersovitz, who has the years of litigation experience necessary to analyze underlying legal documents to understand and assess the risks associated with any significant investment decision, including the decision to invest in the Peterson litigation.”)</p> <p><u>63(c)</u></p> <p>See Ex. 1455, 1456, 1677, 1691, 1770, 1906, 1907 , 1916 (Reed Smith memos analyzing <i>Peterson</i> turnover action).</p> <p>Tr. 3403:20-3404:24 (J. Martin) (Q In addition to the pleadings that you reviewed from the docket, did your team do independent research on the issues in the turnover litigation? A Yes. Q Was that an extensive amount of work? A Yes, it was. All the way through, running these issues to ground, as I said, took a considerable amount of time and, you know, the total investment of time is certainly north of 400 hours on the part of just my group. Actually, we consulted with lawyers in our Washington, D.C. office as well. We have some white-collar lawyers there who understood turnover litigation and were able to explain it which was helpful for me. They also knew about TRIA and the blocking of assets from their practices which of course we came to a study, as painful as that was.</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>And we had lawyers in our DC office also who were following the legislation and also able to help us understand how the legislation came to be what it was and what was then, as I said, Section 502. 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 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.”)</p>	
<p>64. The information advantage Respondents had based on their efforts and expertise helped reduce the risk of the Peterson trades.</p>	<p>Ex. 2393 (Martin Report) ¶¶ 52-56 (“RD Legal has an information advantage in the industry in which it operates. Investors choose to invest in RD Legal because it built a network of law firms that were willing to sell their receivables, it was able to successfully evaluate the collectability of, and otherwise value, those receivables, and it was able to purchase the receivables at an advantageous price. RD Legal gained this information advantage based in part on the personal expertise of its principal, Roni Dersovitz, who has the years of litigation experience necessary to analyze underlying legal documents to understand and assess the risks associated with any significant investment decision, including the decision to invest in the Peterson litigation. . . . Investment firms that have an reformation advantage may</p>	<p>Denied.</p> <p>Whatever information Respondents had regarding the <u>Peterson</u> matter, that knowledge had no impact on the risk of the <u>Peterson</u> trades. Respondents do not cite any evidence in the record suggesting Respondents had any influence on the outcome of the <u>Peterson</u> Turnover Litigation or geopolitical outcomes, two primary risks threatening collection in the <u>Peterson</u> matter.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>appear to be taking greater risks, but often times the risks are actually lower than perceived.”)</p> <p>Tr. 5727:16-5728:6 (Dersovitz) (“Now, if you think about what we heard yesterday, it reduced the overall -- and before -- it reduced the overall risk concentration in the fund because there was less risk in those trades. It’s really -- it’s not what people appreciate. It’s the best trade I’ve ever done. If I’m saying it’s the best trade I’ve ever done, it’s the one that had the -- despite everyone’s impression, it was the one that had the least risk. It’s that simple. There were multiple legal ways to get at the Clearstream money. And we, quite simply, had an information advantage to get there. I doubt that I will ever have a trade as good as that. And that’s what funds are about. And that’s why people entrusted us with their money.”)</p>	
<p>65. The Peterson trades were not a monolithic investment, but rather a large number of individual transactions with different terms, counterparties, and risk profiles.</p>	<p>Ex. 2393 (Martin Report) ¶¶ 40-49 (explaining that the Peterson receivables were a set of “diverse assets with non-correlated risk profiles,” and that, in summary: “Peterson receivables were anything but a monolithic block of assets with uniform and correlated risk profiles, and instead varied substantially in terms of their types, cash flow structures, durations, expected returns and actual investment performance. These differences undermine the SEC’s allegations of excessive concentration in Peterson receivables and a failure to disclose a purportedly associated concentration risk to investors.”).David Martin</p>	<p>Admitted that the <u>Peterson</u> trades were a large number of individual investments, that some had different counterparties (i.e., they were vis-à-vis two law firms and numerous individual plaintiffs) and had different terms (i.e., some had rebate payment structures and others were outright purchases such that the net yield on the investment was more sensitive to payout timing).</p> <p>Deny that the <u>Peterson</u> trades had different “risk profiles” as that term is vague, broad, and undefined. The Peterson</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Tr. 5726:18-5728:6 (Dersovitz) (“Q Do you have a view of whether or not investing in the Peterson case raised or lowered the concentration risk of the funds? A I think it lowered. I know it lowered the concentration risk of the funds. Q Is that your belief? A Yes. Q Why? A So it’s part -- to some -- well, you’ve got to appreciate that there are different positions with different collateral buckets and different avenues of recovery. That’s No. 1. So you have attorney positions that have the possibility of being repaid from multiple sources of the attorneys with collateral. You had plaintiff positions that were originated at 18 percent that had the ability to be paid back from other sources of collateral as well. But those were non-recourse to the plaintiffs, but there were other avenues of recovery. And you had a third parcel that was outright purchases which were dealing with larger sums of money. Now, if you think about what we heard yesterday, it reduced the overall -- and before -- it reduced the overall risk concentration in the fund because there was less risk in those trades. It’s really -- it’s not what people appreciate. It’s the best trade I’ve ever done. If I’m saying it’s the best trade I’ve ever done, it’s the one that had the -- despite everyone’s impression, it was the one that had the least risk. It’s that simple. There were multiple legal ways to get at the Clearstream money. And we, quite simply, had an information advantage to get there. I doubt that I will ever have a trade as good as that. And that’s what funds are about. And that’s why people entrusted us with their money.”)</p>	<p>trades all faced the same threshold litigation risks related to the possibility that the Turnover Litigation would be unsuccessful, and political risks—in particular the United States’ relationship with Iran—that threatened recovery. Div. PFOF ¶¶ 121-140. Respondents do not cite any record evidence to the contrary.</p> <p>The Division admits that, if the Turnover Litigation were unsuccessful or the Citibank assets were returned to Iran for geopolitical reasons, Respondents had additional avenues from which they could <i>pursue</i> recovery, with the caveats set forth in the Division’s Response to Resp. PFOF ¶ 61.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>66. Respondents structured and timed the Funds' investments in the Peterson Judgment in a manner that substantially reduced concentration risk:</p> <p>(a) By entering into transactions with a large number of individual counterparties, including Peterson attorneys and plaintiffs, Respondents diversified and thereby reduced the risk associated with a refusal to turn over the</p>	<p>Tr. 3997:21-3999:14 (D. Martin) ("Q -- but one of your opinions, Mr. Martin, is that the Peterson receivables reduced portfolio risk? A Yes, absolutely. Q And, sir, look at paragraph 14, please. In the middle here you say, "My examination shows, however, that Peterson receivables were not monolithic but instead different in terms of their types and the structure of their cash flows. And, as a result, had different non-correlated risk profiles." Do you see that, sir? A Yes, sir. Q What do you mean that the Peterson receivables had non-correlated risk profiles? A Well, they weren't -- when you think about correlation, we think about how things perform relative to each other. And what we saw with the Peterson receivables when I actually examined them, one, they were not monolithic. They were different types of receivables. Some that related -- some that were purchased directly outright. Some of them had rebates. Others that were purchased from Fay and Perles. So they were different -- you know, different types of structures. They had different return characteristics. They had different duration characteristics. Different cash flow characteristics. Different ways of controlling the cash. And they were non-correlated. So I would not think of them from a risk perspective as being one block of assets, but different segments of assets. Q You go on to say that this diversification translated into differences in sensitivities of Peterson</p>	<p>Denied.</p> <p>First, while there were a large number of individual plaintiffs, there were only two attorney counterparties— Messrs. Fay and Perles. Div. PFOF ¶¶ 94-99.</p> <p>Second, while Respondents cite support for the proposition that different contract structures presented different <i>duration</i> risks, all of the <u>Peterson</u> investments were concentrated in a matter sensitive to the same risk that the Turnover Litigation would be unsuccessful or political factors would threaten recovery.</p> <p>Third, Respondents' citation to the testimony of David Martin does not support their PFOF. Martin testified, to the contrary, that the <u>Peterson</u> investments were correlated. Tr. 4152:3-24.</p> <p>Fourth, Dersovitz's self-serving statement is contradicted by the fact that Respondents reported <u>Peterson</u> (although without identifying it for investors) as a unitary investment in the Financial Statements, Div. PFOF ¶ 691, and that Respondents' COO warned Dersovitz that the <u>Peterson</u> investments were concentrating the portfolios.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>purchased fee or award; and</p> <p>(b)</p> <p>Respondents hedged duration risk by structuring some of the Peterson trades as rebate transactions (which increase in value over time) and others as flat-fee transactions (which decrease in value over time)</p>	<p>receivables to various types of risk.”</p> <p>Do you see that, sir? A Yes, I do.</p> <p>Q What do you mean there? A Basically that those receivables react - you know, reacted differently to different factors and had different sensitivities with respect to the risk.”)</p> <p><i>Id.</i> at 4031:11-4032:3 (“Q The distinction between having some per diem and having some rebated, did that have any impact on how duration risk impacted portfolio value? A Yeah, I think -- I think on the per diem, it actually reduces duration, because the accrual is over at a certain point. So the fact that you don’t have – you don’t enjoy the income over longer period of times -- which creates a risk -- because if you’re accruing interest, and you don’t collect the money -- okay -- you’re going to write that off at the end of the day. So the fact that you don’t accrue it actually reduces the amount of duration -- I mean, the amount of duration risk, the risk related to how long the sequel is relative to the income that you’re going to receive on it.”)</p> <p>Tr. 5726:18-5728:6 (Dersovitz) (“Q Do you have a view of whether or not investing in the Peterson case raised or lowered the concentration risk of the funds? A I think it lowered. I know it lowered the concentration risk of the funds. Q Is that your belief? A Yes. Q Why? A So it’s part -- to some -- well, you’ve got to appreciate that there are different positions with different collateral buckets and different avenues of recovery. That’s No. 1. So you have attorney positions</p>	<p><u>Id.</u> ¶¶ 236-41.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>that have the possibility of being repaid from multiple sources of the attorneys with collateral. You had plaintiff positions that were originated at 18 percent that had the ability to be paid back from other sources of collateral as well. But those were non-recourse to the plaintiffs, but there were other avenues of recovery. And you had a third parcel that was outright purchases which were dealing with larger sums of money. Now, if you think about what we heard yesterday, it reduced the overall -- and before -- it reduced the overall risk concentration in the fund because there was less risk in those trades. It's really -- it's not what people appreciate. It's the best trade I've ever done. If I'm saying it's the best trade I've ever done, it's the one that had the -- despite everyone's impression, it was the one that had the least risk. It's that simple. There were multiple legal ways to get at the Clearstream money. And we, quite simply, had an information advantage to get there. I doubt that I will ever have a trade as good as that. And that's what funds are about. And that's why people entrusted us with their money.")</p>	
<p>67. Respondents further reduced concentration risk by deliberately broadening the types of Peterson trades they</p>	<p><u>67(a):</u> Ex. 1108_7 (May 28, 2010 Master Service Agreement between The Perles Law Firm, PC and RD Legal Funding Partners, LP re <i>Peterson</i> Judgment) Ex. 1111 (Perles Guaranty) Ex. 6 at row 1, column D (showing first <i>Peterson</i>-related funding date as</p>	<p>Denied. Resp. PFOF ¶ 67 fails as a matter of simple logic. They did not “reduce[] concentration risk” by <i>increasing</i> the size of <u>Peterson</u> investments over time. To the extent Respondents mean only that they had lower concentration risk at those earlier times when they had</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>were willing to execute and scaling up the size of the Peterson investments only as new developments increased the certainty that the Peterson collection action would succeed:</p> <p>(a) When Respondents first started investing in the Peterson judgment in September 2010, they limited the Funds' purchases to legal fees where the attorney had signed a performance guaranty and also pledged his entire case inventory as collateral, and it was only after</p>	<p>September 1, 2010)</p> <p><i>Bank Markazi v. Peterson</i>, 136 S. Ct. 1310, 1318-19 (2016) (reflecting dates that President Obama signed an executive order blocking the assets and signed Section 8772 into law)</p> <p>Ex. 8P at row 46, column B (showing first <i>Peterson</i> plaintiff-related funding date as September 2012)</p> <p>67(b):</p> <p>Tr. 6615:5-9 (Dersovitz) (“Q I believe you said one of the things you were doing with the Peterson investment was you were scaling the investment, and -- because you didn’t want to jump in too quickly, correct? A Correct.”)</p> <p>Tr. 4082:1-17 (D. Martin) (“A There was less risk after 8772 after President Obama, you know, froze the assets. There was less risk after you had the judgement. You had less risk after you put the money into a trust. I mean, all those factors -- and he was scaling it to the position, which was the right thing to do from an investment perspective, if, you know, you like a position and you think it’s good, and, you know, you try to make 13.5 percent for your investors. So I thought -- from a risk-reward perspective, I thought it was done properly. I mean, I don’t -- if you’re saying it was risk? Yeah, absolutely. But that’s why you get paid. Q You’re saying that 13.5 was a handsome reward -- A Very handsome.”)</p> <p>Ex. 1369_7, Ex. 1676_10, Ex.</p>	<p>less money invested in the <u>Peterson</u> matter, that is admitted.</p> <p>The Division further denies the PFOF that “Respondents further reduced concentration risk by deliberately broadening the types of Peterson trades they were willing to execute” for the reasons set forth in the Division’s Response to Resp. PFOF ¶ 66.</p> <p>Additionally, while Respondents stated they “first started investing in the Peterson judgment in September 2010,” that funding was pursuant to a funding agreement they entered into in May 2010, which at that time already contemplated the advance of \$10 million dollars to Perles. Div. PFOF ¶ 94.</p> <p>The Division also disputes as an improper proposed finding of fact that President Obama’s Executive Order “block[ed]” the Citibank assets for the reasons stated in the Division’s Response to the Resp. PFOF ¶ 59 (noting that the Peterson plaintiffs argued that the Executive Order, but that that was a legal question that was not resolved until Judge Forrest issued her ruling in February of 2013).</p> <p>Finally, the Division notes</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>President Obama signed an executive order blocking the assets and signed Section 8772 into law that the Funds began entering into non-recourse transactions with Peterson plaintiffs; and</p> <p>(b)</p> <p>Respondents carefully increased the size of the Funds' investments in the Peterson judgment as collection of judgment proceeds became more and more certain.</p>	<p>1939_11, Ex. 2149_9 (2011-2014 Domestic Fund showing Peterson growth from 14% of net assets in 2011, to 39% in 2012, to 61% in 2013, to 74% in 2014)</p> <p><i>See also Exs. 12_5, 14_6, 16_6, 19_6</i> (2011-2014 Domestic Fund audited financial statements showing similar concentration growth for <i>Peterson</i> over time)</p>	<p>that of the total approximately \$55 million deployed by the Funds to <u>Peterson</u>, the overwhelming majority of it, over \$42 million, was deployed before the turnover was even ordered by Judge Forrest and the assets moved to the Qualified Settlement Fund. <u>See</u> Ex. 2 at column L.</p>
<p>68. •As the Peterson opportunity became more attractive over</p>	<p>Ex. 2396 (Metzger Report) ¶ 112 (“[I]n my opinion, creating a large concentration in the Peterson assets after July 2013 was akin to buying nearly risk-free U.S. Treasury securities that were extremely safe</p>	<p>Admitted that <u>Peterson</u> assets may have reduced overall portfolio risk considering that the majority of other investments in the portfolio were the unsettled ONJ Cases</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>time from a risk perspective, a higher concentration of Peterson assets reduced overall portfolio risk.</p>	<p>through the government backstop, but also had high rates of returns.”)</p> <p>Ex. 2393 (Martin Report) ¶ 13 (“[A]s the concentration of Peterson receivables in the portfolio increased, overall portfolio risk declined.”).)</p> <p>Tr. 5726:8-5728:6 (Dersovitz) (“Q Did you continue to try to take steps to get other parties to invest into the Iran-Peterson case? A Yes. Q Why? A I thought it was the best trade in the book. I’ve never seen anything quite like it in my mind -- I should say in my estimation, it was like investing into cash. I was buying cash at a discount. Q Do you have a view of whether or not investing in the Peterson case raised or lowered the concentration risk of the funds? A I think it lowered. I know it lowered the concentration risk of the funds. Q Is that your belief? A Yes. Q Why? A So it’s part -- to some -- well, you’ve got to appreciate that there are different positions with different collateral buckets and different avenues of recovery. That’s No. 1. So you have attorney positions that have the possibility of being repaid from multiple sources of the attorneys with collateral. You had plaintiff positions that were originated at 18 percent that had the ability to be paid back from other sources of collateral as well. But those were non-recourse to the plaintiffs, but there were other avenues of recovery. And you had a third parcel that was outright purchases which were dealing with larger sums of money. Now, if you think about what we heard yesterday, it reduced the overall -- and before --</p>	<p>and the uncollectible Cohen Cases; denied as lacking evidentiary support that increasing concentrations of Peterson assets lowered the risks compared with the settled cases Respondents touted to investors.</p> <p>Further denied as the use of the word “risk” in this context is vague and broad. If the Respondents’ mean that this decreased “bankruptcy” and “theft” risk, the Division admits this proposed finding of fact. If the Respondents mean that a higher concentration of Peterson assets decreased collection risks due to litigation, the Division denies this proposed finding of fact. <u>See</u> Div. Resp. to Resp. PFOF ¶ 56.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>it reduced the overall risk concentration in the fund because there was less risk in those trades. It's really -- it's not what people appreciate. It's the best trade I've ever done. If I'm saying it's the best trade I've ever done, it's the one that had the -- despite everyone's impression, it was the one that had the least risk. It's that simple. There were multiple legal ways to get at the Clearstream money. And we, quite simply, had an information advantage to get there. I doubt that I will ever have a trade as good as that. And that's what funds are about. And that's why people entrusted us with their money.")</p>	
<p>69. Respondents took other actions aimed at managing and minimizing risks associated with the Peterson trades:</p> <p>(a)</p> <p>Respondents managed the risk of theft associated with investments in the Peterson judgment by establishing control</p>	<p>Ex. 2393 (Martin Report) ¶ 73 ("In terms of the management of risks, it is my opinion that the risk management procedures of RD Legal ensure that the actual level of the risks incurred remain consistent with its approved risk profile that arise from its investment strategy.")</p> <p>Tr. 5726:8-5728:6 (Dersovitz) ("Q Did you continue to try to take steps to get other parties to invest into the Iran-Peterson case? A Yes. Q Why? A I thought it was the best trade in the book. I've never seen anything quite like it in my mind -- I should say in my estimation, it was like investing into cash. I was buying cash at a discount. Q Do you have a view of whether or not investing in the Peterson case raised or lowered the concentration risk of the funds? A I think it lowered. I know it lowered the concentration risk of the funds. Q Is that your belief? A Yes. Q Why? A So it's part -- to some -- well, you've got to appreciate that there are</p>	<p>Denied that Respondents "establish[ed] control over the judgment proceeds." There were no judgment proceeds. The Peterson plaintiffs sought to recover on their judgment from three separate pools of assets, and they never obtained any "control" whatsoever over two of them during the relevant time period. Div. PFOF ¶¶ 92-93.</p> <p>The third pool, the assets at Citibank, were never under Respondents' "control" (until they were distributed). Citibank had custody of those assets until they were transferred to the Qualified Settlement Fund at UBS in July of 2013. Div. PFOF ¶ 91.</p> <p>At most, the Division admits that in their funding agreements with respect to</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>over the judgment proceeds</p> <p>(b)</p> <p>Respondents laid off some risk associated with the Peterson trades through participation agreements with third parties</p>	<p>different positions with different collateral buckets and different avenues of recovery. That's No. 1. So you have attorney positions that have the possibility of being repaid from multiple sources of the attorneys with collateral. You had plaintiff positions that were originated at 18 percent that had the ability to be paid back from other sources of collateral as well. But those were non-recourse to the plaintiffs, but there were other avenues of recovery. And you had a third parcel that was outright purchases which were dealing with larger sums of money. Now, if you think about what we heard yesterday, it reduced the overall -- and before -- it reduced the overall risk concentration in the fund because there was less risk in those trades. It's really -- it's not what people appreciate. It's the best trade I've ever done. If I'm saying it's the best trade I've ever done, it's the one that had the -- despite everyone's impression, it was the one that had the least risk. It's that simple. There were multiple legal ways to get at the Clearstream money. And we, quite simply, had an information advantage to get there. I doubt that I will ever have a trade as good as that. And that's what funds are about. And that's why people entrusted us with their money.")</p> <p>69(a):</p> <p>Ex. 1108-6 (May 28, 2010 Master Agreement between The Perles Law Firm, PC and RD Legal Funding Partners, LP) ("At Assignee's request, Assignor will notify the party(ies) that is/are obligated to pay any Settlement</p>	<p><u>Peterson</u>, Respondents provided that the plaintiff or their lawyers agreed that the trustee managing the assets should disburse those assets directly to Respondents, in the event that turnover was order, eliminating the risk that the plaintiff and/or his lawyers would abscond with the payouts, but this did not diminish or eliminate other risks, such as that the plaintiffs may nevertheless resist payoffs as some have done in the context of the distribution of the Citibank assets. Div. PFOF ¶¶ 119-120; Ex. 625 (letter from Trustee to Judge Forrest regarding payment delays in <u>Peterson</u>), or, of course, that the assets may not be ordered forfeitable.</p> <p>The Division admits that Respondents participated some of the <u>Peterson</u> trades in the Funds to third parties such that those parties now bore, to some extent, some of the risks of those trades, but note that certain assets of the Funds could still be used to pay back the participants should those participants not collect on their <u>Peterson</u> investment. See Ex. 713 at 4-6.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Amount and/or Legal Fee (“Obligor”) (and Assignee may also so notify such party(ies)) of the terms of this Agreement and Assignor will direct such Obligor to make any proceeds of such Settlement Amount to the extent of the applicable Legal Fee payable to Assignee rather than to Assignor.”)</p> <p>Ex. 1041-6 (August 22, 2009 Master Agreement between Fay Law, P.A and RD Legal Funding Partners, LP) (“At Assignee’s request, Assignor will notify the party(ies) that is/are obligated to pay any Settlement Amount and/or Legal Fee (“Obligor”) (and Assignee may also so notify such party(ies)) of the terms of this Agreement and Assignor will direct such Obligor to make any proceeds of such Settlement Amount to the extent of the applicable Legal Fee payable to Assignee rather than to Assignor.”)</p> <p>69(b):</p> <p><i>See, e.g., Ex. 2000</i> (June 13, 2014 CCY Master Participation Agreement)</p> <p>Ex. 3146-1 to 2 (October 4, 2013 Schedule A-51 to Master Participation Agreement between Domestic Fund and CCY re Peterson).</p> <p>Ex. 3146-3 to 4 (October 4, 2013 Schedule A-52 to Master Participation Agreement between Domestic Fund and CCY re Peterson).</p> <p>Ex. 3147-5 to 6 (November 5, 2013 Schedule A-93 to Master Participation Agreement between Domestic Fund and CCY re Peterson).</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>70. Based on their information advantage and risk management efforts, Respondents believed that the Funds' investments in the Peterson Judgment were collectively the "best trade in the book."</p>	<p>Ex. 216 (Cobblestone Transcript) at 35:17-36:3 ("MALE VOICE: Okay. I want to shift a little bit here because I don't want to take up too much more of your time. There's an issue that -- RONI: No worries. MALE VOICE: -- we came - we talked to Katarina (phonetic) and Misha (phonetic) about earlier with regard to the diversification of the portfolio right now. I'd like you to speak to that, especially as it relates to how much his in -- related to that one particular settlement with the U.S. Government and Iran. RONI: Yes. That's the best trade -- I have to tell you that's the best trade in the book.").</p> <p>Tr. 492:1-492:10 (Garlock) ("Q And Mr. Dersovitz says, jumps in there and says, "Yes, that's the best trade. I have to tell you that's the best trade in the book," right? A Right. Q He was very positive about the Iran trade? A Clearly. Q But without even going back to the transcript, Mr. Garlock, he clearly was positive about that trade, correct? A Effusive.")</p> <p>Tr. 395:20-396:6 (Ishimaru) ("Q And he told you, I believe, that this is in his opinion the best trade in the book at some point, right? A Yes. Q You heard that from him? A Yes. Q He believed in the Peterson case? A Yes. Q And he believed that it was by far the best trade in the book, didn't he? A Yes. He was gung ho about this. Q Very much so? A Yes.")</p> <p>Tr. 5726:8-5728:6 (Dersovitz) ("Q Did you continue to try to take</p>	<p>Denied that Respondents had the information advantage they claim, see Division's Response to Resp. PFOF ¶ 63, and denied that the <u>Peterson</u> investment was the "best trade in the book" for Flagship Fund investors, but admit that Respondents believed <u>Peterson</u> to be the best trade in the book for RDLC and Dersovitz, who stood to collect profits during the pendency of the <u>Peterson</u> Turnover Litigation while investors disproportionately bore the risk that the Turnover Litigation or political factors would threaten recovery.</p> <p>Respondents acknowledge the <u>Peterson</u> trades were not the most risk-free trade in the book in adopting the Pluris reports, which assigned a higher yield rate to <u>Peterson</u> investments than certain other investments. See, e.g., Ex. 71-5; see also Div. PFOF at n.1266 (Robak testimony describing yield spreads).</p> <p>The Division also denies Resp. PFOF ¶ 70 based on the ambiguity of the phrase "best trade in the book," as certain trades may be best based on "upside" despite greater risk, while investors in the Flagship Funds were not interested in taking on greater risk to achieve the greater upside afforded by funding unresolved cases. See Div.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>steps to get other parties to invest into the Iran-Peterson case? A Yes. Q Why? A I thought it was the best trade in the book. I've never seen anything quite like it in my mind -- I should say in my estimation, it was like investing into cash. I was buying cash at a discount. Q Do you have a view of whether or not investing in the Peterson case raised or lowered the concentration risk of the funds? A I think it lowered. I know it lowered the concentration risk of the funds. Q Is that your belief? A Yes. Q Why? A So it's part -- to some -- well, you've got to appreciate that there are different positions with different collateral buckets and different avenues of recovery. That's No. 1. So you have attorney positions that have the possibility of being repaid from multiple sources of the attorneys with collateral. You had plaintiff positions that were originated at 18 percent that had the ability to be paid back from other sources of collateral as well. But those were non-recourse to the plaintiffs, but there were other avenues of recovery. And you had a third parcel that was outright purchases which were dealing with larger sums of money. Now, if you think about what we heard yesterday, it reduced the overall -- and before -- it reduced the overall risk concentration in the fund because there was less risk in those trades. It's really -- it's not what people appreciate. It's the best trade I've ever done. If I'm saying it's the best trade I've ever done, it's the one that had the -- despite everyone's impression, it was the one that had the least risk. It's that simple. There were multiple legal</p>	<p>PFOF at n.759 (investor Mantell describing other legal funding opportunities that offer a better potential return for taking on more risk).</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>ways to get at the Clearstream money. And we, quite simply, had an information advantage to get there. I doubt that I will ever have a trade as good as that. And that's what funds are about. And that's why people entrusted us with their money.")</p> <p>Tr. 6176:6-10 (Dersovitz) ("Q You called it the best trade in the book? A Yes. Q Why? A It was, is, and remains so. The returns have been wonderful on that trade.")</p> <p>Tr. 2876:23-2877:1 (Hutchinson) ("Q How would you characterize Mr. Dersovitz's view of the Peterson case over the time you have known him? A I don't want to quote Mr. Dersovitz, but I believe he said it was the best trade he made.")</p> <p>Tr.4281:17-21 (Laraia) ("Q Did you ever hear him describe it as the best trade in the book? MR. SUTHAMMANONT: Objection. Leading. THE WITNESS: That's exactly how he described it. JUDGE PATIL: Overruled.")</p> <p>Tr. 6791:13-21 (Markovic) ("QUESTION: At the April -- in the April of 20 -- in the April 2013 meeting, you said he launched right into the Peterson case? "ANSWER: I think almost in every meeting he did. "QUESTION: And what did he say. "ANSWER: Let me tell you about an interesting case, the best case of my portfolio, rah-rah-rah -- just, yeah, it was his pride and joy.")</p>	
71. •Respondents	Ex. 367-5 (Memorandum of Terms for Iran SPV) (" Potential Risks . The United States normalizes relations	Denied. Respondents cite Ex. 367-5,

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>considered political risk and other potential risks to collection of the Peterson judgment but dismissed those risks as <i>de minimis</i>.</p>	<p>with Iran by entering into a Treaty that nullifies the previous Congressional Acts. We believe this is unlikely as Section 502 of the Iran Threat Reduction and Syria Human Rights Act of 2012 specifically prevents the Executive Branch of our Government of unblocking the subject assets.</p> <p>Additional claimants: Under current New York State law the first to seize an 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). In our estimation, the risk that the judgment could be overturned is <i>deminimis</i>. (details provided upon request.)”</p> <p>Ex. 573_2 (10/5/13 Reed Smith Memorandum) (“You asked us to consider whether possible future improvements in the United States relations with Iran could adversely affect the Peterson Plaintiffs’ chance of recovery in the <i>Peterson v. Islamic Republic of Iran</i> matter, currently on appeal at Nos. 13-2952 and 13-3133 in the Second Circuit. This update, which assumes a familiarity with the Peterson case, explains why we do not think it likely that any changes in U.S. relations with Iran would affect the Peterson Plaintiffs’ chances of recovery . . . Any action seizing the Peterson Plaintiffs’ property would raise takings and due process issues”).</p>	<p>which supports nothing more than that Respondents told investors in 2013 that the risk the <i>default judgment</i> obtained by the <u>Peterson</u> plaintiffs “could be overturned is <i>diminimus</i> (sic).”</p> <p>Ex. 573-2 does address political risk, but in the text Respondents quote says only that the Reed Smith authors do not believe changes in U.S. relations with Iran would “likely” affect the Peterson Plaintiffs’ chances of recovery.</p> <p>Neither document—nor anything else in the record—supports Respondents proposed finding that political risks and other risks—including those related to the Turnover Litigation—were <u>de minimis</u>.</p>
<p>72. Investors did not conduct the due</p>	<p>Tr. 345:16-346:10 (Ishimaru) (“Q Mrs. Ishimaru, we have seen a number of emails now. I just want to ask you, at around this time, this point in time,</p>	<p>Denied.</p> <p>As set forth in the Division’s Posthearing Brief, investors</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>diligence necessary to assess the risks associated with the Peterson investments.</p>	<p>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.")</p> <p><i>Id.</i> at 396:20-25 ("Q And I believe you had said that you had a hard time understanding the risk because of all that, right? A Yes. Q But you understood that Mr. Dersovitz had an opinion on the risk, didn't he? A Yes.")</p> <p>Tr. 216:9-18 (Burrow) ("Q Now, you said this Iran-barracks-Peterson issue was sort of beyond your ability to conduct diligence on and understand, right? A Correct. Q It requires more sophistication or understanding of the legal proceedings and a lot of things that you do not have the time to look into with your 400 various clients you needed to provide services to, right? A Correct.")</p>	<p>are not charged with doing any "necessary" due diligence to unearth the truth in the face of Respondents' misrepresentations. <u>See</u> Div. Br. at 23-27.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Tr. 740:12-741:9 (Mantell) (“Q Understood. Now, do you know if this judgment had ever -- was ever appealed? A I have no knowledge of the proceedings that went on or didn’t go on in this, other than I’m aware that there’s some process of appeals that went on with regard to the secreted assets that were a part of -- that were involved. I don’t know anything other -- about this case. Q Right. Now, do you have an understanding of how this judgment that is shown on the screen, Respondents’ Exhibit 1020, relates to the receivables that the RD Legal funds invested in? A I’m under the impression that this judgment is the sole -- is the source of money --oh, no. I’m under the impression that this is the judgment that the fund made an investment in with regard to some -- I’m thinking that it bought Claimants’ positions in this. I don’t have the facts. Q Right. A That’s my assumption.”)</p> <p>Tr. 1018:13-23 (Condon) (“Q Right. And you already testified, of course, that you’re not a lawyer. Right, sir? A Right, happily. Q Even more so after today, I’m sure. But you don’t have background experience in looking at different legal cases and evaluating them is that right? A Yes. Q And you relied upon Mr. Dersovitz, as the manager of the fund, to do that work and make those kinds of decisions; is that right? A Yes.”)</p> <p>Tr. 2088:18-2089:3 (Furgatch) (“Q Now, litigation risk. You said that you don’t want to be exposed to any</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>position where the outcome may depend on what one judge or one jury decides; is that right? A Correct. Q And did you do any analysis of the Peterson case to determine what risk there was? A I didn't have to. It was not the target investment that we were receiving. Q Fine. A So the answer is no.")</p> <p><i>Id.</i> at 2093:8-13 ("Q You did not do any independent analysis of the procedural positions of the cases, the legal issues involved or what issues were actually before the Supreme Court? A No. In my view, it was his case, and not mine. I wished him luck.")</p> <p>Tr. 3100:19-3101:23 (Levenbaum) ("Q You talked about the risk associated with the Peterson case just now. I want to ask you some questions. Did you ever look at the pleadings associated with the Peterson case? A No. Q Did you ever take a look at Judge Forrest's summary judgement order? A No. Q Did you ever know that there were multiple bases that formed her order for summary judgement? A No. Q Did you ever take a look at the appellate documents? A No. Q Did you ever take a look at the issue that the Supreme Court took up on appeal? A No. Q Do you have an understanding that the Supreme Court only looked at the separation of powers issue under Section 8772 of the statute they were considering? A No. Q Do you know or do you have any idea whether or not the Supreme Court if it had overturned the appellate court, whether or not there would be a completely separate</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>bases for the summary judgement order ordering the turnover of funds to be still in place? A No.”)</p> <p>Tr. 3388:11-3389:3 (Sine nsky) (“Q You talked about the Peterson case a bit, Mr. Sinensky, during your direct examination, sir. You said one concern you had was geopolitical risk; is that right? A Yes. Q You thought it had just a different level of risk than the type of investments you believed were in the Offshore Fund; is that right? A That’s correct. Q But you yourself never conducted any analysis of what particular risks the Peterson case had compared to the other type of receivables RD Legal acquired; is that right? A That’s correct. Q You never reviewed the legal issues or the legal proceedings regarding the Peterson case; is that right? A That’s correct.”)</p>	
<p>73. Most investors who complained that the Peterson transactions were inconsistent with the Funds’ primary strategy did not understand that the Peterson receivables were backed by a</p>	<p>Tr. 2089:15-2091:4 (Furgatch) (“Q Okay. And do you understand whether the judgment that had been entered on behalf of the plaintiffs was appealable? A Yes. Q And what’s your understanding? A The case was before the Second Circuit Federal Court. Give me a second. I’m trying to recall the state. Well, let’s talk time frames. Are you asking me what I know now, or what I knew at a particular point in time? Q Sir, let’s just take it step by step. MR. HEALY: I’ll ask Mr. Puls to put Exhibit 1020 on the screen. BY MR. HEALY: Q It’s not in your book, so you’ll have to look on the screen. A Okay. Q If we blow up the top half. As an attorney, Mr. Furgatch, do you understand this to be a judgment entered by the United States District</p>	<p>Admitted that numerous investors who testified that the <u>Peterson</u> transactions were inconsistent with the Flagship Funds’ investment strategy as it was described to them did not know the details of the <u>Peterson</u> default judgment.</p> <p>In many cases, investors did not focus on the details of the <u>Peterson</u> matter either because they were told that investments in that matter were “separate” from the Flagship Funds or were otherwise assured that the Flagship Funds did not invest in matters with ongoing disputes. <u>See, e.g., Div. PFOF ¶¶ 324(a), 363, 499(f),</u></p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>final, non-appealable judgment.</p>	<p>Court for the District of Columbia? A Yes. Q And you can see in the bottom of the first paragraph, that an amount of approximately \$2.7 billion had been allocated on behalf of the plaintiffs in that case? A Yes. Q Before today, had you ever seen this document? A No. Q Okay. Do you have an understanding whether this order, this judgment was ever subject to appeal? A Yes. Roni explained that it was on appeal. Q Would you be surprised to learn that this judgment was never appealed? A That would not square with my recollection of what Roni told me.”)</p> <p><i>Id.</i> at 2092:13-2093:3 (“Q Okay. And you don’t want to be exposed to litigation risks related to investments in RD Legal? A Correct. Q And you thought there was litigation risk in the Peterson case -- right -- in the Iran cases? A Yes. Q And that risk, to you, was -- you thought that this right to payment on behalf of the plaintiffs might some day be overturned? A The best way I can answer this is what I knew was what was explained by Roni. And Roni had explained to me a scenario where there was not full and final judgment on the matter. So I trusted that explanation. And, therefore, categorized in my mind this had litigation risk.”)</p> <p>Tr. 742:8-10 (Mantell) (“Q Do you know whether that judgment was past the point of any appeal? A No.”)</p> <p>Tr. 3359:14-22 (Sinensky) (“Q And do you have an understanding whether the judgment that was awarded to the</p>	<p>511.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Peterson plaintiffs was, in fact, past the point of any potential appeals? A At the time -- well, the answer is in retrospect, I thought it was appealed. Q The actual judgment? Do you have an understanding, sir, that there was a judgment entered in a federal court in the District of Columbia? A I don't understand the mechanics, details.”)</p>	
<p>74. Multiple investors erroneously believed that if the United States Supreme Court had reversed the Second Circuit's ruling on the constitutionality of Section 8772, the result would be the return of the restrained funds to the Iranian government.</p>	<p>Tr. 2136:10-24 (Furgatch) (“Do you have any understanding as to what might happen to the Peterson Plaintiffs’ claim if the Supreme Court ruled against them? A Well, I mean, all I can do is apply my ownpersonal experience in federal court. I’ve unfortunately been out in front of the Ninth Circuit out in California a number of times. Appellate courts can reverse decisions, they can remand them, and who knows what else they can do. So, I mean, really the outcome could have been varied. But I suppose by default, if your question is -- if the Supreme Court overruled the appellate court, my guess is that the defendants would not be held liable, and there would be no recovery. “)</p> <p>Tr. 775:21-776:6 (Mantell) (“Q If the Supreme Courts had reversed in this case, what would have happened if the turnover order had been issued? A My assumption is that the turnover order would have been reversed, and the funds would have been released to the country of Iran. Q Would you be surprised to learn that if the Supreme Court had reversed the Second Circuit, that that would not have reversed the turnover order? A I would.”)</p>	<p>Admitted that if the United States Supreme Court reversed the Second Circuit’s ruling on the constitutionality of Section 8772 that the fate of the restrained funds would be subject to further litigation, and that Mr. Mantell testified that he assumed, as of the date he testified at the hearing, such a ruling would have led to the release of the restrained funds to Iran.</p> <p>Denied that Respondents offer any support for a finding that any investor had an “erroneous[.]” belief” about potential consequences of the Supreme Court reversing the Second Circuit’s <u>Peterson</u> ruling at the time they invested in the Flagship Funds.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>75. The Division's designated expert Anthony Sebok did not analyze or purport to opine on the risks associated with the Peterson trades.</p>	<p>Tr. 2593:25-2594:10 (Sebok) ("Q Now, you never reviewed any of the pleadings in the Southern District of New York, correct? A I did not. Q You didn't review any of the pleadings in the Second Circuit? A No, I did not. Q You didn't review any of the pleadings in the underlying case in which the judgment was entered, correct? A No, I did not.")</p> <p>Tr. 2640:14-25 (Sebok) ("MR. SUTHAMMANONT: I think some of the confusion, Your Honor, is that Mr. Healy is arguing with the witness about the quantum of risk or how much risk there was, when the witness's opinion is about what type of risk there is. JUDGE PATIL: That's true. These opinions – I'm sorry if I misspoke. These are about types of risk associated with Peterson; not the actual magnitude of risk. He's not someone who is saying that there would be, like -- they were never actually going to recover.")</p>	<p>Denied.</p> <p>As set forth in the testimony Respondents cite, Professor Sebok did not analyze or opine upon the <i>quantum of risk</i> presented by the <u>Peterson</u> investments, but he did analyze and opine upon the types of risk associated with the <u>Peterson</u> investments. See Div. PFOF ¶ 137; Ex. 223 (Sebok Report) at 223-23, 223-37 to 40.</p>
<p>76. The Supreme Court's review of the summary judgment order in the Peterson collection action only addressed one of multiple independent grounds for the turnover order.</p>	<p>Ex. 1770-1 (8/26/2013 Reed Smith Memorandum) ("Based on the limited record we have reviewed, it appears unlikely that the Defendants could obtain a reversal on appeal based on a holding that § 8772 is unconstitutional. It also seems likely that Plaintiffs' judgment will be affirmed on appeal on one or more of the grounds relied on by the district court.")</p> <p>Tr. 3410:19-3411:12 (J. Martin) ("Q Did you have an understanding of whether there were multiple grounds for the Peterson plaintiffs to succeed in the turnover litigation? A Yes. And at the time of this memo, if we're</p>	<p>Admitted.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>going to put 502 into arguments that they would advance, there were three bases on which the plaintiffs were arguing that the assets be turned over. I may not have all the discrete pieces of this. But 502 would be one of them. It was a directive if there were no other constitutional interests and the requirements of the statute could be met. There also was an argument based on TRIA, that these assets were of a terrorist party. And, therefore, the blocked assets were capable of being turned over, consistent with TRIA. And lastly, there was an argument that the assets were not subject to immunity under the FSIA and, therefore, were capable of being reached in just I think an action with the writ of execution, probably under New York Law, yeah.”)</p> <p><i>Id.</i> at 3429:16-3430:5 (“Q If we could go back to Exhibit 1770, Mr. Puls, if you could highlight the next sentence in this paragraph. Just to recall, this was -- this memo was addressed in the 2nd Circuit -- A Right. MR. ROTH: -- Appeal. And it states: “It also seems likely that plaintiff’s judgment will be affirmed on appeal on one or more of the grounds relied on by the District Court.” Do you see that? A Yes. Q And the next paragraph, it goes on to say, “There are multiple avenues of affirmance.” Do you see that? A Yes.)</p> <p><i>Peterson v. Islamic Republic of Iran</i>, 758 F.3d 185, 189 (2d Cir. 2014) (“In March 2013, the district court granted summary judgment to plaintiffs, ordering turnover of the assets on the</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>two independent bases of TRIA section 201(a) and 22 U.S.C. § 8772.”).</p> <p>Tr. 1699:4-12 (Perles) (“Q Now, 8772 is a provision which provided a third independent basis through which the plaintiffs could obtain the assets that had been discovered at Citibank; is that right? A That is right. And I think the Second Circuit had articulated it that way with -- because we wouldn’t have taken that unnecessary trip to the Supreme Court. But you are correct in your analysis.”)</p> <p>Tr. 2476:21-2477:25 (Fay) (“Q The Supreme Court ultimately granted certiorari, correct? A Yes. Q And the issue that the Supreme Court addressed was -- addressed was the separation of powers under Section 8772; isn’t that correct? A Yes. Q The Supreme Court did not address TRIA, correct? A Yes. Q And it didn’t address the ability to execute under the Foreign Sovereign Immunities Act; isn’t that correct? A Yes, that’s correct. Q And regardless of the opinion that the Supreme Court issued, those bases to recover were still intact; isn’t that correct? A Yes. Q And they would have been intact for the Citibank assets; is that correct? A Yes. Q And any other assets that you located -- A Yes. Q -- isn’t that correct? You always believed that you would be able to recover this judgement against Iran; isn’t that correct? A Yes, I did. Q And you still believe that today? A Yes, I do.”)</p>	
77. Even if the t	Tr. 1708:23-1709:2 (Perles) (“If the Supreme Court had reversed on the	Admitted that even if the Supreme Court had ruled

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>Supreme Court had ruled against the Peterson plaintiffs, that would not have prevented the distribution of the restrained proceeds in the Qualified Settlement Fund.</p>	<p>separation of powers issue under 8772, would that have changes the status of Judge Forrest’s turnover order? A I would think not.”)</p> <p>Tr. 3446:23-3447:17 (J. Martin) (“Q Earlier today, we were discussing the multiple grounds for Judge Forrest’s order. Do you recall that? A Yes. Q Do you recall what the three grounds were? A Yes. She paid particular attention to 8772. She paid some attention to TRIA, less attention to the FSIA exemption. But those were the three bases of her ruling. Q And you understand the Supreme Court decision affected-- sorry. You understood that the Supreme Court decision addressed the , constitutionality of 8772 under the separation of powers? A Yes. Q What would have happened if the Supreme Court had reversed by concluding that 8772 was unconstitutional? A The case would have gone back to the 2nd Circuit. But in all likelihood, it would have been affirmed again.”)</p>	<p>against the Peterson plaintiffs, that would not, <i>by itself</i>, have prevented the distribution of the restrained proceeds in the Qualified Settlement Fund.</p>
<p>78. The Supreme Court affirmed the summary judgment order in the Peterson collection action.</p>	<p><i>Bank Markazi v. Peterson</i>, 136 S. Ct. 1310, 1322 (2016) (affirming Second Circuit opinion).</p>	<p>Admitted.</p>
<p>79. Shortly after the Supreme Court’s affirmance, Peterson</p>	<p>Div. PFOF 118-119</p>	<p>Admitted that Mr. Perles and Mr. Fay paid Respondents \$62 million and approximately \$37 million using funding from other funders following the</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>attorneys Steven Perles and Thomas Fay satisfied their obligations to the Funds by paying \$62 million and approximately \$37 million, respectively.</p>		<p>Supreme Court's affirmance. See Div. PFOF ¶¶ 118-119.</p>
<p>80. The weighted average actual annualized return for the Perles and Fay transactions was 34.23%. By comparison, the weighted average actual annualized return for non-Peterson receivables was 24.75%</p>	<p>Ex. 2393 (Martin Report), Exhibits 5A and 5B (charts showing actual annualized return on Fay and Perles Peterson legal fee receivables, respectively, as compared to actual annualized return on non-Peterson receivables).</p>	<p>Denied.</p> <p>Respondents' 24.75% figure is computed by including schedules for which payment has been received while omitting schedules for which no payment has been received, artificially inflating returns by excluding, for example, the Osborn investments for which the Funds continue to await payment. <u>Compare</u> Ex. 5B to Ex. 2393 (listing cases) <u>with</u> Ex. 5 (listing Osborn schedules).</p> <p>Additionally, Exhibit 5A to Ex. 2393 includes not only the Flagship Funds' Perles and Fay transactions, but also transactions "participated" to Constant Cash Yield "CCY." <u>Compare</u> Ex. 5A (listing Fay and Perles schedules) <u>with</u> Ex. 2393 to Ex. 4 at lines 14-19, 40-46 (listing some of the</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
		same schedules in summary of transactions participated to CCY).
<p>81. The Funds’ investments in the Peterson judgment did not materially increase—and ultimately lowered—the average duration of investments in the Funds’ portfolios</p>	<p>(Ex. 2393 (Martin Report) at ¶¶ 32-33 (“Peterson receivables also reduced the duration risk of the entire RD Legal portfolio. Duration, defined for this analysis, is the anticipated length of time a legal receivable is outstanding before it is collected. The longer the duration or anticipated time to collect the receivable, the riskier the receivables because the value of the receivable becomes more sensitive to changes in discount rates and more susceptible to credit risk. In addition, a lengthening in the duration of a given receivable due to delayed payments can negatively impact its actual realized returns (“IRR”), particularly where the receivable does not include a “per-diem/rebate” feature whereby the purchase price and fair value valuation are dictated significantly by the date the receivable is expected to be paid. Exhibit 3 tracks the impact of Peterson receivables on the duration of the entire RD Legal portfolio (which is the weighted average of every individual legal receivable in that portfolio). For the first three years, June 2011 to June 2014, the duration impact was relatively minor, as Peterson receivables lengthened the overall portfolio duration by 5 to 12 months. For most of the later period, from February 2015 to September 2016, the Peterson receivables in aggregate had a shorter duration than the rest of the portfolio, lowering the overall portfolio duration by 1 to 7 months. In effect, the Peterson</p>	<p>Denied.</p> <p>The Martin Report to which Respondents cite explains that for purposes of the Report, “duration” is the <u>anticipated</u> length of time a receivable is outstanding before collection. The Report does not, therefore, support Respondents’ proposed finding as to what impact the Funds’ <u>Peterson</u> investments had on actual duration (nor could it, given that the Funds have not collected on all of their <u>Peterson</u> investments).</p> <p>Additionally, according to the Martin Report text cited by Respondents, the <u>Peterson</u> receivables lengthened the Funds’ overall anticipated portfolio duration by up to 12 months. Given Respondents’ representations, in their FAQ, that opportunities ranged “from nine months to upwards of 2 years” and that they “rarely purchased” receivables with 48 month durations, Div. PFOF ¶¶ 185, 186, adding 12 months to the average expected duration was material. See also Div. Resp. to Resp. PFOF ¶ 62.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>receivables reduced the duration risk of the entire portfolio between 2011 and 2016 because such receivables reduced portfolio duration when the size of the overall RD Legal portfolio was largest.”)</p> <p><i>See also id.</i> at Exhibit 3.</p>	

D. Respondents Disclosed the Existence of the Peterson Trades

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>82. Starting as early as 2011, Respondents told potential investors that the Funds were investing in the Peterson Judgment.</p>	<p>Tr. 3890:21-3891:4 (Dersovitz) (“Q And so my question is whether you can sit here today and testify under oath that whenever you spoke to potential investors in the flagship fund, at times when Iran was in that flagship fund, you told me about the existence of the Iran investment in the flagship fund. A I am very comfortable saying that we disclosed it. To the best of my recollection, I discussed it virtually every single meeting. Do I want to sit here and say absolutely? No. But I know what I did.”)</p> <p>Tr. 6791:4-21 (Markovic) (““QUESTION: At -- and what did Mr. Dersovitz say when he pitched the fund? “ANSWER: Well, he launched into the Peterson case immediately, and I think he spent most of the time on that, at least half of the time on that. And then he went into the regular pitch that was peppered in -- it depends on which meeting. One of the meetings, he was just peppered with so many questions, he never got through -- “QUESTION: At the April</p>	<p>Denied.</p> <p>Respondents cite testimony from (i) Dersovitz that does not specify whether Respondents said anything about <u>Peterson</u> in 2011, and acknowledges he could not say “absolutely” whether he always mentioned <u>Peterson</u>; (ii) Ms. Markovic, who did not even work for RD Legal or otherwise interact with them in 2011; (iii) Ms. Hirsch, who says only, without reference to any particular date or year, that Dersovitz talked about the Iran deal “incessantly”; (iv) Mr. Garlock, whose interaction with Respondents were largely in late 2012, and who did not learn of the <u>Peterson</u> investments until exiting Marketing Director alerted him to concerns about those concentrations, Div. PFOF ¶¶ 460-61; and (v) Mr. Geraci, who testified only to receiving</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>-- in the April of 20 -- in the April 2013 meeting, you said he launched right into the Peterson case? “ANSWER: I think almost in every meeting he did. “QUESTION: And what did he say. “ANSWER: Let me tell you about an interesting case, the best case of my portfolio, rah-rah-rah -- just, yeah, it was his pride and joy.”)</p> <p><i>Id.</i> at 6792:16-6793:1 (“QUESTION: Okay. Did he, at these TIGER 21 meetings, explain that he had already invested in the Iran case, in the flagship funds? “ANSWER: Yes, yes. “QUESTION: And what did he explain that he had done. “ANSWER: Well, he was talking about it as having funded, I’m not sure at that point if it was only attorney claims, or if there were some other plaintiff claims that were starting to be funded, but he explained that he was funding.”)</p> <p>Tr. 4597:2-5 (Hirsch) (“A I don’t think there was any lack of transparency about the Iran trade. Mr. Dersovitz talked about it incessantly. There wasn’t a person that he’d met that he didn’t say the word ‘Iran.’”)</p> <p>Ex. 2778 (10/5/12 email to Garlock referencing phone call and attaching “a timeline of events on the Iran case for your review”)</p> <p>Tr. 480:17-23 (Garlock). (“Q After the call and after you received an email referencing the call with some further information, correct? A Correct. Q So you already knew</p>	<p>a 2012 document identifying “US Treasury – Peterson v. Islamic Republic of Iran” as one of the Funds’ “Top 5 Obligors.” This testimony does not support Resp. PFOF ¶ 82.</p> <p>Admitted to the extent Resp. PFOF ¶ 82 is intended to convey only that Respondents told <i>some</i> potential investors at certain times about the <u>Peterson</u> investment, particularly at times before they received feedback from many investors who did not want exposure to that case. See generally Div. PFOF ¶¶ 612, 614-15, 619-20.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>that the Iran terrorism judgment was in the RD Legal portfolio, correct? A Yes.”)</p> <p>Ex. 216 (Cobblestone Transcript) at 35:17-36:3 (“MALE VOICE: Okay. I want to shift a little bit here because I don’t want to take up too much more of your time. There’s an issue that -- RONI: No worries. MALE VOICE: -- we came - we talked to Katarina (phonetic) and Misha (phonetic) about earlier with regard to the diversification of the portfolio right now. I’d like you to speak to that, especially as it relates to how much his in -- related to that one particular settlement with the U.S. Government and Iran. RONI: Yes. That’s the best trade -- I have to tell you that’s the best trade in the book.”).</p> <p><i>Id.</i> at 37:15-39:2 (“Iran - the Iran opportunity is another unique opportunity. \$2 billion was seized by the attorney who represents the victims or the surviving family members of the Marines that were killed in Beirut in 1983. Litigation on that only started in 2000. A judgment was obtained in 2007 or so. The corpus of money that was here illegally was only identified in 2009 and seized at that point in time. Since that point in time, this past February, President Obama locked those assets under a statute that’s called TRIA TRIA is the Terrorist Risk Insurance Act. That statute was previously used in 2002 to compensate other Iranian victims of terror for \$300 million because that -- that money was found at that time to be here illegally. The nice thing about TRIA is that that act</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>mandates - absolutely mandates without question that blocked assets be used to compensate victims of terrorism. In this case, it would be Iranian victims of terrorism. With that, we began to consider making advances to the attorneys -- to the plaintiffs who had award line items in the judgment -- the \$2.65 billion judgment that they had received in 2007. There was discussion at that point in time that a further Iranian sanctions bill would come to pass later this year that would specifically address this litigation and mandate that the seized funds be used to pay these judgment holders. We told or communicated with the plaintiffs through a liaison group that we would be prepared to make advances to them once that act of Congress is signed off on by the President. Well, that occurred in -- on August 15th or so this past summer. The Iranian sanction bill of 2012 passed and was signed by President Obama has a provision in it, Section 502, that specifically addresses the litigation and specifically says that the money that is the subject matter of this litigation be distributed to those judgment holders. (End of audio file.)”</p> <p>Tr. 490:25-491:9 (Garlock) (“Q You understood from Ms. Markovic’s words that the Iran investment was already in the portfolio, correct? A In the regular portfolio? Q Yes. A Yes. Q And, in fact, that a special opportunity vehicle would be put in place, you understood, for the overflow from that portfolio, correct? A Yes.”)</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p><i>Id.</i> at 493:3-494:9 (“Q And during the course of this, he clearly tells you that the Iran trade is a judgment that was obtained in 2007, doesn’t he? A Yes. Q And he then said that there was a corpus of money that was here illegally, was only identified in 2009, and was seized at the time, right? A Correct. Q Tells you that there is a judgment on the one hand, Mr. Garlock? I am not reading from the transcript right now. I am asking you a question. He told you on the one hand here’s a judgment from 2007, right? A Right. Q And a corpus of money that was seized in 2009, right? Squarely within the definition of a legal fee receivable, right? MR. BIRNBAUM: Objection. Calls for a legal conclusion. JUDGE PATIL: Overruled. To the extent you understand that question, you can answer it. A Can you repeat it? Q Mr. Dersovitz told you, or it was stated during the course of this conversation in the PPM that they invest in legal fee receivables, factoring receivables related to settlements, judgments and litigation, right? A Correct. Q Yes? And here we have a judgment, right, a legal fee that’s owed, right? And a corpus of money, money that was seized, right? A Okay. Q Right? A Right.”)</p> <p>Tr. 2751:8-2752:6 (Geraci) (“Q Sir, if you go to the last page of the document there’s a heading “Top 5 Obligors.” Do we have the native version. Sir, do you see the “Top 5 Obligors” as of March 31, 2012? A Yes. Q Do you recall receiving this information before you invested? A</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Yes. Q Now, what do you understand this to mean, "Top 5 Obligors"? A Again, the fund consisted of individual positions held, these would be percentage-wise the total fund of the top 5 positions. Q Okay. And the first one, line 4 says, "U.S. Treasury, Peterson versus Islamic Republic of Iran." What is your understanding what that was? A That was one of the positions surrounding the bombing of the army barracks. Q Are you aware of this position in the fund before you invested? A Yes. Q What was percentage of the fair value of the fund in the U.S. Treasury, Peterson versus Iran case? A State in here 28.95 percent.")</p>	
<p>83. TIGER 21 is an investment group for high net worth investors.</p>	<p>Tr. 726:7-20 (Mantell) ("Q Understood. Now, you also told us that you're a member of Tiger 21h, which is a private -- private investment club? Is that -- A Yes. Q -- a fair characterization? And on the Tiger 21 website there's material that describes Tiger 21 as, quote, An ultra wealthy secretive millionaires club. A Well, I don't know who -- who's controlling the PR for the firm, but it's -- an ultra wealth has a new definition these days. But it's a bunch of high net worth individuals who are basically in a -- it's best described as a peer-to-peer learning network for investors.")</p> <p>Tr. 6098:22-6099:16 (Dersovitz) ("Q Do you know who Tiger 21 is -- A Yes, I -- Q -- or what that is, I should say? A Yes, I do. It is an investment club of high-net-worth individuals.</p>	<p>Denied to the extent Resp. PFOF ¶ 83 is meant to indicate TIGER 21 members invest as a group. <u>See</u> Div. PFOF ¶ 474.</p> <p>Admitted that TIGER 21 is, as described in the testimony of Mr. Mantell cited by Respondents, a "peer-to-peer learning network" for high net worth individuals.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Their -- the minimum liquid investable funds that any member has to have is \$10 million. They're generally CFOs of large public corporations involved in the finance industry. You've got extremely wealthy doctors there. They group themselves into groups of anywhere from 10 to 15 people. And they typically roundtable investment ideas, call in investment -- call in from time to time investment managers, allow them to do 20- to 30-minute presentations, kick out the investment manager, and then have discussions about the investment managers. And as was my experience, they would then have one or two people, if they decided to proceed, do diligence for the group.")</p>	
<p>84. A number of TIGER 21 members invested in the Funds.</p>	<p><i>See, e.g., Inability-To-Pay PFOF 82 (Mantell), 83 (Wils), 87 (Sinensky)</i></p>	<p>Admitted.</p>
<p>85. TIGER 21 investors knew or should have known before they invested that the Funds were purchasing legal receivables arising out of the Peterson judgment:</p>	<p>85(a)</p> <p>Tr. 2187:13-16 (Demby) ("Q Why did you send this email to the group? A I felt a sense of responsibility. We are a very close-knit group, and we look out for each other's interests.")</p> <p>Tr. 893:3-894:5 (Wils) ("Q Okay. Did you do any other research into RD Legal prior to investing? A Yes. When -- after I had met with -- after I had attended that other meeting, the second meeting at Tiger 21 at the -- I did speak to Arthur. And I probably -- Alan Mantell as well, and probably George Mrkonic also invested about</p>	<p>Denied</p> <p>While Dersovitz discussed Peterson with Slifka and Slifka spoke to Reed Smith attorneys in early 2013 (prior to the April 2013 meeting at Tiger 21), Respondents do not cite to any evidence to support that Tiger 21 members shared due diligence concerning the Funds prior to investing, much less discussed the Funds with Mr. Slifka (who Respondents chose not to call to testify) outside of Mr. Slifka's introduction of Dersovitz at the April 2013</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>(a) TIGER 21 investors engaged in “collaborative intelligence” whereby they communicated with one another and shared information in evaluating investment opportunities;</p> <p>(b) Respondents were introduced to the TIGER 21 investor group through TIGER 21 member Randy Slifka;</p> <p>(c) Prior to his pitch to the TIGER 21 investors in April 2013, Dersovitz discussed the Funds’ investment in the</p>	<p>what they thought of the opportunity. And we all had a conversation, probably independently, about what they thought, because they’d all invested in it. I think that seven or eight people in the group invested in RD Legal. It was a substantial sum of money. The things that Tiger 21 does, you’ve got this -- they’re company -- the organization’s model is collaborative intelligence. So everyone in the -- in my group looks at an investment from a slightly different perspective. We concur and say what we’re seeing and decide together if we’re going to invest or not. Q When you say you “decide together,” does the group make decisions to invest money as a group or each individual person makes -- A We invest as -- we invest as individuals, but we -- make the decision to invest as individuals in a group.”)</p> <p>Tr. 6098:22-6099:16 (Dersovitz) (“Q Do you know who Tiger 21 is -- A Yes, I -- Q -- or what that is, I should say? A Yes, I do. It is an investment club of high-net-worth individuals. Their -- the minimum liquid investable funds that any member has to have is \$10 million. They’re generally CFOs of large public corporations involved in the finance industry. You’ve got extremely wealthy doctors there. They group themselves into groups of anywhere from 10 to 15 people. And they typically roundtable investment ideas, call in investment -- call in from time to time investment managers, allow them to do 20- to 30-minute presentations, kick out the investment manager, and then have discussions</p>	<p>Group 5 meeting (which Messrs. Ashcraft and Wils did not attend, see Div. PFOF ¶¶ 483, 485(f)) or that Mr. Slika conveyed any of the information concerning Peterson that Respondents contend he possessed to any member of Tiger 21 (as opposed to prospective institutional investors to whom Exs. 1362, 1643, 1672, 1673, 1685, and 1688 are directed).</p> <p>Further, the evidence establishes that it was the Tiger 21 investor George Mrkonic who introduced the Fund materials to the Tiger Group 5 members, Div. PFOF ¶ 478, following which Mr. Sinensky contacted Mr. Dersovitz directly. Div. PFOF ¶¶ 478-80.</p> <p>Mr. Dersovitz did not mention the Peterson case at all at the April 2013 Tiger 21 meeting that Mr. Mantell and Mr. Demby attended. Div. PFOF ¶ 485(f).</p> <p>Dersovitz told Mr. Sinensky about Peterson in context of the Iran SPV, not the Flagship Funds. Div. PFOF ¶¶ 490(a), and reinforced Mr. Sinensky’s understanding that the Funds only invested in post-settlement funding on April 30, 2013. Div. PFOF ¶ 488. Dersovitz similarly misled Mr. Wils, Div. PFOF</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>Peterson judgment with Slifka, and Slifka also spoke directly with Reed Smith attorneys regarding the Peterson collection action;</p> <p>(d) Before, during and after the TIGER 21 pitch, Slifka was telling investors that the Funds were investing heavily in the Peterson judgment;</p> <p>(e) Dersovitz discussed the Funds' investments in the Peterson judgment at his pitch meetings with TIGER 21 investors;</p>	<p>about the investment managers. And as was my experience, they would then have one or two people, if they decided to proceed, do diligence for the group.”)</p> <p>85(b)</p> <p>Tr. 2204:9-23 (Demby) (“Q One of the things that I wanted to ask you about was Tiger 21. Do you recall whether or not Randy Slifka was at that May meeting you discussed with the Tiger Group 5? A He was in attendance, yes. Q In fact, wasn’t it Randy Slifka – at least to the meeting, he was the one that introduced Mr. Dersovitz to -- A Correct. Q -- to the Tiger 21 group? A Yes. Q He had been enthusiastic about RD Legal at that time and wanted to make that introduction? A Yes.”)</p> <p>Tr. 600:2-20 (Mantell) (“Q I think you just mentioned a presentation that Mr. Dersovitz made to group 5. When was that? A In my -- you would know better than I, but I want to say sometime in 2013. Q And how did Mr. Dersovitz come to give the presentation there? A I don’t know with certainty, but I believe with some reason that Randy Slifka, who was a member of group 5 at the time, knew him and introduced him. That’s common. Members who know sponsors might bring them into a group. Q And who is Mr. Slifka? A Mr. Slifka is just a guy who is an investor who -- he owns some real estate. He owns some other assets. He manages some -- he was, at the time, a manager of hedge fund of --</p>	<p>¶¶ 493(c)-(d), and Mr. Ashcraft. Div. PFOF ¶¶ 499(e)-(g).</p> <p>Finally, with respect to 85(f), while the Offering Memoranda contain the quoted language, there is no evidence that any Tiger 21 investor was told or determined that “judgments” related to the Peterson case. See, e.g., Div. PFOF ¶¶ 492(f) n. 792 (Mantell testimony that “judgment” in the Offering Memorandum did not inform him that it related to the Peterson case”); 197 (Mantell: Offering Memoranda language signaled investments “completely different that the Iran claim”).</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>(f) The versions of the Offering Memoranda the TIGER 21 investors received before investing specifically stated the Funds purchased legal receivables arising out of litigation where “a judgment has been entered against a judgment debtor.”</p>	<p>hedge fund portfolios for some people, and he was a member of group 5.”)</p> <p>85(c)</p> <p>Ex. 1621 (February 2013 email exchange between Dersovitz and Slifka re Peterson)</p> <p>Ex. 1609 (Dersovitz email to Slifka saying Jim Martin (Reed Smith) should be expecting his call)</p> <p>Exs. 1767, 1771, and 1788 (emails between Dersovitz, Slifka, and Reed Smith attorneys re Peterson discussions)</p> <p>Tr. 6475:19-6376:5 (Dersovitz) (“Q And RBC had access accepted on January 18, 2013, right? A Yes. Q And that’s before you met with any of the Tiger groups, correct? A Correct. Q By that time, you had already begun a relationship with Mr. Slifka? A Correct. Q And -- A It would be more appropriate to say that he had begun doing diligence on the Peterson trade.”)</p> <p>85(d)</p> <p>Ex. 1632 (2/26/2013 Slifka email) (“Dear Robert, As per our conversation, attached please find information on claims pertaining to Peterson v. Islamic Republic of Iran. . . RD Legal, whose information is attached, has approximately 1/3 of their fund in this investment.”); Ex. 1643 (3/4/2013 Slifka email) (same); Ex. 1672 (4/16/2013 Slifka email) (“Effectively, I believe you are buying cash at a discount. . . . As you can see,</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>there is also a legal decision that stipulates that over \$2 billion of cash sitting in Citibank gets turned over (attached, please find the most recent court decision). . . . FYI, Roni has a disproportionate position in his fund of these claims and obviously finds them very compelling.”); Ex. 1673 (4/25/13 Slifka email) (same); Ex. 1685 (4/16/13 Slifka email) (same); Ex. 1688 (4/30/13 Slifka email) (“The claims of ‘Peterson’ allow you to buy cash at a discount; effectively, ‘a legal arbitrage.’”)</p> <p>85(e) Tr. 6792:16-6793:1 (Markovic) (“QUESTION: Okay. Did he, at these TIGER 21 meetings, explain that he had already invested in the Iran case, in the flagship funds? “ANSWER: Yes, yes. “QUESTION: And what did he explain that he had done. “ANSWER: Well, he was talking about it as having funded, I’m not sure at that point if it was only attorney claims, or if there were some other plaintiff claims that were starting to be funded, but he explained that he was funding.”)</p> <p>Tr. 6118:9-6119:25 (Dersovitz) (“Q I want to talk about that Tiger 21 Group 5 meeting. You mentioned what the presentation was like. What did you say about Peterson at the Tiger 21 Group 5 meeting? A It’s hard to remember many past meetings, but certain past meetings are very unique. That meeting sticks out in my mind. Q Why? A Kat began her -- it was Kat, Leo and I. Kat began her normal introduction. Within two to four minutes of that, I -- I interjected</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>myself. And I typically would say something along the lines, I'm going to let you -- if you don't mind, I'm going to tell -- if you don't mind, I'm going to speak about a fascinating new opportunity. If you don't mind, I'm going to hog this part of the meeting right away. I'm going to let Kat talk about the whole loan, but this is the best trade I've ever seen. Why do I remember this meeting? Alan Mantell. Alan was wearing a bright yellow sweater asking question after question -- he's an attorney -- after question after -- asking question after question after question. It was a lively meeting. It was obvious to me that he was trying to show off to everyone about how smart he was. My take on that was a little different. But he's a money manager also, so he's an RI -- I don't know if he's an RIA, but he certainly has investors. So I remember that meeting clearly. It's one of the -- you don't remember a lot of things five, seven years back. That's a meeting I won't forget. Q Did you talk about the fund's investment in Peterson at that meeting? A I would always speak about the Iran opportunity. I would always speak about how it was in the fund, we're planning to do a lot more of it, and perhaps an -- the fact at one point we were hoping to launch a SPV.")</p> <p><u>85(f)</u></p> <p><i>See, e.g. Ex. 350_14</i> (6/18/2013 email to Wils attaching offering documents)</p> <p><i>Ex. 503_23</i> (4/26/2013 email to Demby attaching offering documents)</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	Ex. 2836_17 (6/11/2013 email to Mantell attaching offering documents)	
86. Respondents also discussed the Funds' investments in the Peterson Judgment with existing investors.	<p><i>See, e.g., Ex. 277-2</i> (3/12/12 Dersovitz email to Ishimaru, Gumins and Craig discussing Peterson investment)</p> <p>Ex. 287-1 (6/10/2012 Dersovitz email to Ishimaru) ("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 (since that's where the current interest lies) and the domestic vehicle will probably have to season assets for that vehicle. If that's the case and we raise as much as I believe we're going to raise offshore, than the concentrations for this asset could significantly increase in the domestic fund as we ramp up that exposure (seasoning process) for the new vehicle. I know what it is today, but not tomorrow. Furthermore, once 503 passes, it's a new game and this might be where we disagree.")</p> <p>Tr. 333:17-23 (Ishimaru) ("Q Did you get any kinds of assurances? A We were told as in the previous statement by Mr. Dersovitz that it will be -- you know, in the future that concentration would go down, but he did explain that, you know, at -- I believe he explained that there is going to be times when the concentration may end up being even higher.")</p> <p><i>Id.</i> at 342:15-23 ("Q Ma'am, did Mr. Dersovitz address your question about</p>	Admitted, except to the extent Resp. PFOF ¶ 86 is intended to mean "all" existing investors or that these discussions also occurred at times prior to their investment, which is not supported by the record.

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>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.”)</p> <p>Tr. 2842:3-22 (Hutchinson) (“JUDGE PATIL: Overruled. How did you become aware in 2012 that Peterson was part of the assets of RD Legal? THE WITNESS: I believe directly from Roni Dersovitz. And our conversations with him both in person and over the phone we discussed it many a time. Q Okay. Did Mr. Dersovitz ever come to Tennessee and give presentations to you of HHM clients? A Yes, he did. Q Were you present at some of those presentations? A I was. Q Do you have a recollection whether he ever discussed the Iran case with those presentations? A I can’t say specifically that he discussed it in the investor presentation, but I know we were well-aware of it. And the date of Mr. Dersovitz visited with us, he and my partner and I had coffee in the morning and had a presentation that evening. The presentation was with clients.”)</p> <p>Tr. 5648:17-5650:16 (Dabbah) (“Q Mr. Dabbah, do you recognize a case called Peterson vs. Islamic Republic of Iran? A Yes, I am familiar with it. Q What is the Peterson case? A Peterson case is related to a terrorist attack in -- long time ago in the 1980s in Lebanon. Q Did the -- A You know, which was -- to simplify matters --</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Iran was held responsible. And, obviously, there are victims from that attack. Q Did the -- A And also -- Q Sorry. A And also various lawsuits, various -- there's not just one thing. There's many things going on with that, you know, in the last 25, 30 years. Q Did the RD Legal investor funds purchase any receivables related to the RD Legal case? A Yes. Q How do you know that? A Well, typically -- I don't believe in 2007-2008, but certainly when we invest in a particular investment, hedge fund or anything, the work doesn't stop there. So generally we like to speak to -- depending upon the strategy, we like to speak to the manager once a month, once a quarter, also visit once a year, twice a year. As I said, it depends on the strategy. So in this particular case, you know, we meet with Roni and others over the years. I'll speak to them on a monthly basis, on a quarterly basis, and you gather new information about what's happening, what kinds of things he's doing, what kinds of doings the fund is doing, what are they investing, issues, problems. So it's an ongoing process from what you review as an ongoing process of making any type of investment. If you own a stock, some people check the price 10 times a day. And some people look at it at the end of the month. But it's a constant review process. Q So how did you learn that the funds were invested in this case? A The management told me. Q When you say "the management" told you, who do -- do you recall who? A Specifically Roni, Roni Dersovitz. Q How did that come about? How did he tell you? A I mean, I can't</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>remember whether I -- it was in a meeting or a phone call, but he seemed to be very excited about the prospect.)</p> <p><i>Id.</i> at 5655:14-5657:11 (“Q Below those headers, it says, “United States, payor, qualified settlement trust.” And then if you look across to the right column, it says, “Percentage of partners’ capital” 70.44 percent. A Right. Q Did you review this document? A I did. Q Do you know what qualified settlement trust stands for? A It’s an entity created by the government. Q Do you understand whether this qualified settlement trust represents a particular position in the portfolio? A Yes. Peterson. Q You knew that at the time you reviewed it? A Of course. Q If you hadn’t known, if you didn’t know what it was when you reviewed it, what would you have done? A You can do two things. As I said before, you can either call the auditor for clarification -- some people aren’t allowed to call the auditor. They’re prevented to. Or you can speak to the investment manager to get clarification. Q And if you reviewed -- if you were invested in a hedge fund and you reviewed a document that listed a particular receivable with a concentration of 70 percent, and you didn’t understand what that receivable was, would you call the manager? A I would. I mean, I can only speak for myself. JUDGE PATIL: Excuse me. Mr. Dabbah, how did you know that qualified settlement trust related to the Peterson case? THE WITNESS: Because I had conversations with Roni, and I -- you know, this is not the first time that this</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>-- this particular word came up. I didn't have to wait for the audited financials to know about qualified settlement trust. JUDGE PATIL: Okay. So the source you're saying of that was Mr. Dersovitz? THE WITNESS: Yes. In finding out in previous years about the Peterson case and anything else, you like to know exactly what the mechanism is especially if there was a high concentration. What's the exit strategy? How are people going to be paid out? Where is the money? Things like this.")</p>	
<p>87. On March 12, 2012, Respondents . posted a memorandum on the investor website entitled "02.28.12 Citibank Temporary Limit Increase" that specifically discussed the Funds' investments in the Peterson Judgment (the "Citibank Memorandum").</p>	<p>Ex. 1324 (Citibank Memorandum)</p> <p>Ex. 2354A-1 (investor website screenshot showing Citibank Memorandum)</p> <p>Ex. 3096 at row 193 (investor website upload history showing Citibank Memorandum uploaded on 3/12/2012);</p> <p><i>See also Division PFOF 315.</i></p>	<p>Admitted that on March 12, 2012, Respondents posted a memorandum on the investor website titled "02.28.12 Citibank Temporary Limit Increase" that discussed Respondents' investments in the <u>Peterson</u> litigation, but denied that the Citibank Memorandum accurately described the investments in the <u>Peterson</u> litigation or that the Memorandum disclosed which of Respondents' funds invested in that litigation.</p> <p><u>See Div. PFOF ¶¶ 314-318.</u></p>
<p>88. The Citibank</p>	<p>Ex. 1324 (Citibank Memorandum) ("Due to a large increase in the</p>	<p>Denied. The Citibank Memorandum describes</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>Memorandum confirmed that the Funds had made substantial investments in the Peterson judgment, and that Respondents intended to increase the size of those positions.</p>	<p>amount of advances for Citibank, N.A., we now have a need to increase its concentration limitations This matter has manifested itself as a new opportunity for our portfolio . . . We are confident that the monies frozen in the Citibank accounts will be paid to claimants and thusly, our advances. The only risk in the foreseeable future is time. As such, it remains a very lucrative prospect for receivable purchases as we have a strong history with the attorneys pursuing this matter 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.”)</p> <p>Ex. 287-1 (6/10/2012 Dersovitz email to Ishimaru) (“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 (since that’s where the current interest lies) and the domestic vehicle will probably have to season assets for that vehicle. If that’s the case and we raise as much as I believe we’re going to raise offshore, than the concentrations for this asset could significantly increase in the domestic fund as we ramp up that exposure (seasoning process) for the new vehicle. I know what it is today, but not tomorrow. Furthermore, once 503 passes, it’s a new game and this might be where we disagree.”)</p>	<p>advances “for Citibank” and that the Funds “may be increasing our exposure with Citibank” and that in connection with the increased concentration limit of 30% that “inflows should keep our exposure at a steady balance until the settlement pays fully[.]” Ex. 1324; <u>see</u> Div. PFOF ¶¶ 314-318.</p>
<p>89. Dersovitz</p>	<p>Ex. 278-2 (3/13/2012 email exchange between Dersovitz, Ishimaru, Craig,</p>	<p>Denied to the extent that Resp. PFOF seeks to imply</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>affirmatively recommended that investors review the Citibank Memorandum.</p>	<p>and Gumins) (“With regards to the investor communications, we’ve just posted a note on the investor site about citibank exposure.”).</p> <p>Ex. 287-1 (6/10/2012 Dersovitz email to Ishimaru) (“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%.”).</p>	<p>that Dersovitz told any investors other than those in the exhibits cited by investors (i.e., Ms. Ishimaru, Mr. Craig, Mr. Gumins).</p> <p>Specifically, Exhibit 278-2 shows only that Dersovitz, in Response to an investor inquiry (i.e., not affirmatively), noted that a note was posted on the investor website about Citibank exposures.</p> <p>Exhibit 287-1 is an email in response to a question from the same investor and says only that if that investor looks at Respondents’ website, she would see a memorandum discussing a concentration threshold for the “Iran exposure.” That same email assured the investor, Ms. Ishimaru, that Dersovitz was planning on “having a discussion with investors to see what their tolerance threshold is for an increased exposure” and that, “if everyone balks, [Respondents] will not proceed.” Ex. 281-1.</p>
<p>90. The marketing materials and Offering Memoranda directed investors and potential</p>	<p>Ex. 66-10 (June 2013 Domestic Offering Memorandum) (“Each monthly report will be available to download on a secure web page of www.rdlegalcapital.com.”)</p> <p><i>Id.</i> at 29-30 (same)</p> <p>Ex. 67-11, 43 (June 2013 Offshore</p>	<p>Admitted that the marketing materials and Offering Memoranda mentioned Respondents’ website, but denied to the extent Respondents seek a finding suggesting such documents directed investors to monitor the website for</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>investors to the website where the Citibank Memorandum resided.</p>	<p>Offering Memorandum) (same)</p> <p>Ex. 1564-3 (January 2013 FAQ) (providing that quarterly AUP reports and annual audited financials are “posted on Firm website”).</p> <p>Ex. 1900_11 (DDQ) (“Agreed Upon Procedures Report - the report is prepared by Wiss & Company for the first, second and third quarters. The fourth quarter is covered by the year end audit. The report is typically distributed by Woodfield Fund Administration, LLC to investors within 60 days of the end of the quarter. All reports are posted on the investor website.”)</p> <p>Ex. 1324 (February 2012 Citibank Memorandum).</p> <p>Ex. 2354A-1 (screenshot of website showing, among other documents, 02.28.12 Citibank Temporary Limit Increase Memorandum).</p> <p>Ex. 3096 at row 193 (showing Citibank Memorandum uploaded on March 12, 2012)</p>	<p>communications that were not otherwise provided to them or that the Citibank Memorandum resided on the website prior to March 12, 2012 (Resp. PFOF ¶ 87). The documents cited by Respondents offer no support for such a finding.</p>
<p>91. In 2012, Respondents began marketing two new “special opportunity” hedge funds that would invest</p>	<p>Ex. 216 (November 2012 Cobblestone Transcript) at 34:4-17 (“MALE VOICE: Well. that -- so that brings up I guess one of the questions that had, which was parallel pools. So you have the two funds, the onshore and the offshore and you’ve explained that to us, so I don’t think we need to get into that, how it’s seasoned and everything. But are there parallel pools of capital that you’re trying to manage besides just the two funds that we see? RONI: No. although we are in the process of</p>	<p>Admitted.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
exclusively in the Peterson judgment (the “Iran SPV”).	crafting a special opportunity vehicle. FEMALE VOICE: Which will house an opportunity that’s in the portfolio. So it’s not a separate business or a separate opportunity set. It’s just a place for the overflow if you will.”)	
92. Respondents accurately described the Iran SPV as a separate vehicle from the Funds.	Ex. 361-1 (9/11/13 Markovic email to Wils) (“I am reaching out to you to discuss an opportunity separate from our flagship fund in which you are invested. . . . This SPV will invest solely in one very unique opportunity. This SPV is structured very differently from our flagship funds. I have attached an updated summary of the status of case as well as the term sheet.”)	Admitted. Denied to the extent the PFOF is meant to imply that describing the Iran SPV’s <i>investments</i> as “separate” from the Funds was accurate.
93. The Iran SPV, unlike the Funds, did not allow investors to redeem unrealized gains prior to the collection of the Peterson judgment.	Ex. 1778-14 (September 2013 RD Legal Special Opportunities Partners, LP Offering Memorandum) (“In no event shall a limited partner have the right to withdraw from the Fund or withdraw any portion of its capital account at their option. An investment in the Fund is illiquid. A limited partner will only receive distributions if and when the Fund begins to receive proceeds related to the Receivables.”)	Denied. Exhibit 1778-14 states that an investor “will only receive distributions if and when the Fund begins to receive the proceeds related to the Receivables.” That does not mean the investor must await, as phrased in Resp. PFOF ¶ 93, “collection of the Peterson judgment.” In fact, Respondents collected money from Messrs. Fay and Perles in May and September 2016, respectively, when those attorneys refinanced their <u>Peterson-related</u> loans. See Div. PFOF ¶ 730. Moreover, investors in one of the Iran SPVs—including Respondents themselves—received a full distribution of their investments with total returns in 2015, before the

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
		Supreme Court had issued a ruling in the matter, and years before some of the Funds' investors obtained their funds back. Ex. 2222 at 4; Tr. 3240:10-12 (Schall) ("Q: Is that consistent with your recollection that the onshore SPV dissolved at some point, 2015? A: Yes.")
<p>94. Even when addressing the Iran SPV, Respondents made clear that the Funds had already invested in the Peterson judgment:</p> <p>(a) In an email to existing investors, Respondents' agent Katarina Markovic stated that, "from time to time, we come across very large cases that we cannot take full advantage of in</p>	<p>94(a)</p> <p><i>See, e.g., Exs. 361 and 362, and 1781</i> (Markovic emails to Wils and Mantell, respectively, attaching two page Iran SPV marketing flyer)</p> <p>94(b)</p> <p>Tr. 6786:5-8 (Markovic) ("QUESTION: Okay. So in September of 2013, RD Legal is still trying to get the Special Purpose Vehicle launched, correct. ANSWER: Yes.")</p> <p>Exs. 361_7 ("RD Legal has deployed moneys to the Peterson Plaintiffs' attorneys to be repaid following the successful resolution of the appeal related to the turnover order. RD Legal has purchased and will continue to purchase future cash flows from the Peterson Plaintiffs at a discount.")</p> <p>94(c)</p> <p>Tr. 2029:10-18 (Furgatch) ("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</p>	<p>Denied.</p> <p>To the contrary, many witnesses testified that Respondents did not make clear—and sometimes affirmatively misrepresented—whether the Funds had already invested in the <u>Peterson</u> judgment, both in oral communications and in the way Respondents described the investments the Funds had already made. <u>See, e.g., Div. PFOF ¶¶ 345, 346, 361, 362, 387, 388, 485(f), 489(a), 490(a, c), 492(f), 493(d), 499(f), 507(a), 509, 511, 513, 514.</u></p> <p>Additionally, the fact the Iran SPV had not yet launched when Respondents began marketing that opportunity does not support Resp. PFOF ¶ 94. As Respondents ask the Court to find in their PFOF ¶ 91, Respondents began marketing the Iran SPV in 2012.</p> <p>When Respondents began marketing an Iran-specific</p>

Proposed Fact	Supporting Evidence	Division Response
<p>our Flagship Funds,” and that Respondents had “decided to launch [the Iran] SPV to absorb the excess capacity”;</p> <p>(b) At a time when the Iran SPV had not yet launched, the two-page “Summary of Investment Opportunity” marketing flyer Respondents circulated specifically stated that Respondents had already “deployed moneys to the Peterson Plaintiffs’ attorneys” and had “purchased and</p>	<p>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.”)</p> <p>94(d)</p> <p>Ex. 216 (Cobblestone Transcript) at 34:4-17 (“MALE VOICE: Well that - - so that brings up I guess one of the questions that had, which was parallel pools. So you have the two funds, the onshore and the offshore and you’ve explained that to us, so I don’t think we need to get into that, how it’s seasoned and everything. But are there parallel pools of capital that you’re trying to manage besides just the two funds that we see? RONI: No. although we are in the process of crafting a special opportunity vehicle. FEMALE VOICE: Which will house an opportunity that’s in the portfolio. So it’s not a separate business or a separate opportunity set. It’s just a place for the overflow if you will.”)</p> <p>Tr. 490:25-491:9 (Garlock) (“Q You understood from Ms. Markovic’s words that the Iran investment was already in the portfolio, correct? A In the regular portfolio? Q Yes. A Yes. Q And, in fact, that a special opportunity vehicle would be put in place, you understood, for the overflow from that portfolio, correct? A Yes.”)</p>	<p>opportunity, they ran Funds other than the Flagship Funds (such as the Unit Trust) and investors were not told what funds had already invested in <u>Peterson</u>. When one investor, Mr. Furgatch, asked whether the Funds invested in the <u>Peterson</u> case, Dersovitz told him that there was only a “residual negligible amount” for the purpose of seasoning those investments for the Iran SPV. Div. PFOF ¶ 548.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>w[ould] continue to purchase future cash flows from the Peterson Plaintiffs at a discount”;</p> <p>(c)</p> <p>Respondents spoke to investor Andrew Furgatch at length about Peterson and told him that the Peterson assets were “parked” in the Funds for the Iran SPV; and</p> <p>(d)</p> <p>Respondents told potential investor Cobblestone Partners that they were “in the process of crafting a special opportunity vehicle . . . Which will</p>		

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>house an opportunity that's in the portfolio." Respondents went on to clarify that the Iran SPV opportunity was "not a separate business or a separate opportunity set," but instead was "just a place for the overflow if you will."</p>		
<p>95. Many investors simply assumed without asking that investments in the Peterson judgment were limited to the Iran SPV.</p>	<p><i>See, e.g., Tr. 917:8-15 (Wils)</i> ("Q In the meeting in Cresskill, Mr. Dersovitz described the opportunity to invest in the Iran-related case -- A Yes. as a special purpose vehicle. Q Right. Well, did he tell you that the Iran case was only invested in the special purpose vehicle? A No. Nor did we ask.")</p> <p><i>Tr. 1489:11-1490:4 (Ashcraft)</i> ("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 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</p>	<p>Admitted that, based on Respondents' oral and written representations, some investors assumed, without expressly asking, that investments in the <u>Peterson</u> litigation were limited to the Iran SPV.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>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.")</p> <p>Tr. 3330:3-11 (Sinensky) ("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.")</p>	
<p>96. Respondents never denied that the Funds had invested in the Peterson judgment:</p> <p>(a) Testimony to the contrary by Division witness Steve Gumins was not</p>	<p>96(a)</p> <p>Ex. 588 (2/9/2012 email from Laraia to Gumins with attachments regarding Peterson and TRIA).</p> <p>Ex. 2752 (3/12/2012 email between Dersovitz and Craig, copying Gumins, discussing investment in the Peterson judgment and directing recipients to the 2012 Citibank Memorandum).</p> <p>Ex. 3064 (5/22/2012 email from Dersovitz to Gumins regarding the Peterson plaintiffs with response from Gumins).</p> <p>Ex. 274 (3/7/2012 email from</p>	<p>Denied.</p> <p>Respondents denied repeatedly that they invested in matters with "potential appeals or other disputes" still pending. <u>See, e.g.,</u> Div. PFOF ¶¶ 156, 158. With respect to Resp. PFOF ¶ 96(a), Mr. Gumins' testimony is credible because he had no reason to lie and contemporaneous emails show him expressing distaste for the <u>Peterson</u> case for personal reasons. <u>E.g.,</u> Ex. 3064. Mr. Gumins testified Mr. Dersovitz repeatedly told him that there were no</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>credible and is contradicted by contemporaneous emails Gumins received from Respondents and others specifically discussing the Funds' investments in the Peterson judgment.</p> <p>(b) Many investors admitted that they never asked Respondents whether the Funds had invested in the Peterson judgment.</p>	<p>Dersovitz to Craig and Ishimaru, copying Gumins and mentioning the concentration in Citicorp).</p> <p>Tr. 3614:16 to 3617:4 (Gumins) (“Q Let me direct your attention to Division Exhibit 274. Take a moment to look at this. There’s a couple of pages. The front one is an e-mail – an e-mail from Mr. Dersovitz to Mr. Craig, copying yourself and I believe Ms. Ishimaru on March 7th, 2012. And there’s kind of a long explanation there. And on the second page, there’s an e-mail on March 4th, 2012 that Mr. Craig appears to have written. Do you recall these conversations? A Vaguely. Q What do you mean by that? A Well, Paul got going on his analytics. And this is where Paul is extremely good at tying up every loose end. I thought Paul was going overboard. So I just couldn’t be bothered reading it. Q Just indulge me one moment where it says – on page 3, for example, there’s a part there that says “Concentration risk. At the time I invested, the only major borrower or ultimate obligor concentration was Mark. Now we understand based on information we requested from Rick and Leo that while Merck is down to 18 percent at January 31, Citicorp and Novartis are 28 and 11 percent.” Do you know if you read this at the time? A I scanned it. I scratched my head. And I thought, geez, Paul, what’s the matter with this. That’s exactly what I’m investing in. So I did not understand necessarily where Paul was going because I didn’t care if we had 28 or 38 percent with Citicorp. They made me feel warm and fuzzy.</p>	<p>Peterson positions in the Funds, Div. PFOF ¶ 446, and Mr. Gumins explained that he disregarded or did not read Dersovitz’s emails to Mr. Craig and Ms. Ishimaru. <u>E.g.</u>, Tr. 3614:16—3617:4.</p> <p>As to Resp. PFOF ¶ 96(b), if Dersovitz omitted the material information that the Funds had invested in Peterson, of course they did not ask him about it.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>This is what Roni told me he did. So Paul was being a superb analyst. But I just blew it off and didn't pay any attention to it. Q What about it being Citicorp? Why did that make you feel warm and fuzzy? A Because these are major corporations. They're going to pay. It's just a question of how much they dance. It fit with what everything Roni had pitched me. And Roni had called me up on the phone once or twice about this and said, "God. Paul doesn't stop, does he?" And he said, "Look, what's the difference? We're doing exactly what we said." And I just laughed. It just wasn't in my radar. Q What about -- it starts at the bottom of page 2 and goes on to page 3. It says, "Rothstein Kass's qualified opinion on the 2010 financials opened up two issues for us. The first is the new accelerated GP calculates its monthly cut. In other investments, we're not used to the GP taking its cut monthly, no clawback, other than we hope the \$5 million above in illiquid assets. Even if that FASB157 requires the new method of evaluating assets and the NAV at which LP's invest in the fund, why can't the GP go back to its old way of calculating its cut on a straight line basis?" Do you have any idea what this is about? A Zero. Q Do you know if you read this at the time? A Absolutely not. Q Did you have any of these concerns back then? A That wouldn't hit my radar. I can't finish my wife's full text. There's not a chance I would have read this. And if I would have, I glossed over it, what is this about. I would have never given it a second thought.")</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Ex. 3065 (5/24/2012 email from Dersovitz to Gumins regarding Peterson to which Gumins replies, "You really may have a very good deal.").</p> <p>Tr. 3689:16-3691:2 (Gumins) ("Thank you, sir. Let's take a look at Exhibit 3065. You can start from page 2 and the top of bottom of page 1. We just referenced the Perles transactions. This is an e-mail from Mr. Perles on May 2012, May 24th of 2012 to Mr. Dersovitz with the subject matter of RM's Iran Sanctions Floor Remarks Video. Do you see that? A Yes. Q And if you take a look at the top, just the top paragraph of page 1, you have an e-mail discussion with Mr. Dersovitz with regard to this letter, May 24, 2012. And Mr. Dersovitz says, "Did you hear the end of the clip where Senator Menendez mentioned Section 503 of the Marines? If you had any doubts prior, you really can't now. Working from home if you want to speak." Any reason to believe that you didn't engage in this e-mail discussion with Mr. Dersovitz on May 24th, 2012? A Absolutely. He got one. And he may have had a really good deal and paid no [REDACTED] -- excuse me. I paid no attention to him. And I did not call him. There can't be a record of that day, me calling him on the phone. I wasn't interested. He's selling me. And I don't want to buy. Q Sir, I'm just asking you whether or not you engaged -- A I'm asking you the question. No, I did not engage. Q You didn't engage in this e-mail -- A It's the same lol that I gave him</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>before. If you get a one-line e-mail from Steve Gumins, it means I probably didn't read your e-mail. And I can guarantee you. And there's a computer record of everything I do because I'm a server and also with Bank of New York server. I never looked at any YouTube video about this, ever. I just fluffed this off and went delete and sent it off to him. ")</p> <p>Ex. 3066 (6/26/2012 email from Dersovitz to Gumins about TRIA with a response from Gumins).</p> <p>Tr. 3631:7-3632:11 (Gumins) ("Q I'm sorry to rewind the clock a little bit. But can I direct your attention to Respondents' Exhibit 3066? A Is there a question? JUDGE PATIL: He switched over to 3066. MR. TENREIRO: Yes. I apologize. JUDGE PATIL: Which is a different document. 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. Attachment Law 360 article. Re: Weinstein versus Iran. 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 Mellé. 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." Do you see that? A Yes. Q What's that about? What's your response about? A That's my way</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>of saying this, whatever. I'm on holiday. I'm just -- what are you doing? I already told you I wasn't interested.")</p> <p>Ex. 1339 (March 2012 emails discussing Citibank exposure with Gumins responding).</p> <p>Tr. 3679:23-3680:13 (Gumins) ("Q I'm going to ask you to take a look at Exhibit 1339. If you just look at the top, it's an e-mail exchange between Paul Craig, yourself, and Ms. Ishimaru on March 20th, 2012; is that right? A Yes. Q Any reason to believe you didn't engage in this? A I'm sorry? Q Any reason to believe that you didn't engage in this e-mail correspondence with Mr. Craig and Ms. Ishimaru on or about March 20th, 2012? A Yeah. I'm just not familiar with it. I don't remember it. Q You don't remember? A No, sir.")</p> <p>Ex. 598 (January 2013 emails between Dersovitz and Gumins regarding Peterson concentration).</p> <p>Tr. 3638:10-3640:1 (Gumins) ("Q Can I take you back to Division Exhibit 598? We saw this a minute ago. But if you look at page 2, Mr. Dersovitz there tells you, "We're roughly at 40, 45 percent. Now beginning to dial down with new dollars." Do you see that? A Yes. Q Did you understand that -- what did you understand that to mean? A The Offshore Fund -- no, I don't remember. The timeline's too many years. I would say the Offshore Fund had that much in it. That's what his</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>response would have been to me. Again, he said the Onshore Fund had no exposure. But I couldn't understand how there was an investment, offshore, for -- I think it was 25 percent. And I couldn't get an answer what the investment was in.</p> <p>Q So you had asked him about what exposure to Iran, onshore and offshore; is that correct? A Yes, sir.</p> <p>Q So you understood your response to be offshore -- his response? A Only.</p> <p>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. Q Let's go to -- A 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.")</p> <p><i>Id.</i> at 3627:9-3628:15 (Gumins) ("Q One second. Can you please direct your attention to Division Exhibit 598? Let's go to the back on page 3. I apologize. Do you see an e-mail from yourself to Mr. Dersovitz on January 2013? A Yes. Q You say, "What's our exposure to Iran, onshore and offshore? I may have</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>more money.” A Yes. Q What is that about? A I wanted to make sure that I wasn’t invested. I wanted to know the exposure. Q I’m sorry. 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 So you mean he as a firm; is that what you mean? A Yes, sir. Q You said “I may have more money.” What was that about? A Because I would -- was -- 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.”)</p> <p><i>Id.</i> at 3697:10-21 (“Q And I believe there were some e-mails that were shown to you about that. And I’m going to ask that you take a look at Exhibit 1582. Do you have that in front of you? A Sorry? Q Do you have that Exhibit 1582 in front of you, sir? A Yes. Q Any reason to believe that you didn’t engage in this e-mail exchange with Mr. Dersovitz, January 2015? A No.”)</p> <p><i>Id.</i> at 3698:1-3701:5 (“Q If you start from the back, sir, page 4, you ask Mr. Dersovitz, “What’s our exposure to Iran onshore and offshore? I may</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>have more money.” Do you see that? A Yes. Q You understood at this point that there was exposure in the fund? A No. I wasn’t sure. I’m flushing. I’m playing. Q It’s your testimony -- A Bait and switch. MR. WILLINGHAM: -- you didn’t have any idea what the matter meant? A No. You’re putting words in my mouth. I wasn’t sure. What I’m trying to say is I didn’t know at that point. Q And Mr. Dersovitz responds to you on January 15, 2012, right? A Yes. Q And shortly after your question, right? A Yes. Q And your response was for both onshore and offshore. Your question was for both onshore and offshore, correct? A Yes. Q And he responds roughly at 40 to 45 percent and now begins to dial down with new dollars. A But he didn’t answer the question. I don’t have anything confirming that it was onshore. That was what I’m trying to get my fingers around at the time. Q You ask him about onshore and offshore? A Yes. But I got a rounding answer. Q You got a roughly 40, 45 percent, right? A Yes. Q Any reason to believe that wasn’t true with regard both to the onshore and offshore funds at the time? A He constantly told me there was no money in the onshore fund. So there is reason to believe. Q You then respond -- A So I’m trying to - - I want to understand. I’m trying to flush out what’s going on. I just can’t figure it out yet. But I’m real close. Q You respond to his e-mail. And I believe you were asked about this. And you say, “I may have another 1M -- is that 1 million, sir? A Yes. Q “But that will only be good until 3/31.</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Not sure but would that work?" You see that? A My question is, did I give it to him? It's a very important question. Q Sir, I'm just asking if that was your response. A No, you're not. I'm trying to flush out if Roni's playing games with me. So I'm baiting and switching by saying I might have some new money. That would be 100 percent me. Q I believe you then testified that this discussion, that 1 million was -- A No. What I need to understand is the timeline because I don't have that in front of me. Was it a year before? Because we're dealing with things that are five years old now. Was it the year before that I gave him a short-term bridge loan or was it then? I need to understand that. Without that, I'm not answering the question correctly. Q Well, I believe you testified on direct, sir, that 1 million -- A No. I testified that I gave him a bridge loan. I'm asking you what year. Don't confuse me with that. Is it 2012 -- if I had Brian Torres, I'd know instantly. Is it 2012 he got a bridge loan from me or 2013? It does make a big difference. 2013, it says, 100 percent, "Roni, I'm on to you, I'm baiting you with a million bucks. What are you doing, dude?" 2012, I completely believed him. I'm asking you: Did I give him money in 2013 in January? Q Sir, it's your job to talk about the facts honestly. A You have that documentation. Answer my question, please.")</p> <p><i>Id.</i> at 3701:6-3703:24 ("Q Sir, I'm going to ask you a different question. Your testimony is that this was a bait and switch; you just wanted to bait</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>him with a million dollars that wasn't real? A I wanted to find out what he was doing. Q Your testimony is this was about a million dollars that wasn't real, right? A I have no clue because I can't get the documentation. If you want to have a recess for five minutes, I'll find out from my office exactly if I gave him money. If I gave him money in 2013 in January, I was pretty stupid. I don't think I did. I think I bait and switched him. Q And you don't think that this was discussing any intent about an actual investment? A No. Q So you had no intent to leave -- A Let's ask me again what I'm asking you. Can you please tell me if I sent money or not? It's a simple question. Without knowing that, and I can find that out -- but walking out to the window there and making a phone call, we'll have an answer for this in five minutes. Do you want an answer or do you want me to play games about it? Q Sir, my job is not to give you evidence. But I will represent to you that a million dollars was not provided to Mr. Dersovitz at that point. A Thank you. Then I bait and switched him. So if you've known that, why are you doing this? Q Can we have a stipulation from the Division -- I want to make this clear. The Division agrees that a million dollars was not invested at this point? MR. TENREIRO: He can testify. Q Sir, if it's your understanding that a million dollars was not invested at this point or provided in any way to Mr. Dersovitz, the purpose of this e-mail was just a bait and switch with Mr. Dersovitz? A 100 percent. Q You were just teasing about it? A</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Absolutely. Q You never would have left your money with Mr. Dersovitz? A Not a chance. Q Absolutely when you had your doubts, you would have redeemed 100 percent, right? A Yes. When did I send him my redemption letter? Q Shortly after that. A Okay. Q And you wanted no part of that blood money, right? A Exactly. Q Sir, isn't it really true that this was actually about a real investment -- A No. MR. WILLINGHAM: -- and there was a concern about whether or not the funds would be locked up? A No. Q That absolutely wasn't a concern that your office had? A No. I would have asked him, would it be a lockup? Because that's normally what I would do to make sure I claim whatever it is. I always need to know what are the terms of the agreement. So I would have asked him that. But I had no intention of putting the money out. Q You had no intention of putting the money out? A Not if I didn't put it out.")</p> <p>96(b)</p> <p><i>See, e.g., Tr. 917:812-15 (Wils)</i> ("Q In the meeting in Cresskill, Mr. Dersovitz described the opportunity to invest in the Iran-related case -- A Yes. as a special purpose vehicle. Q Right. Well, did he tell you that the Iran case was only invested in the special purpose vehicle? A No. Nor did we ask.")</p> <p>Tr. 1489:11-1490:4 (Ashcraft) ("Q And what was that conversation? A It was -- you know, I don't have exact memory of every little thing</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>discussed. But it was more about, you know, that the fund's 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.")</p>	

E. Respondents Disclosed the Concentration of the Peterson Trades

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>97. The Funds' audited financial statements disclosed the concentration of the Funds' investments in the Peterson judgment and other top positions.</p>	<p>Exs. 10_8, 12_5, 14_6, 16_6, 19_6, 22_6 (2010-2015 Domestic Fund audited financial statements showing condensed schedule of investments).)</p> <p><i>See also Exs. 9_9, 1369_7, 1676_10, Ex. 1939_11, 2149_9, 23_5</i> (2010-2015 Offshore Fund audited financial statements showing condensed schedule of investments).</p> <p>Tr. 3071:20-3073:5 (Levenbaum) ("We can put it on the screen if it's easier for you, sir. 3038. (Respondents Exhibit No. 3038 was marked for identification.) THE WITNESS: Okay. BY MR. WILLINGHAM: Q This is the</p>	<p>Denied.</p> <p>Respondents identified <u>Peterson-related investments</u> in the Funds' audited financial statements as "Citibank," "U.S. Government," "Funds under control of the U.S. Government," and "Qualified Settlement Trust" investments. Div. PFOF ¶ 235.</p> <p>"[O]ther top positions" were listed without reference to what proportion of any particular concentration related to the same case, such</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>year-end financial statements for 2011. Do you see that? A Yes. Q If you take a look at the bottom, I will represent that this is something produced, it looks like, by your office to the Division. Do you see that? A Yes. Q Any reason to believe that this wasn't produced from your file? A None. Q And if you take a look at page 6 of this exhibit. A Bigger, please. Q Yes. Absolutely, sir. It's the same condensed schedule of investments that we had seen before but just with different items reflected there? A Yes. Q And you see it's "Fund under the control of U.S. Government at 68.16 percent of the fund." Do you see that? A Yes. Q Any reason to believe that you didn't receive this document sometime in -- early 2013? A No. Q Did you ask any question, sir, about that line item in the financials? A No.")</p> <p>Ex. 2159 (May 19, 2015 email exchange between Miriam Freier (Magna Carta) and Markovic, in which Markovic confirms that 70.44% listed in financial statements is <i>Peterson</i>)</p>	<p>that all cases with the same obligor were combined without regard to whether those cases were related to each other.</p> <p>Some cases were listed under "payors" despite the fact that the "payor" had no obligation to actually pay any dollar amount, or that the payor was not actually the party with the legal obligation to pay. For example, regarding the <u>Peterson</u> case, Respondents and the individuals they funded all understood and argued vigorously that the assets belonged to Iran and that Iran was obligated to pay on the default judgment. See Div. PFOF ¶¶ 141, 243, 245.</p>
<p>98. The audited financial statements for the Offshore Fund showed that its investments in the Peterson judgment</p>	<p>Ex. 1369_7 (2011 Offshore Fund audited financial statements showing condensed schedule of investments).</p> <p>Ex. 1676_10 (2012 Offshore Fund audited financial statements showing condensed schedule of investments).</p> <p>Ex. 1939_11 (2013 Offshore Fund audited financial statements showing condensed schedule of investments).</p>	<p>Denied.</p> <p>Because Respondents identified <u>Peterson-related</u> investments in the Funds' audited financial statements as "Citibank," "U.S. Government," and "Funds under control of the U.S. Government" and "Qualified Settlement Trust" investments, <u>see</u> Div. PFOF</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>grew over time from 14% of net assets in 2011, to 39% in 2012, to 61% in 2013, to 74% in 2014.</p>	<p>Ex. 2149_9 (2014 Offshore Fund audited financial statements showing condensed schedule of investments).</p> <p><i>See also Exs. 12_5, 14_6, 16_6, 19_6</i> (2011-2014 Domestic Fund audited financial statements showing similar concentration growth for <i>Peterson</i> over time)</p>	<p>¶ 235, they did not show to investors a growth over time of an investment in the same case.</p>
<p>99. Respondents received input from industry professionals on how to describe the Peterson obligor in the audited financial statements, and followed that advice.</p>	<p>Tr. 3893:17-3894:4 (Dersovitz) (“Q Can you look back and ask what else there is you could have done? Did you ever consider that of the many different obligors listed for the Iran positions in the fund’s financials, none of them referred to Iran? Do you think that would have been a more transparent way of communicating to investors that that deal reflected the Iran investment? A Look, that was the topic of a long discussion between Leo Zatta and Dennis at Marcum. And they collectively decided that that was the understanding, that we linked everything to who was obligated to pay a given settlement. Their conclusion was that that was the best way of disclosing it on the financials.”)</p> <p>Tr. 3193:10-3194:6 (Schall) (“A The obligor, if you want to say the Republic of Iran, the United States Government, they were a reasonable explanation -- this is not a -- it’s not a security. It’s not a stock of a public company or a bond issued by a public company. It is a unique case. So that there has to be some interpretation. And management felt that this was the best interpretation calling it funds U.S. Government, and we agreed with them. Q Right. But so -- so you’re</p>	<p>Denied.</p> <p>Respondents’ auditor testified that it was Respondents who provided the names of the “payors” listed in the Condensed Schedules of Investments for the Funds’ Financial Statements. Div. PFOF ¶ 235.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	saying one way you could describe this reasonably under the accounting standards is to say U.S. Government? That's your testimony? A Yes. 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.")	
100. The audited financial statements were emailed to investors by third party administrator Woodfield.	Exs. 1261, 1262, 1369, 1370, 1675, 1676, 1938, 1939, 2148, 2149, 2887, and 3052 (emails from Woodfield to investors attaching financial statements for the Funds from 2010 through 2015)	Admitted that the financials were emailed to existing investors by third party administrator Woodfield.
101. Current and historical financial statements were also available via the RD Legal investor website to current and prospective investors who signed nondisclosure agreements.	Ex. 3095 (RD Legal investor website screenshot showing General Fund Info page with fully expanded archive libraries showing historical audited financial statements) Tr. 5598:2-14 (Dersovitz) ("Q Are these year-end financials for 2013, are they the only financials that are available to investors on the website? A If you scroll down, you'll see that there is an archive document section where a whole list of older documents will come up, including historical financials, Wiss reports, and so on and so on. Q Why are those there? A It's the repository of all information. It's so that all information possible is communicated to the investors, and they have the opportunity to make the	Admitted.

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>best informed decision that they can.”)</p> <p>Tr. 930:14-930:24 (Wils) (“Q And then the next paragraph goes on to describe information that is available on an investor website, and it describes how -- A Yes. Q -- you can get credentials -- A Correct. Q -- to access that website? Did you ever go on the website that is referenced in Exhibit 1796? A Perhaps I did, perhaps I didn’t. I don’t have a recollection of it.”)</p> <p>Tr. 189:12-25 (Burrow) (“Q Okay. When you went on the website, I think you said maybe two or three times this morning, did you understand that copies of the audited financial statements were on the website? A Yes. Q Including historical copies of the financial statements for prior years? A Yes. Q Did you understand that copies of the offering memorandum for the funds were on the website? A I did, yes.”)</p>	
<p>102. Respondents emphasized to investors and prospective investors that the portfolio has always been “lumpy” because of the opportunistic nature of</p>	<p>Ex. 277-2 (3/12/12 Dersovitz email to Ishimaru, Gumins and Craig) (“I appreciate the fact that lumpiness is to be avoid [sic], but having said that if you look at the business’ history over the last ten, you’d see that we’ve always been lumpy.”)</p> <p>Ex. 287-1 (6/10/2012 Dersovitz email to Ishimaru) (“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 (since that’s where</p>	<p>Denied. Respondents repeatedly represented to prospective and current investors that the Funds were diversified and not concentrated. <u>See</u> ¶¶ 201-218.</p> <p>Respondents cite to no evidence (other than their self-serving testimony) to support their contention that they told (much less “emphasized” to) <i>prospective</i> investors that the portfolio was “lumpy” or otherwise concentrated.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>the strategy.</p>	<p>the current interest lies) and the domestic vehicle will probably have to season assets for that vehicle. If that's the case and we raise as much as I believe we're going to raise offshore, than the concentrations for this asset could significantly increase in the domestic fund as we ramp up that exposure (seasoning process) for the new vehicle. I know what it is today, but not tomorrow. Furthermore, once 503 passes, it's a new game and this might be where we disagree.")</p> <p>Tr. 333:17-23 (Ishimaru) ("Q Did you get any kinds of assurances? A We were told as in the previous statement by Mr. Dersovitz that it will be -- you know, in the future that concentration would go down, but he did explain that, you know, at -- I believe he explained that there is going to be times when the concentration may end up being even higher.")</p> <p><i>Id.</i> at 342:15-23 ("Q 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.")</p> <p>Tr. 6807:5-19 (Markovic) ("I'm trying, as a threshold matter, do you recall ever discussing concentration of a fund either risk related to concentration, anything related to concentration, in the initial meetings with investors either as part of your</p>	<p>The evidence Respondents cite concerns what Respondents told Ms. Ishimaru, Mr. Gumins, and Mr. Craig post-investment (see Ex. 277-2) and that Mr. Dabbah understood at the time he invested (with no mention of how) that there might be concentrations.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>pitch or in response to their questions? THE WITNESS: Yes. As I mentioned before, concentration is generally discussed as this is an opportunistic strategy. The portfolio will take concentrations from time to time and so on specifically. MR. BIRNBAUM: So -- and by 'specifically' you mean what you just described would be your ordinary practice in the initial pitch; is that fair? THE WITNESS: Yes.")</p> <p>Tr. 5645:23-5646:2 (Dabbah) ("Q Did you understand at the time you invested in the RD Legal investor funds that the funds might have concentration -- concentrated positions? A Yes. I mean, it's a kind of strategy where these things can happen.")</p> <p>Tr. 5597:1-5598:14 (Dersovitz) ("Q And you mentioned not understanding why you're here with this information. Does that apply to people complaining about not knowing about concentration? A Absolutely. Q Why? A I wish you could -- can you open 12/31/2013, you know, the financial? You'll see the top five positions. We've been concentrated historically at -- in the stub period for 2007, maybe it was 2008, we had a 58 percent concentration in Merck. We've had concentrations since day one. That is the strategy. It will never change. I try to avoid it, but it will never change. Q The phrase lumpiness? A Yes. Q What does that mean to you, that phrase "lumpiness"? A We're an opportunistic strategy, so you either take advantage of the situation if you have the capital or it</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>passes you by. Once you take advantage of the situation, you can either grow yourself out of it and dilute the position or try to sell it off. But you don't forego a good deal. Q Are these year-end financials for 2013, are they the only financials that are available to investors on the website? A If you scroll down, you'll see that there is an archive document section where a whole list of older documents will come up, including historical financials, Wiss reports, and so on and so on. Q Why are those there? A It's the repository of all information. It's so that all information possible is communicated to the investors, and they have the opportunity to make the best informed decision that they can.")</p>	
<p>103. When asked, Respondents endeavored to provide accurate concentration information to investors:</p> <p>(a)</p> <p>Respondents circulated lists of the top positions in the Funds to investors</p>	<p>103 (a):</p> <p>Exs. 1377 & 1377A (May 2, 2012 email to Certis Capital with attached list "five highest concentrations in our portfolio" with the top position "US Treasury – Peterson v. Islamic Republic of Iran).</p> <p>Ex. 1461 (August 22, 2012 email to Paul Craig and Asami Ishimaru attaching "Top 10 Obligor Report" with top position "USA (Gov't of)").</p> <p>Ex. 2869_1, 9 (December 6, 2011 email from Chandarana to Tom Condon attaching, in response to request from Condon, listing of all fund positions, including <i>Peterson</i> positions).</p> <p><i>Compare Ex. 2776_5</i> (October 4, 2012 email exchange with Garlock</p>	<p>Denied.</p> <p>Respondents consistently provided inaccurate concentration information to investors, including but not limited to (i) telling Andrew Furgatch, first orally then confirming in writing, that only 10-20% of the Domestic Flagship Fun was invested in <u>Peterson</u> when more than half that Fund's assets were so allocated, Div. PFOF ¶¶ 556, 557, 670, (ii) listing concentrations in financial statements based on obligors without regard to whether cases listed together were related, <u>see</u> Div. PFOF ¶ 243, (iii) listing concentrations in <u>Peterson</u> investments by names that did not indicate</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>who requested that information.</p> <p>(b)</p> <p>Respondents provided accurate responses to requests for information regarding the size of the Funds' investments in the Peterson judgment.</p>	<p>attaching list of top obligors) <i>with Ex. 216_10 at 36:21-37:14</i> (Cobblestone call discussing concentrations in <i>Peterson, Novartis, and Merck</i>)</p> <p>103(b):</p> <p><i>Compare Ex. 287_4</i> (June 5, 2012 email from Leo Zatta to Paul Craig and Asami Ishimaru, in response to question from Craig, stating that as of April 30, 2012, "The total Iran position is approximately \$26 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 . . .") <i>with Ex. 2 at N12</i> (Total Peterson Indicated Portfolio Value as of April 30, 2012 is \$26,024,040.00).</p> <p><i>Compare Ex. 598_3</i> (January 15, 2013 email to Steven Gumins stating <i>Peterson</i> concentration is "roughly 40-45%" in response to question about exposure in "onshore and offshore) <i>with Ex. 2 at M18</i> (October 31, 2012 exposure 40.61%), <i>M19</i> (November 30, 2012 exposure 44.99%), and <i>M20</i> (December 31, 2012 exposure 45.57%).</p> <p><i>Compare Ex. 1936_1</i> (March 27, 2014 email from Markovic to Geraci, responding to question regarding <i>Peterson</i> concentration: "Roni has deployed a total of \$18mm in the domestic fund) <i>with Ex. 3004A</i> (March 31, 2014 Dashboard showing percentage of dollars deployed in Domestic Fund as \$17,090,260).</p> <p><i>Compare Ex. 422_2</i> (June 25, 2014</p>	<p>any relationship to that case, <u>see</u> Div. PFOF ¶ 235, and (iv) informing investors that 95% of assets under management were concentrated in receivables relating to settled cases at times Respondents knew that to be false, <u>see</u> Div. PFOF ¶¶ 166, 172; <u>see also</u> Div. PFOF ¶¶ 665, 666, 670 (documenting instances of Respondents refusing to answer <u>Peterson</u>-concentration questions, and showing instances in which investors memorialized in writing Dersovitz's oral lies about the concentrations).</p> <p>Respondents, at times, also distributed lists of portfolio positions that made it seem as if the portfolio was diversified, by breaking up the <u>Peterson</u> positions and not identifying concentrations. <u>See, e.g.</u>, Div. PFOF ¶ 365.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>email from Offshore Fund investor and Tiger 21 Member, Allen Demby, informing other Tiger 21 members Dersovitz said “the exposure of the fund to Iranian settlement is in the ‘high 40 percentages’) <i>with Ex. 3004A</i> (March 31, 2014 Dashboard showing percentage of dollars deployed in Offshore Fund as 46.47%) <i>and Ex. 422_1</i> (June 25, 2014 email Dersovitz email stating he thinks of the position in terms of dollars deployed).</p> <p><i>Compare Ex. 2159</i> (May 19, 2015 email exchange between Miriam Freier (Magna Carta) and Markovic, in which Markovic confirms that 70.44% listed in financial statements is <i>Peterson</i>) <i>with Ex. 19_6</i> (2014 financial statement for Domestic Fund list 70.44% concentration in Qualified Settlement Trust).</p> <p><i>Compare Ex. 478_18</i> (June 2, 2015 notes from Kyle Schaffer on-site meeting, stating “Fair Value of Iran was 115m” and the investment was split “45% non-Iran, 55% Iran”) <i>with Ex. 2 at M49, N49</i> (May 31, 2015 Fair Value of <i>Peterson</i> is \$109,224,168 and <i>Peterson</i> % of Total Portfolio Purchase Price is 53.28%).</p> <p><i>Compare Ex. 2182_1</i> (June 16, 2015 emails exchange between Hutchinson and Markovic, where in response to question regarding “total percentage” of the <i>Peterson</i> position, Markovic responds: “As of 31 March 2015 the percentage . . . across both funds on a Fair Value basis is approximately 60%) <i>with Ex. 2 at O47</i> (March 31, 2015 <i>Peterson</i> % of Indicated</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Portfolio Value is 62.81%).</p> <p>Tr. 985:20-25 (Condon) (“Q When you would -- when you would reach out to Mr. Dersovitz, then you would get an answer about how much of the fund -- A Yes. Q -- was exposed to Iran? A Um-hum.”)</p>	
<p>104. Division witness Andrew Furgatch’s company Magna Carta received and reviewed copies of the Funds’ historical financial statements reflecting the concentration of investments in the Peterson judgment before it invested in the Funds.</p>	<p>Tr. 2068:14-2069:1 (Furgatch) (“Q As part of your diligence, did you review the audited financial statements for the fund that you were investing in? A If they were provided to us, certainly we reviewed them, yes. Q Well, did you ask during this diligence phase to review the audited financial statements for the fund you were going to invest in? A Well, we typically do ask. And I remember specifically wanting to meet their financial chief. I’m not sure if CFO was his title, but their financial person. So, yes, whatever they presented.”).</p> <p><i>Id.</i> at 2071:18-2072:22 (“I’m asking if you or anyone from your company actually asked to receive and review the written audited financial statements from the company? MR. BIRNBAUM: Objection, Your Honor. It’s been asked and answered again. JUDGE PATIL: Overruled. THE WITNESS: Okay. I’ll answer it this way, which I don’t think is the precise call of the question, but I think what you’re trying to get to. The document was received and reviewed. Does that help? BY MR. HEALY: Q Yes. So before the time you invested, you received the audited financial statements for the RD Legal domestic fund in which you invested?</p>	<p>Admitted that Mr. Furgatch’s company received copies of the Funds’ historical financial statements before investing in the Funds.</p> <p>Denied that those financial statements adequately described the concentration of investments in the <u>Peterson</u> litigation. Those financial statements identified <u>Peterson-related</u> investments in the Funds’ audited financial statements as “Citibank,” “U.S. Government,” “Funds under control of the U.S. Government,” and “Qualified Settlement Trust” investments. Div. PFOF ¶ 235.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>MR. BIRNBAUM: Are we now asking you, Mr. Furgatch, or back to the prior question to include -- BY MR. HEALY: Q Magna Carta JUDGE PATIL: The objection is moot. Go ahead. THE WITNESS: Repeat the question. BY MR. HEALY: Q So yourself or Mr. Hill or someone of Magna Carta did receive the audited financial statements for the fund before the time you invested? A Yes, I believe that's the case.")</p>	
<p>105. Dersovitz told Furgatch before Magna Carta invested that the Funds had already originated Peterson trades and were planning to continue to originate Peterson trades.</p>	<p>Tr. 2028:8-2029:18 (Furgatch) ("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 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</p>	<p>Denied.</p> <p>The testimony from Mr. Furgatch to which Respondents cite does not make any mention of the Funds—as opposed to the “other fund”—having any intention to continue originating <u>Peterson</u> trades. And while Mr. Furgatch spoke of the possibility that there was some “residual negligible amount” in the Flagship Funds, he understood based on conversations with Dersovitz that any such amounts were the product of “parking” such assets in the Funds to season them for the Iran SPV. <u>See Div. PFOF ¶¶ 548, 550.</u></p> <p>The balance of Respondents’ purported support for their proposed finding is Dersovitz’s own self-serving testimony, and even he acknowledged communicating that whatever was in the</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>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.”)</p> <p>Tr. 6061:11-18 (Dersovitz) (“Q When you talked with Mr. Furgatch about the Peterson case, what did you discuss with him? A That the trades had already been originated, that we were continuing to originate -- we were continuing -- we were planning to continue to originate in trades. To use his words, “They were parked in the fund.”</p>	<p>Funds were only “parked” there.</p>
<p>106. Furgatch was angry and upset with Dersovitz because of scrutiny Magna Carta faced from its auditors at KPMG after Respondents froze the Funds</p>	<p>Tr. 6091:17-6093:22 (Dersovitz) (“Q At some point, did Mr. Furgatch communicate to you why he was upset about the nature of his investment in RD Legal? A When he couldn’t get the cash out over the four quarters, because we had gone illiquid, he explained to me that he had major liquidity issues himself. Q And was he upset by that? MR. BIRNBAUM: Objection. THE WITNESS: Yes. He was very -- JUDGE PATIL: Excuse me. I thought there was an objection. MR. BIRNBAUM: Calls for speculation. JUDGE PATIL: Overruled. BY MR. WILLINGHAM: I’m not sure what your answer -- A He was very upset, and explained to me</p>	<p>Denied.</p> <p>Other than Dersovitz’s self-serving and unreliable hearsay testimony, Respondents cite only Ex. 2159, which identifies auditors as a reason Mr. Furgatch sought information but does not suggest scrutiny of Magna Carta made him “angry and upset.”</p> <p>Mr. Furgatch was angry and upset because Dersovitz lied to him, in particular about the existence of cases with litigation and political risk</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>that the insurance regulators were doing an audit and had deemed his financial reserves inadequate, and that it was severely impacting his capital account at the carrier -- or the carriers. I don't know whether it was Public Service Insurance Company, which is a New York local liability carrier. That's the one that I had my first trial with -- or one of my first trials with, or the Magna Carta entity, which I think provides insurance in Illinois. Q Okay. And why was he upset with you with regard to the need for cash, if you know? A He was desperate for cash. He was -- he was -- he had redeemed - - I'm told that he had redeemed \$50 million worth of investments. That he had invested \$50 million in the period of time beforehand, mostly into alternatives, and he was scraping for dollars anywhere that he could get it to meet his reserves. Q Was he able at that time to get his company's investment in RD Legal back? A Not at -- not over the four quarterly redemptions that are one of the two mechanisms that are allowed for in our offering documents. Q And did that have anything to do, from your understanding, whether or not he was upset? A He -- I considered him a friend. I enjoyed -- sincerely enjoyed our lively discussions, because I like those type of intellectual discussions. I'm fine with -- I invite other people to share their opinions with me, because it makes for a good back and forth. He got very pissed with me, and effectively stopped talking to me once he became severely cash constrained. Q At the time he needed money from funds, could RD Legal actually -- did it have the funds to repay them? A No.</p>	<p>after Mr. Furgatch made clear he was "vehemently against investing" in such matters, <u>see, e.g.</u> Div. PFOF ¶¶ 549, 552, and continued to lie to him about the Funds' investments in the <u>Peterson</u> case long after Mr. Furgatch invested Magna Carta's money. Div. PFOF ¶¶ 556, 557.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>We had gone illiquid.”)</p> <p>Ex. 2159_3 (5/14/15 Freier email to Markovic) (“As Andy may have mentioned on your call yesterday, we are dealing with quite a bit of scrutiny from from our auditors at KPMG. I have now been tasked with providing to them all types of information validating Magna Carta’s assets & they have honed in specifically on our illiquid investments.”)</p>	
<p>107. Furgatch sent an email to Dersovitz on May 14, 2015 in which he stated his understanding that the amount invested in the Peterson judgment was about \$8 to \$10 million, which represented 10-20% of the Domestic Fund.</p>	<p>Ex. 447_1-2 (May 14, 2015 email from A Furgatch to R. Dersovitz) (“It was great to catch up with you over the phone today even as short as it was. Because of our connection problems and me being in the car for some of it, I thought I should bullet point some of what I recall before handing of this update to my staff. . . . The Iran case is still pending put potentially pushed back for collection. Essentially the SC has asked the SG for an opinion. The SG supports the constitutionality of the law but must issue a written opinion before SC action. The SC has always followed the 2nd Circuit in this process. SC recesses for a few months very soon which may push the dismissal and thus the collection to later in the year. 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% to 20% of the Fund.”)</p>	<p>Admitted.</p>
<p>108. While it was true that, at the time of</p>	<p>Compare Ex. 18_6 (2014 Financials for Offshore Fund showing \$65,085,654 as net book value of Peterson receivables purchased) with Ex. 19_6 (2014 Financials for</p>	<p>Denied.</p> <p>Respondents offer no support for the proposed finding that as of May 14, 2015, the</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>Furgatch's May 14, 2015 email, the Peterson concentration in the Domestic Fund was approximately 10 to 20%, Furgatch's statement that 10-20% represented about \$8 or \$10 million was incorrect.</p>	<p>Domestic Fund showing \$50,297,833 as net book value of Peterson receivables purchased) (i.e., domestic fund holds approximately 44% (\$50,297,833 / \$115,383,487 (\$65,085,654 + \$50,297,833)) of Peterson receivables as of 12/31/2014).</p> <p><i>See Ex. 2 at Cell L49</i> (\$55,364,629 total dollars deployed to Peterson in Flagship Funds as of 5/31/2015) (44% (approximate Domestic Fund percentage of Peterson) x \$55,364,629 = \$24,175,582 (approximate dollars deployed in Domestic Fund to Peterson).</p> <p><i>See Ex. 2 at Cell B49</i> (showing \$103,910,068 of total dollars deployed to Flagship Funds as of 5/31/2015) (i.e., \$24,175,582/\$103,910,068 = 23% as approximation of dollars deployed in Domestic Fund to Peterson as of 5/31/2015).</p> <p><i>See also Ex. 3004</i> (March 31, 2014 dashboard showing Peterson concentration in dollars deployed for the Domestic Fund of 20.35%); <i>Ex. 2 at Cell M35</i> (showing combined total for Flagship Funds of 55.83% of dollars deployed to Peterson).</p>	<p>Peterson concentration in the Domestic Fund was approximately 10 to 20%. The evidence they cite from Exhibits 18 and 19 indicates, first, that, of the entire Peterson investment across both Funds, the Domestic Fund had 44% of that investment.</p> <p>The calculation of the 23% cited as "supporting evidence" is based on two errors following that calculation: first, the total percentage of the Domestic Fund supposedly deployed in Peterson is derived by using the 44% number of the Peterson investment allocated to one Fund across both Funds, and assuming, without any support in the record, that this is also the same percentage of <i>that Fund's</i> dollars deployed into Peterson (that is the calculation of multiplying Cell L49 of Exhibit 2 by 44%); second, more egregiously, that number, which is meant to represent only the Domestic Fund's Peterson's deployed assets, is then divided <i>again</i> by the <i>total</i> deployed assets across <i>both</i> Funds, to reach the 23% number.</p> <p>The record evidence shows that the Domestic Fund had considerably more invested in Peterson at the time of the misrepresentation—at least</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
		<p>70%, was tied up in <u>Peterson</u> investments. Ex. 19 at 6.</p> <p>Also denied that it was Mr. “Furgatch’s statement that 10-20% represented about \$8 or \$10 million” of Domestic Fund assets. This statement comes from Mr. Furgatch’s recording, in an email to Dersovitz, of Dersovitz’s statement. Ex. 447-2.</p> <p>Dersovitz responded to that email by saying “You’re correct in all respects” (with one unrelated correction). Ex. 447-1.</p> <p>The Division admits that the dollar figures Dersovitz provided to Mr. Furgatch were not correct, and notes its particular concern with Dersovitz’s decision to conjure up any number given Respondents’ insistence that Dersovitz did not have access to and could not give answers to questions about the <u>Peterson</u> concentrations. Div. PFOF ¶¶ 666-67.</p>
<p>109. After mistakenly affirming Furgatch’s inaccurate statement regarding the amount of the Domestic Fund’s investments in</p>	<p>Tr. 6093:23-6096:7 (Dersovitz) (“Q And if you take a look at Exhibit 2156, which I believe is in evidence, there’s a conversation in an email -- or an email that references a conversation, “Today’s update call,” exchange between you and Mr. Furgatch on May 14, 2015. Do you recall this email? A Yes, I do. Q Do you know whether or not Mr. Furgatch had already caused his investment to be redeemed? A Yes. He had</p>	<p>Admitted that Dersovitz affirmed Furgatch’s statement regarding the amount of the Domestic Fund’s investments in the <u>Peterson</u> litigation, and admitted that Ms. Markovic responded to a request from Mr. Furgatch’s colleague for additional information by providing more accurate figures reflecting the fair value percentage of <u>Peterson</u></p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>the Peterson judgment, Respondents accurately informed Furgatch's colleague of the fair value percentage of the Peterson investments in the Funds.</p>	<p>redeemed already. He had redeemed already. Q And in this email, Mr. Furgatch relates that you told him -- on the second page -- that the domestic fund is not overly dependent on the Iran recovery as it represents something like 8 to 10 million of investment, about 10 to 20 percent of the fund. Do you see that? A Yes. He knew better than that. Q And you responded? A That he was correct in all respects. He had redeemed already. I gave it a very quick read. And that was an error on my part. I acknowledged it -- or Kat acknowledged it within four or five days afterwards by email clarifying it to Miriam. I just went through that email very quickly. I was already frustrated with him. Q Were you intending to mislead Mr. Furgatch at the time? A Never misled him. Q You referenced it was clarified four or five days later. I'm going to ask you to take a look at Exhibit 2159. What is this email? A That's Kat's response several days later clarifying the concentration in the funds of the Peterson position -- to make a complete sentence. I apologize. Q Does the -- there's a number of bullets, and then there's a text underneath the first one that's written, "This is a judgment involving the families of Marines that were killed/harmed in the 1983 Marines barrack bombing, I have attached." Do you see that? A Yes. That's because Miriam -- Miriam was called in to stabilize the business. She was an investment professional. She had worked on Wall Street for years. Andrew was in a state of panic. So he hired Miriam. And she had no</p>	<p>investments in the Funds.</p> <p>Denied, for the reasons set forth in the Division's response to Resp. PFOF ¶ 108, that the inaccurate statement about the Domestic Fund's investments came from Mr. Furgatch or that Dersovitz was "mistaken" as opposed to affirmatively attempting to mislead Mr. Furgatch.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>background on any of his investments, and at that point was gathering information on not only us, but all of the investments that he had been invested in. Q Is this what you were referring to as corrected or clarified? A Yeah. Where we gave the correct concentration number, where she clarified it for me, but also gave information on what it was.”)</p> <p>Ex. 450_2-4 (May 20, 2015 email from K. Markovic to M. Freier) (Freier asks, “In the breakdown of your investments (page 4 of the audit) – what case represents the largest line item (‘qualified settlement trust’) which looks to be 70.44% of the fund?”; Markovic responds, “This is a judgment involving the families of Marines that were killed/harmed in the 1983 Marines barrack bombing. I’m happy to arrange a call to provide more color on this case if you’d like. Pls send me a couple of times/dates that work for you and we’ll arrange.”)</p> <p>Tr. 2114:15-2115:15 (Furgatch) (“Q Sir, let’s look at Division Exhibit 447, which you were asked about earlier. And this is -- at the top is the response from Mr. Dersovitz to your email where you set forth those questions, including the 10 to 20 percent of the domestic fund was invested in Iran positions. Do you recall that, sir? A Yes. Q This email from Mr. Dersovitz is dated May 14, 2015. Do you see that? A Yes. Q And this statement, 10 to 20 percent of the investment, we know that was not correct -- right -- as we sit here? A Yes. Q And within days of this email from Mr. Dersovitz, he corrected that error in the</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>conversation with Miriam; is that right? A You're asking me if Roni corrected that error in a conversation that he had with Miriam? Q Yes. Is that your understanding? A Well, the evidence that we went over today showed that the disclosure of the 10 to 20 percent being inaccurate was evidenced by Katarina's email response to Miriam about a week after this date.")</p>	
<p>110. At the time Respondents mistakenly affirmed Furgatch's inaccurate statement, Magna Carta had already redeemed its investment.</p>	<p>Tr. 2045:24-2046:23 (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.")</p> <p>Tr. 6094:6-6095:12 (Dersovitz) ("Q Do you know whether or not Mr. Furgatch had already caused his</p>	<p>Denied. As stated in the Division's response to Resp. PFOF ¶ 109, Respondents were not "mistakenly" presenting inaccurate facts, but rather affirmatively misleading Mr. Furgatch.</p> <p>The statement to which Respondents refer was memorialized in a May 14, 2015 email. See Resp. PFOF ¶ 108. Respondents do not point to any evidence of when Magna Carta's redemption request was first submitted or became effective, but the record reflects that they confirmed Magna Carta's redemption, at least in part, on November 17, 2016. See Ex. 2966.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>investment to be redeemed? A Yes. He had redeemed already. He had redeemed already. Q And in this email, Mr. Furgatch relates that you told him -- on the second page -- that the domestic fund is not overly dependent on the Iran recovery as it represents something like 8 to 10 million of investment, about 10 to 20 percent of the fund. Do you see that? A Yes. He knew better than that. Q And you responded? A That he was correct in all respects. He had redeemed already. I gave it a very quick read. And that was an error on my part. I acknowledged it -- or Kat acknowledged it within four or five days afterwards by email clarifying it to Miriam. I just went through that email very quickly. I was already frustrated with him. Q Were you intending to mislead Mr. Furgatch at the time? A Never misled him. Q You referenced it was clarified four or five days later. I'm going to ask you to take a look at Exhibit 2159. What is this email? A That's Kat's response several days later clarifying the concentration in the funds of the Peterson position -- to make a complete sentence. I apologize.")</p> <p>Tr. 5298:1-17 (Metzger) ("A My understanding -- well, from the -- I should say from the context of his email, it sounded as if he had put in for a full redemption. And if he put in for a full redemption, his question about what's in the portfolio -- he's sort of not entitled to that information anymore, because he's out. And nothing's going to change if he's told what's in the portfolio; what's not in the portfolio. Now, had it been me, I</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	would have said to Mr. Furgatch, You have put in a full redemption request and, therefore, I'm not going to discuss with you what's in the portfolio. But if -- if Mr. Dersovitz gave inaccurate information to someone who's not an investor, while something that I wouldn't do, I could imagine that other fund managers would do similar things.")	

VIII. Osborn

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>111. The Funds' investments in the Osborn ONJ Cases were workouts:</p> <p>(a) The Funds initially invested in legal fee receivables that had been earned by Daniel Osborn's former law firm, Beatie & Osborn, in connection with a case that had settled.</p>	<p>Ex. 610 (11/20/2012 Dersovitz email to Hirsch and Markovic) ("[Osborn] is a workout and explained in AUP's for quite some time That is absolutely not what we do and was only necessary because of need to work out of a situation.")</p> <p>Exhibit 371 (September 2013 Dersovitz email to Mantell responding to request to speak to Smith Mazure about Osborn) ("Moving forward to the Osborn matter, or any other similar type matter, when a client does take some of our money our first task is to have the position fully evaluated by an independent auditor, such as Smith Mazure. Smith Mazure is a high quality defense firm in NYC that I've known for years. Being on the defense side of the equation, they are well versed in evaluating case inventories and establish reserves for the benefit of their clients. Once the collateral was evaluated and it was determined that there was a great deal of excess collateral and we were able to achieve</p>	<p>Denied.</p> <p>Respondents do not define "workouts" in their Proposed Findings of Fact or disclosures to investors.</p> <p>Respondents offer no evidence that the Funds' initial investments in Beatie & Osborn-related receivables related to a settled case other than the uncertain recollection of Mr. Osborn, who elsewhere signed documents calling the "jaw" or "ONJ" cases settled before any settlement was achieved. <u>See, e.g., Ex. 477.</u></p> <p>Admitted that, prior to its dissolution, Beatie & Osborn had a long relationship with Respondents in which more than \$7 million in fees had been purchased and successfully collected without difficulties.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>(b) Prior to its dissolution, Beatie & Osborn had a long relationship with Respondents in which more than \$7 million in fees had been purchased and successfully collected without difficulties.</p> <p>(c) The dissolution of Beatie & Osborn caused liquidity problems that threatened the Funds' ability to collect on the fees it had previously purchased from Beatie & Osborn.</p> <p>(d) After hiring an independent law firm, Smith</p>	<p>control of cash, 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 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. Having said that I cannot sit here and tell you that this business, or any other business for that matter is headache free. Issues arise in every business and you not only have to deal with issues (problems) in a reasonable way, but you have to learn from those issues as well, so that history does not repeat itself. I can assure you that not only have we learned and changed since 2007 when I initially launched the fund, but we continue to learn on a day by day basis as the business continues to grow and prosper.”)</p> <p>Tr. 2680:3-16 (Dersovitz) (“3 Q Is it your testimony that the Osborn advances RD Legal made did not fit into any of the categories described in this document as well? A I’ve called it a factoring transaction. I’ve called it an other transaction. It is what it is. It’s a workout. And we’ve disclosed it in our AUPs since at least 2010. Q And why didn’t you use the word “workout” in your December 2011 marketing materials? A Because if a law firm didn’t have a workout, it would be a fraud. This marketing piece is only intended to be used as -- to elicit someone’s interest. Then they have to look at the other documents as part of the package.”)</p>	<p>Denied that the dissolution of Beatie & Osborn caused liquidity problems that threatened the Funds’ ability to collect on the fees it had previously purchased from Beatie & Osborn. While the dissolution of Beatie & Osborn may have been one factor that threatened collection, so too was the fact that the Funds had advanced money to Beatie & Osborn, and later to Osborn’s successor law firm, to fund <i>unsettled</i> litigation. <u>See, e.g.,</u> Ex. 192-6 to 8 (RD Legal Complaint describing funding, dating back to 2005, of unsettled ONJ cases).</p> <p>Denied that Respondents only underwrote Osborn’s case inventory after engaging Smith Mazure. Respondents allege in their complaint against attorney Mel Powel, et al., that they began funding Osborn’s new law firm in December 2008, <u>see</u> Ex. 192-7-8, and do not point to any reports or advice from Smith Mazure at or around that time.</p> <p>Admitted that Respondents’ continued funding of the ONJ Cases, by advancing ten times the original potential loss of \$1.2 million, Div. PFOF ¶ 37, ultimately enabled the Funds to collect at least \$1.2 million.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>Mazure, to evaluate the ONJ cases and underwrite Osborn's entire case inventory, Respondents agreed to advance funds to Osborn's new law firm in an effort to preserve the Funds' ability to recoup their previous investments.</p> <p>(e) In the absence of the funding advanced in connection with the Osborn ONJ receivables, the Funds would not have been able to recoup their prior Osborn-related investments.</p>	<p><u>111(a):</u></p> <p>Tr. 1247:4-12 (Osborn) ("At what state -- did the initial transaction with Mr. Dersovitz relate to any particular case or cases? A I'm sure it did. As we sit here, I have no idea what case, as it goes. Q Do you recall whether that case was settled at the time that you reached out to Mr. Dersovitz for funding? A I think that particular case was.")</p> <p><u>111(b)-(c)</u></p> <p><i>See e.g., Ex. 1431_5-6</i> (March 31, 2012 AUP disclosing and describing the advances to Osborn for the ONJ cases); <i>Ex. 1544_5-6</i> (September 30, 2012 AUP disclosing and describing same); <i>Ex. 1712_7-8</i> (March 31, 2013 AUP disclosing and describing same).</p> <p>Tr. 1350:9-11 (Osborn) ("THE WITNESS: The statements in this [AUP] that relate to the firm, which I have personal knowledge, I can attest are accurate.")</p> <p><u>111(d)</u></p> <p>Tr. 5550:25-5551:21 (Dersovitz) ("Q Okay. We talked a little bit about Mr. Osborn previously. And I don't want to get into too much of it, but I want to ask you a few questions. Did you believe it was in the best interest of the fund to continue to fund Mr. Osborn? A Yes, I do. Q Why? Did you believe back in 2011, let's say, going forward? A Yes. Q Why? A He -- first and foremost, he was an honorable person. We had a nice,</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>long-term relationship with him and his firm. Second -- secondly, he owed us a substantial amount of money at that time. And we had the case portfolio that he was then litigating valued or audited by Smith Mazure, which is a well-recognized defense firm here in New York. And based on their conclusions, we decided that it was in the best interest of the investors to continue the -- to continue the relationship rather than write down the position.”)</p> <p>Ex. 1431_5-6 (March 31, 2012 AUP) (“Following the break up, 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. 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.”)</p> <p>Ex. 1137_1 (12/14/2010 Smith Mazure letter to Dersovitz re Osborn audit) (“Pursuant to your authorization, I appeared at the offices of the Osborn Law Firm for a file audit conducted on December 10, 2010. The purpose of this Audit was to re-visit certain litigations previously reviewed, examine any new matters that Mr Osborn desired to include and obtain an update and any additional</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>information as to the ONJ (Osteonecrosis of the jaw) litigation. Once again, I will begin this report with an overview of the ONJ litigation, so that the necessary background information is available for you. Much of this information was provided in last years report but I have updated it as necessary and relevant.”)</p> <p><u>111(e)</u></p> <p>Tr. 1249:24-1250:13 (Osborn) (“Q Okay. For what purpose did Beatie and Osborn enter into an agreement with Mr. Dersovitz for funding relating to the ONJ litigation before there was a settlement agreement? A We needed capital to run the firm, because the cases -- the case inventory, the number of cases became very large very quickly. Numbering in the hundreds. And we expected the MDL, the multi-district litigation might go on for three or four, maybe five years. And it was apparent that it was going to continue beyond there. And we were continuing to get new cases. So we were -- we basically ran out of capital, and we needed capital to run the firm.”)</p> <p>Ex. 481_2 (2/9/16 Osborn email to Dersovitz) (“My situation is desperate, as it always is when I ask you for money. I have missed three payrolls, rent is due, my one credit card is maxed out at \$45,000, Westlaw is being terminated, and I owe our expert \$10,000 in the Ruiz v. Affinity misclassification case. I am not sure how you think I am operating. While I am trying to develop a practice that will allow me to operate without RD</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Legal's support, I do not have sufficient time to do so, as my current staff (now down to me, Lindsay, Kim and Lisa, part-time), continues to spend the vast majority of its time getting the Merck and Novartis settlements administered so that RD Legal can get repaid. You can ask Eric about the countless emails and the letters I send to Bogert and Powell and their lawyers and the telephone conversations I have with Derek Brown. I don't have to do this work; I could leave everything to Bogert and Powell, who, you will recall, fired me in April 2014. But if I do that, the settlement administration will drag on even longer than it has already - and RD Legal will not get its money for another year or two.")</p> <p>Ex. 1186_7 (6/22/2011 Woodfield email attaching AUP report) ("Management believes all of these cases are receiving close monitoring and advances are limited to those needed to cover critical expenses of the Clients.")</p> <p>Tr. 5565:3-5566:10 (Dersovitz) ("Q If RD Legal had not made the decision to work out the Osborn matter back in 2009, would it have been able to recover its principal that had been deployed to Osborn? A Probably not. Q Why not? A The firm would have gone bankrupt. Q Do you have any belief as to whether or not Mr. Osborn would have been able to continue to operate the law firm and fund the ongoing litigation cases? A No. He wouldn't have been able to -- to the best of my knowledge, he wouldn't have been able to litigate these cases.</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>This was the only way to insure our collateral. And it was our feeling, my feeling that it was in the best interest of investors -- of our investors to proceed in that fashion. And it's working out. It's taking longer than I would have expected, but it's working out. But that's what a workout is. Q Would RD Legal have been able to participate in a portion of the Osborn investment to CCY if it had written it off prior to that? A No. Q Why not? A The asset wouldn't have existed. It would have been written off. There's nothing to sell. Q Did CCY do due diligence before it decided to engage in that purchase? A Of course. They're a total, complete third party, independent third party. And it's an arm's length transaction.")</p>	
<p>112. Dersovitz did not consider the investments in the ONJ cases part of the Funds' primary strategy</p>	<p>Ex. 610 (11/20/2012 Dersovitz email to Hirsch and Markovic) ("[Osborn] is a workout and explained in AUP's for quite some time That is absolutely not what we do and was only necessary because of need to work out of a situation.")</p> <p>Exhibit 371 (September 2013 Dersovitz email to Mantell responding to request to speak to Smith Mazure about Osborn) ("Putting aside for the moment whether I was right or wrong, the 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. Having said that I cannot sit here and tell you that this business, or any other business for that matter is headache free. Issues arise in</p>	<p>Admitted.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>every business and you not only have to deal with issues (problems) in a reasonable way, but you have to learn from those issues as well, so that history does not repeat itself.”)</p> <p><i>Id.</i> at 5825:25-5826:2 (“A [Kat’s] question focused on pre-settlement risk on the book. This had nothing to do with pre-settlement risk; this was a workout.”)</p> <p>Tr. 2672:2-16 (Dersovitz) (“Q Even though the ONJ cases had not settled, you were funding Mr. Osborn’s law firm, because he was unable to pay money from earlier advances you made to Mr. Osborn, correct? A It was a decision that I regret today. That particular firm blew up. He owed us a balance of money. We had used a well-respected law firm in New York that I had litigated against myself years and years ago in the defense -- in the defense side of the business. We had them evaluate the portfolio. And we thought that we were going to help him get out of his obligations to us by factoring his then unsettled legal fees. It was a workout. No more; no less.”)</p> <p>Tr. 4473:6-17 (Hirsch) (JUDGE PATIL: Describe to me what Dan Osborn is doing with his cases and whether or not it matches up with this or not. THE WITNESS: Well, Dan Osborn’s cases, again, are workouts. So a workout, if I don’t find one in a portfolio, I’m not happy. I want to see a mistake in every portfolio. Otherwise it means that it’s not real. We all make mistakes. Okay? This is why I never invested with Madoff.</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>This is why I never invested with Batali, Manhattan, et ceterA They were too perfect. This isn't perfect. You know, you don't always get it right.)</p> <p><i>Id.</i> at 4610:22-4611:5 (JUDGE PATIL: Excuse me. So why – what's the reason why one wouldn't include a workout position in the due diligence questionnaire? THE WITNESS: It's kind of like including an error in a trading desk in a due diligence questionnaire. It's a workout position. It's not a predominant type of investment that's being done. It's something that occurred that's being worked out.)</p> <p><i>Id.</i> at 4637:4-15 (“Q How would describing your strategy fit at all if -- as to describe the workouts? A It's not your strategy. It's a workout. You know, intent and result are different things. You -- I never intended for something to be a workout. I'm not going to put that in my strategy. My strategy is to get the best transactions I can and make them profitable for my clients. So I'm going to describe my strategy as in my general strategy.”)</p>	
<p>113. Respondents hired a law firm, Smith Mazure, to perform due diligence on Osborn's legal</p>	<p>Tr. 5550:25-5551:21 (Dersovitz) (“Q Okay. We talked a little bit about Mr.Osborn previously. And I don't want to get into too much of it, but I want to ask you a few questions. Did you believe it was in the best interest of the fund to continue to fund Mr. Osborn? A Yes, I do. Q Why? Did you believe back in 2011, let's say, going forward? A Yes. Q Why? A He -- first and foremost, he was an</p>	<p>Admitted.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>practice and case inventory in connection with Respondents' decision to advance additional funds to Osborn's law firm.</p>	<p>honorable person. We had a nice, long-term relationship with him and his firm. Second -- secondly, he owed us a substantial amount of money at that time. And we had the case portfolio that he was then litigating valued or audited by Smith Mazure, which is a well-recognized defense firm here in New York. And based on their conclusions, we decided that it was in the best interest of the investors to continue the -- to continue the relationship rather than write down the position.”)</p> <p>Ex. 1431_5-6 (March 31, 2012 AUP) (“Following the break up, 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. 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.”)</p> <p>Ex. 1137_1 (12/14/2010 Smith Mazure letter to Dersovitz re Osborn audit) (“Pursuant to your authorization, I appeared at the offices of the Osborn Law Firm for a file audit conducted on December 10, 2010. The purpose of this Audit was to re-visit certain litigations previously reviewed, examine any new matters that Mr Osborn desired to include and</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>obtain an update and any additional information as to the ONJ (Osteonecrosis of the jaw) litigation. Once again, I will begin this report with an overview of the ONJ litigation, so that the necessary background information is available for you. Much of this information was provided in last years report but I have updated it as necessary and relevant.”)</p> <p>Ex. 2072 (Osborn-Smith Mazure correspondence)</p>	
<p>114. Smith Mazure’s due diligence efforts included interviewing Mr. Osborn, auditing the Osborn ONJ cases, underwriting Osborn’s remaining case inventory, and, on at least one occasion, visiting his law offices.</p>	<p>Ex. 1137_1 (12/14/2010 Smith Mazure letter to Dersovitz re Osborn audit) (“Pursuant to your authorization, I appeared at the offices of the Osborn Law Firm for a file audit conducted on December 10, 2010. The purpose of this Audit was to re-visit certain litigations previously reviewed, examine any new matters that Mr Osborn desired to include and obtain an update and any additional information as to the ONJ (Osteonecrosis of the jaw) litigation. Once again, I will begin this report with an overview of the ONJ litigation, so that the necessary background information is available for you. Much of this information was provided in last years report but I have updated it as necessary and relevant.”)</p> <p>Ex. 2072 (Osborn-Smith Mazure correspondence)</p> <p>Ex. 2064 (11/21/2014 Osborn letter to Smith Mazure re Osborn Law case inventory)</p> <p>Tr. 1343:8-25 (Osborn) (“Q If we can go back to Respondents’ Exhibit</p>	<p>Admitted.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>2064 that was shown to you. Do you have that in front of you? A Yes. Q That’s the letter that you sent to Joel Simon at Smith Mazure. I believe it’s November 21 of 2014, correct? A Yes. Q And this is an example of documentation requested from you in terms of your opinion on the status and value of cases that had been pledged to RD Legal as part of the inventory of Osborn Law, correct? A Yes. This is one of the ways I would have been providing information to RD Legal. Q Okay. And when you sent this letter, was the information in there truthful? A Yes.”)</p> <p><i>Id.</i> at 1355:1-16 (“Q Okay. I’m not going to ask you to count, but you did experience periodic overage audits from the Smith Mazure law firm? A Correct. Q And that’s your dealings with Joel Simon that we just discussed? A Yeah. We coordinated time and date for him to come in. He would look at the hard files and do his analysis. We would have a period of time where we would meet and talk about individual cases or the cases as a whole -- Q Uh-huh. A -- wherein we started putting everything on an electronic database. We would make the electronic database, which had all of our files on it, available to Mr. Simon as well.”)</p>	
<p>115. Smith Mazure repeatedly concluded based on its ongoing oversight of the</p>	<p><i>See e.g., Ex. 1431_5-6</i> (March 31, 2012 AUP) (“Following the break up, 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,</p>	<p>Admitted that Smith Mazure conducted the reviews described in Ex. 1431 at 5-6, 1544 at 5-6, and 1712 at 7-8.</p> <p>Denied that Smith Mazure conducted “ongoing oversight” of Osborn’s cases</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>Osborn portfolio that the anticipated legal fees due to Osborn should significantly exceed the balance due to the Funds, including any interim advances that had been made during the pendency of the Osborn ONJ cases.</p>	<p>the Smith Mazure law firm has conducted three audits of the Osborn portfolio with the last audit being in December of 2011. 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.”)</p> <p><i>See also Ex. 1544_5-6 (September 30, 2012 AUP) (same); Ex. 1712_7-8 (March 31, 2013 AUP) (same).</i></p>	<p>or portfolio or that the legal fees should have “significantly” exceeded what was due the Funds (the AUPs utilize the terms “materially”), or that the advances made to Osborn during the pending ONJ litigations were “interim.”</p>
<p>116. The Funds’ investments in the Osborn ONJ cases were fully disclosed to investors:</p> <p>(a) The quarterly AUPs prepared by Wiss & Company on behalf of the Funds specifically disclosed and accurately described</p>	<p><u>116(a)</u></p> <p><i>See e.g., Ex. 1431_5-6 (March 31, 2012 AUP disclosing and describing the advances to Osborn for the ONJ cases); Ex. 1544_5-6 (September 30, 2012 AUP disclosing and describing same); Ex. 1712_7-8 (March 31, 2013 AUP disclosing and describing same).</i></p> <p>Tr. 1350:9-11 (Osborn) (“THE WITNESS: The statements in this [AUP] that relate to the firm, which I have personal knowledge, I can attest are accurate.”)</p> <p><u>116(b)</u></p> <p><i>Ex. 2354A-1 (screenshot of website showing, among other documents, “05.30.12 Temporary Limit Increase to Novartis Exposure” memorandum).</i></p>	<p>Denied.</p> <p>The Funds’ investments in the Osborn ONJ cases were not disclosed to investors accurately, if at all. <i>See infra</i> at Div. Response to Resp. PFOF ¶ 118.</p> <p>The quarterly AUPs, in the Receivables Sample in the investment schedules related to ONJ Cases, concluded such cases were settled litigations and that Smith Mazure determined that there were “documents” that “reflect valid settlements” for the ONJ Cases, and the explanations of the ONJ cases (e.g., Ex. 1431_at 5-6) do not clearly disclose that the Funds are currently making advances on Osborn’s unsettled ONJ Cases</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>the Funds' investments in the ongoing Osborn ONJ cases, and explained why Respondents believed they were in the best interests of investors;</p> <p>(b)</p> <p>Respondents also posted a May 30, 2012 memorandum titled "Temporary Limit Increase to Novartis Exposure" to its investor website; and</p> <p>(c) Investors confirmed that they were aware of the Osborn investments.</p>	<p>Ex. 3096 at row 212 (investor website upload history showing "05.30.12 Temporary Limit Increase to Novartis Exposure" memorandum uploaded on 6/4/2012).</p> <p>116(c)</p> <p>Tr. 379:12-381:18 (Ishimaru) ("Q This is the AUP, or the agreed upon procedures, that quarterly audit report we just saw referenced in the marketing materials that you were provided by RD Legal during the course of your investment, correct? A Yes. MR. WILLINGHAM: Can you go to page 5. Q There is a discussion here of the procedure of the audit. Do you see that? A Yes. Q And this was provided to you that the law firm of Smith Mazure will conduct a review of three cases to determine the valid and perfected security interest, things along that line; do you see that? A Yes. Q If you go down to the bottom of this page, Beatie and Osborn? MR. WILLINGHAM: If you take that paragraph and make it larger. A Yes. Q You were provided this information in 2011 during the course of your investment with RD Legal? A Yes. Q And it's a discussion of the history of the Osborn Law case; do you see that? A Yes. Q And with regard to how that law firm broke up, right? A Um hum. Q Creating cash flow difficulties for the successor law firm, Osborn Law, right? A Yes. Q And that over 7 million of settlements and corresponding legal fees have been purchased and successfully collected without difficulties? A Um-hm. Q Prior to the breakup, and then following the breakup, Smith Mazure</p>	<p>and other case inventory. See Div. PFOF ¶¶ 222-224.</p> <p>With respect to Respondents' ¶ 116(b), the screenshots and upload history cited do not reveal what, if any, information was disclosed in the memorandum that was allegedly posted and therefore is not evidence that the nature of the Osborn ONJ Cases investments were fully disclosed to investors.</p> <p>As to Resp. PFOF ¶ 116(c), the cited passages reflect that (a) Ms. Ishimaru agreed that (i) the AUPs were provided to her and (ii) that the AUPs contain the text the Division contends was misleading (see Div. PFOF ¶¶ 222-224), that (b) Mr. Levenbaum agreed that the Novartis exposure in the financials was the same as the Novartis exposure discussed in the AUPs, and (c) that Mr. Dabbah was aware of the Novartis position when he reviewed the AUPs.</p> <p>In fact, Ms. Ishimaru and Mr. Levenbaum both testified that reading the language in the AUPs, they believed the Osborn advances related to settled cases. Div. PFOF ¶ 223 n.344 (quoting Ishimaru and Levenbaum testimony).</p> <p>There is no cited evidence that investors knew (i) of the Osborn ONJ Cases prior to</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>was engaged to examine the firm's portfolio. Do you see that? A Yes. Q The unsettled ONJ case inventory, do you see that? In December of 2009 right at the bottom. A Smith & Mazure was engaged here. Okay, yes. Q This information, including the unsettled ONJ case inventory, this information was sent to you in 2011, wasn't it? A That was the firm Beatie and Osborn had an unsettled case in their portfolio, yes. Q And that, in fact, if you go to the next page, there was a discussion of the valuation of the Osborn matter and whether or not there was an expectation of a positive result in the investment in the ONJ cases. Do you see that? Take a moment to read it. A Yes. Q Any reason to doubt that this information was provided to you on a quarterly basis by RD Legal during the course of your investment? A No.")</p> <p>Tr. 3108:14-3109:10 (Levenbaum) ("Q So if you take a look at 539 page 24, it's talking about the RDLF's concentration in the Novartis Pharmaceutical Company. Do you see that? A Yes. Q And here in the very same document that you received at the same time on this very same table, there's a concentration referenced for Novartis Pharmaceuticals Company. Do you see that? A Yes. Q 14 percent? A Okay. Q Right? A Yes. Q So you knew that this Novartis investment as reflected in the financials was directly related to the document that you got at the same time, the AUP referencing Novartis Pharmaceutical Company? A Right. Q Right? A Right.")</p>	<p>investing, (ii) that such cases were unsettled, or (iii) that Respondents continued make further investments in unsettled ONJ Cases.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Tr. 5667:17-5668:2 (Dabbah) (“Q There’s a header below what -- where I just read that says, “Osborn Law, PC. Beatie and Osborn and Osborn Law, PC, Osborn have been maintained on the portfolio watch list since the original law practice. Beatie and Osborn dissolved in 2009.” Are you aware -- were you aware of this position when you reviewed this document? A Yes. On reviewing the document, of course, this is a section that we would look at carefully. So we were aware that it was a number of positions that were in workout.”)</p>	
<p>117. Investor Alan Mantell learned about the Osborn ONJ cases from the AUPs.</p>	<p>Tr. 664:16-666:15 (Mantell) (“Q And, Mr. Mantell, if you turn to Exhibit 17 369 in the binder marked Mantell, please. It should be what’s on the screen. A Okay. Q Do you recognize Exhibit 369? And you’ll note, Mr. Mantell, there’s an attachment, if you want to look at that as well. A Yes. This is an email from me to Randy Slifka transmitting a second quarter compliance review by the Wiss Accounting firm with regard to the fund that I invested in, the RD Legal fund that I invested in. Q And why did you send that email to Mr. Slifka -- withdrawn. Why did you forward this to Mr. Slifka? A When I got this report -- I don’t remember how I got it. It doesn’t matter. It would have been maybe emailed to me and by RD Legal. And I read it, and I became concerned. And by then it was clear to me that Randy was also an investor, because I actually was an</p>	<p>Admitted that Mr. Mantell learned about the ONJ cases from an AUP report months after his investment into the Funds, that the investment (and continued funding of Osborn) concerned Mr. Mantell, and that, if Mr. Mantell had understood prior to this investment that the ONJ cases comprised approximately 10% of the Funds’ value, he would not have invested. <u>See</u> Div. PFOF ¶¶ 503-506.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>investor in a managed fund of hedge funds -- that's not quite correct. There was an option structure used by Royal Bank of Canada to routinely enable investors to invest in portfolio hedge funds that was managed by Randy SlifkA Randy arranged RBC to do that. RBC was actually interested in it, because they became a lender. You put up an amount of money. They leveraged that amount of money, and Randy guided as to which funds would be chosen. And I was in that -- I had such an investment, and Randy was managing it. And one of the funds that he invested in was RD Legal, and I knew that because I could see the entire portfolio on the RBC website. So I knew Randy was involved and that his funds were -- his other investors were involved. And so I forwarded this to him. Q And do you recall why you forwarded it to him? A Yeah. To discuss the implications. Say, Hey, Randy, there is an issue here. 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.”)</p>	
<p>118. Respondents never denied, mischaracterized, or attempted to hide the Funds' investments in</p>	<p><i>See e.g., Ex. 1431_5-6</i> (March 31, 2012 AUP disclosing and describing the advances to Osborn for the ONJ cases); <i>Ex. 1544_5-6</i> (September 30, 2012 AUP disclosing and describing same); <i>Ex. 1712_7-8</i> (March 31, 2013 AUP disclosing and describing same). <i>Ex. 2354A-1</i> (screenshot of website showing, among other documents, “05.30.12 Temporary Limit Increase</p>	<p>Denied. Respondents denied repeatedly that they invested in matters with “potential appeals or other disputes” still pending. <i>See, e.g., Div. PFOF ¶¶ 156, 158.</i> Dersovitz acknowledges that the Osborn ONJ cases do not</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>the Osborn ONJ cases.</p>	<p>to Novartis Exposure” memorandum).</p> <p>Ex. 3096 at row 212 (investor website upload history showing “05.30.12 Temporary Limit Increase to Novartis Exposure” memorandum uploaded on 6/4/2012).</p> <p>Tr. 4623:10-13 (Hirsch) (“And you testified earlier that you learned of the fact that Osborn positions were workouts from these [AUP] reports, correct? A Yes.”)</p> <p><i>Id.</i> at 4611:19-4612:11 (“THE WITNESS: Well, in the case of RD, [the workout positions are] all in the AUP, which is the agreed-upon procedure where they go through. They have a third-party that comes in and looks at all of the positions that have hair on them, if you will, or in a workout. And it gets disclosed to the investors on the website. And, I believe -- I think it was on the website. Just -- I think it was on the website. And then an email goes out to everyone saying, This has been uploaded to the website. It also -- anything comes out during due diligence. One of the things that you ask a manager is, tell me about everything that you have done that’s gone wrong. Don’t just give me the good things. Give me the bad things. And that’s where these things come up.”)</p> <p>Ex. 216 (Cobblestone Transcript) at 36:8-16 (“MALE VOICE: Well, there’s two issues. It’s the size of-- really, the size that you would let any one single settlement get to is one issue. And then separately now that</p>	<p>fit into the categories of investments described in the Funds’ DDQs and other marketing materials. Div. PFOF ¶¶ 172-74.</p> <p>Dersovitz affirmatively misled Mr. Sinensky concerning the Funds’ involvement with the Osborn ONJ Cases. Div. PFOF ¶ 660.</p> <p>Mr. Dersovitz attempted to obfuscate the nature of the Osborn ONJ Cases to Respondents’ employees, and Ms. Markovic continued to market the Funds as having “no litigation risk” after becoming aware of the litigation risk in the ONJ Cases. Div. PFOF ¶ 677-78.</p> <p>Further, Dersovitz, in responding to Mr. Mantell’s questions concerning the Osborn positions, represented that the “focus of the business . . . to advance case on settlements and/or judgments . . . has not changed, nor will ever change” despite knowing that he intended to continue to advance Osborn money on unsettled cases. Div. PFOF ¶ 504.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>we know there's this one settlement out there - and I know that you had one with, I guess, Merck and - what was the other -- JOHN: Novartis. MALE VOICE: - Novartis, that were big but not quite as big.")</p>	
<p>119. Respondents accommodated a request by TIGER 21 investor Alan Mantell to put him in touch with Smith Mazure to discuss the Osborn transactions and collateral.</p>	<p>Exhibit 371_1 (September 2013 Dersovitz email to Mantell responding to request to speak to Smith Mazure about Osborn) ("Enjoy your weekend and we'll schedule a time to speak at mutually convenient time next week. With regards to Smith Mazure, I will call them during the early part of the week and provide the authorization for the conversation.")</p> <p>Tr. 677:4-16 (Mantell) ("Division Exhibit No. 371 was received in evidence.) BY MR. SUTHAMMANONT: Q Mr. Mantell, you'll see that at the bottom of that paragraph there he says, "Further, if you would like to speak again or even speak with Smith Mazure, it would be my please" -- I think he means pleasure -- "to continue the dialogue." Do you see that? A Yeah. Q Did you take Mr. Dersovitz up on the offer to - - A I did.")</p>	<p>Admitted.</p>
<p>120. Osborn signed a guaranty and assigned his entire case inventory as well as a million dollar life insurance policy as</p>	<p>Tr. 1311:5-1312:7 (Osborn) ("Q I think you said earlier that you had signed over -- did you say your entire book of business by some point to RD Legal; is that right? A Yes. I think at some point -- I think early on, the UCC financing statement was filed in which I pledged the collateral from my entire case inventory. There's a lot of documentation to get these things done; whether it's a master assignment and sale, these schedules, financing</p>	<p>Admitted.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>collateral for the Funds' investment in the Osborn ONJ cases.</p>	<p>statements, summaries, inventories, audits, paperwork, paperwork, paperwork. And I know in there somewhere was a -- it was a pledge -- it maybe even would have been a security agreement where I pledged the entire inventory, my office inventory to support the repayment of this money. Q Did you ever pledge anything to RD Legal other than your office inventory? A One life insurance policy. Q How much is that worth? A A million dollars. Q Anything else? A I think I signed a personal guarantee. Q And what did you understand that to mean? A That if Osborn Law cannot repay the obligation to RD Legal, RD Legal can look to me.”)</p> <p><i>See, e.g., Ex. 477_6 (Osborn Guaranty for Osborn Schedule A-1))</i></p>	
<p>121. The Funds have received payments for the Osborn ONJ receivables in excess of the amount they paid for those receivables.</p>	<p><i>See Ex. 3117_7 (Law Firm/Plaintiff Report for Osborn Law, PC) (showing \$508,930.99 in net proceeds received from Osborn Law during the period from 1/1/2007 through 10/31/2016); see also Ex. 3116 (same)</i></p> <p>Tr. 5555:6-5557:16 (Dersovitz) (“Q As you sit here today, Mr. Dersovitz, do you have an understanding whether or not RD Legal profited or the investors profited on the moneys that were disbursed to Osborn? A Yes, I do. Q And what is your understanding of that? A That historically we’ve advanced \$13.4 million, and that we’ve collected -- collected \$13.9 million. Q I’m going to stop you right there. So what does that mean; you’ve deployed 13.4 million, and you’ve collected 13.9 million? What does that mean? A</p>	<p>Denied that the Funds’ have received payments for the Osborn ONJ receivables in excess of the amounts Respondents advanced to those cases. The ONJ Cases netted Respondents approximately \$6 million out of almost \$12 million advanced. <u>See Div. PFOF ¶ 44.</u> The remainder of the amounts at issue in the evidence cited by Respondents was received as a “participation” by a third party into these receivables, and does not account for obligations that Respondents and the Funds have under those participation agreements to remit proceeds to the third party should they not collect</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>We made a half-a-million-dollar profit to date, and we have -- and we have plenty of collateral left, so we fully expect to collect the balance due to us.</p> <p>Q Okay. You gave me some pretty specific numbers there, Mr. Dersovitz. I'm going to ask if you've seen Exhibit 3116 before. A Yes, I have. (Respondents Exhibit No. 3116 was marked for identification.) BY MR. WILLINGHAM: Q What is Exhibit 3116? A With all the talk about Osborn, I asked my CFO to prepare a table listing the dollars deployed and dollars collected on Osborn. Q Okay. And if you take a look at this, this number in parentheses that says 13.4 - - \$13,442,143, do you see that? A Yes. Q And that's dollars deployed to Osborn since inception? A Yes, it is. Q And then you see two categories; dollars collected for Osborn from CCY? Do you see that? A Yes. Q What -- and there's a number of a little over \$7.5 million? A Yes. Q What is CCY? A CCY is Constant Cash Yield. They are a counterparty with whom we have a participation relationship with. And they purchased \$7.5 million of the Osborn position. So that's a sale or a collection for us. Q A collection for the RD Legal investors? A Yes. Q Okay. That's what you mean by "a participation"? A Yes. Q Okay. We've heard that word a lot. I just want to make sure that's your understanding. And what about the dollars collected from Osborn from cases? A We've collected \$6.4 million to date. And we have expectations of future collections as well. And that nets out to a -- we're 500,000 -- 508,000 in the black to date.")</p>	<p>sufficient money to cover their participation in the ONJ Cases. <u>See</u> Ex. 713 at 4-6.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p><i>Id.</i> at 5559:6-18 (“Q And if you take a look at Exhibit 3117. Is this the underlying data reflecting the payments and advances for the Osborn matter? A Yes. Q If you take a look at page 7. At the end of all the payments and advances, it shows the same numbers we saw previously -- A Yes, it does. Q -- on Exhibit 3116? A Yes, it does. Q And there’s a record of -- there’s various payments that have recently come in? A Yes.”)</p> <p><i>Id.</i> at 5563:22-5564:8 (“Q With regard to the Osborn cases, you mentioned other collateral that you expect to collect from -- in addition to the Novartis or Fosamax cases or selling off portions to CCY or others. Page 5564 What other collateral are you referring to? A They had -- first of all, we had expectations of future recoveries from these jaw cases. That’s No. 1. Then there are two or three other cases which are near completion in terms of litigation. One is Ruiz vs. Affinity, which is a trucking case where there -- and the other is Vaxserve.”)</p> <p>Tr. 1344:1-25 (Osborn) (“Q And if you take a look at page 2 at the top. A Yes. Q Right at the top, damages are approximately 15 million. And you have a fee agreement that allows you to request up to 35 percent of any recovery. Do you see that? A Yes. Relating to the trucking misclassification case that we were talking about. Q Right. The Ruiz case that you just got summary judgment on? A Correct. Q Did you think at the time in 2014 that was a reasonable</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>expectation of damages? A Yes, I did. Q In fact, you now got a summary judgment on the liability, correct? A Correct. Q And you're headed toward the mediation, correct? A Yes. Q And then the only thing now left is if mediation is unsuccessful, a damages hearing? A Correct.")</p> <p><i>See Ruiz v. XPO Last Mile, Inc., formerly Affinity Logistics Corporation, 3:05-cv-02125-JLS-KSC (S.D. Cal.) (Dkt. 416) (7/27/2017 Order Granting Joint Motion for Extension of Time to File Motion for Preliminary Approval of Class Action Settlement)</i></p>	

IX. Cohen

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>122. The Funds' investments in the Cohen cases occurred between 2007 and 2009, and all of the Cohen cases were settled or otherwise resolved before July 2011.</p>	<p>Ex. 202-29 - 80 (Schedules A-1 through A-5 to Master Assignment and Sale Agreement between the Cohen Firm and RD Legal showing purchase of legal fees/retainer in connection with <i>United States v. James J. Licata</i>).</p> <p>Ex. 202-81 (June 3, 2009 Schedule A-6 to Master Assignment and Sale Agreement with the Cohen Firm, memorializing agreement with respect to the "Deferred Prosecution Agreement" in the criminal matter <i>United States of America v. WellCare Health Plans, Inc.</i>, Case No. 9:09-cr-00203-JDW-EAJ & 8:09-cr-203-T-27EAJ, United States District Court, Middle District of Florida, Tampa Division.)</p>	<p>Admitted that the Funds' investments in the Cohen cases occurred between 2007 and 2009, but denied that all of the Cohen cases were "settled or otherwise resolved before July 2011" as unsupported by the evidence cited by Respondents and as contradicted by the actual facts of the cases, which show that Cohen's client, the relator in the <u>qui tam</u> WellCare matter, was still litigating with WellCare and the United States over his right to recover from the settlement in the criminal case, and that Cohen was still litigating over the assets that Licata had conveyed as payments to him</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p><i>See also</i> Division’s Proposed Fact 51, and Division’s footnotes 93 & 98.</p> <p>Div. PFOF 61 (confirming that the Funds purchased receivables from the Chau case on February 29, 2008).</p>	<p>for that matter. Div. PFOF ¶¶ 56, 69, 77.</p>
<p>123. The Cohen investments were not subject to litigation risk because the purchased fees had been earned and could be accurately determined:</p> <p>(a) The Licata investment related to a criminal case in which Cohen’s \$15 million retainer was earned as of the date he filed a notice of appearance in the case.</p> <p>(b) The</p>	<p>123(a):</p> <p>Ex. 202-29-80 (Schedules A-1 through A-5 to Master Assignment and Sale Agreement between the Cohen Firm and RD Legal showing purchase of legal fees/retainer in connection with United States v. James J. Licata).</p> <p>Tr. 1435:03-15 (Cohen) (“Q Yeah. This is a reference on the funding of the Licata criminal matter. And I want to ask you a question about that. A All right. Q Again, this was a \$15 million fee? A It was. Q At the time you were – received funding on this from RD Legal, was that fee earned? A Yes. 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.”);</p> <p>Tr. 5779:13-5780:1 (Buchman) (“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</p>	<p>Denied.</p> <p>123(a)</p> <p>Admitted that the legal fee was earned, but denied that purchasing Cohen’s receivable with respect to the fee he expected to <i>receive</i> from Licata was not subject to litigation risk. In order for Cohen to actually receive the fee and be able to remit payment to the purchaser of his receivable, Cohen would have to, as Respondents knew, fight a litigation to quiet title over the assets. Indeed, Respondents funded that litigation with their “purchase” of Cohen’s Licata receivables, and that litigation was not resolved until 2014 with Cohen losing all claims to the assets and subsequently remitting no returns at all to Respondents, the purchasers of those receivables. Div. PFOF ¶¶ 54-60, 80.</p> <p>123(b)</p> <p>Denied that the WellCare matter was settled as to Mr. Cohen’s client when Respondents’ purchased Cohen’s receivable, and</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>Wellcare investment related to a settled criminal matter which set aside \$80 million from which Cohen and his client expected to be paid.</p> <p>(c) The Chau Lai investment related to a multi-millions dollar final judgment in a civil premises liability action that had been entered and upheld on appeal. Although the defendant filed a further discretionary appeal to the Florida Supreme Court two months after the Funds invested in the Chau</p>	<p>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.”)</p> <p>123(b)</p> <p>Ex. 202-81 (Schedule A-6 to Cohen Master Assignment and Sale Agreement showing purchase of \$4 million legal fee based on “Deferred Prosecution Agreement bearing United States District Court, Middle District of Florida, Tampa Division, Case No. 8:09-cr-00203-JDW-EAJ & 8:09-CR-203-T-27EAJ”)</p> <p>Tr. 1431:04-16 (Cohen) (“Q And at the time you received funding from Mr. Dersovitz – here it looks like to be about June 3 of 2009 – that criminal matter, the deferred prosecution agreement had already been entered, correct? A That’s correct. Q And I believe you told Mr. Suthammanont it was a resolution of the criminal case, correct? A Against the corporation, yes, sir. Q Against the corporation. And that \$80 million, in fact, had been funded and set aside at the time of that deferred prosecution agreement, correct? A Yes, sir.”.)</p> <p><i>Id.</i> at 1431:21-1432:3 (“Q All right. And, in fact, you met with some gentlemen who are here at counsel table on behalf of the Division, correct? A Right. Q Do you recall telling them that the [Wellcare] matter that was funded by RD Legal at the time was actually the resolved criminal case? A Yes.”.)</p>	<p>denied that purchasing Cohen’s receivable with respect to his representation of a relator in the WellCare matter did not involve litigation risk. At the time Respondents’ purchased Cohen’s receivable, due and owing to him from the relator, the relator’s right to recover had not been established and was subject to litigation over the coverage of the Federal Torts Claim Act, and a settlement of the <u>qui tam</u> action was being negotiated. A settlement in the <u>qui tam</u> action was reached in 2012, and, after litigating the matter, Cohen’s client lost his legal argument that he was entitled to share in the proceeds of the criminal settlement between the United States and WellCare. Div. PFOF ¶¶ 64-77. As a result, in part, of these litigation losses and of the settlement with WellCare being lower than anticipated, Cohen did not remit to Respondents even the full amount he had received from that when they purchased his receivable, let alone any interest. Div. PFOF ¶ 82.</p> <p>The evidence Respondents cite in support of their PFOF ¶ 123(b) is unreliable because it consists not of the legal documents and court papers which show conclusively the status of the WellCare matter at various points in time, but</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>Lai case, the case settled and the appeal was voluntarily dismissed soon thereafter.</p>	<p>(<i>Id.</i> at 1432:17-24 (“Q When the deferred prosecution agreement was entered back in 2009, that your client was the whistleblower in that action, the one who wore the wire – A Right. Q – it was your understanding that he was going to receive a significant percentage of that money, correct? A Right.”).)</p> <p><i>Id.</i> at 1449:20-1450:13 (MR. WILLINGHAM: Your Honor, I’m going to object. I don’t know if it’s intentional, but there’s a distinction between a whistleblower and a relator that is being conflated here. And I just think it’s an inappropriate question. JUDGE PATIL: Can you explain that to me? MR. WILLINGHAM: The relator is in the qui tam action which is a separate action. JUDGE PATIL: Right. You’re saying this money relates to the criminal action? MR. WILLINGHAM: Yes, Your Honor. And I think that was what he testified to. And I think that’s what he said very distinctly that these were separate actions; one was a resolved, settled criminal case, and the other was qui tam action, which was ongoing, which there was a relator which is a term of art for a qui tam action. JUDGE PATIL: All right. Sustained.”).)</p> <p><u>123(c)</u></p> <p>Tr. 1419:4-1420:1 (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.</p>	<p>simply of the arguments of Respondents’ counsel to the Court, or simply of Mr. Cohen’s <i>belief</i> that his client was entitled to recovery.</p> <p><u>123(c)</u></p> <p>Denied that the <u>Chau</u> investment was not subject to litigation risk at the time of investment, because it did not involve a final, non-appealable judgment, as Respondents admit in 123(c). <u>See also</u> Div. PFOF ¶¶ 61-63.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>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 in '08, February of '08, and sustained the jury verdict.")</p> <p>Ex. 3175 (2/6/2008 Court of Appeal Decision in <i>Chau v. Southstar Equity, LLC et al.</i>)</p> <p>Div. PFOF 61 (confirming that the Funds purchased receivables from the Chau case on February 29, 2008)</p> <p>Tr. 1420:1-9 (Cohen) ("A . . . They appealed it to the Florida Supreme Court. And before the court ruled on that case, the defendants came to me and agreed -- wanted to settle that case for about \$19.5 million. And I agreed to settle it. I think the interest had gone up to maybe 21 or so. I decided that the most prudent thing to do was to settle it to the \$19.5 million.")</p>	
<p>124. The Funds' investments in the Cohen cases were fully disclosed to</p>	<p><i>See, e.g., Ex. 1892_8-9</i> (1/17/2014 email from Woodfield to all investors attaching September 30, 2013 AUP describing the status of the investments in the Cohen cases).</p> <p><i>See also Exs. 1186, 1246, 1263, 1431, 1490, 1544, 1712, 1796, 1892, 2018,</i></p>	<p>Denied.</p> <p>Respondents rely solely on the AUPs for the proposition that their investments in the Cohen cases were "fully disclosed" to investors but:</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
investors	<p>2055, and 2092 (AUPs from various quarters and years, all describing the status of the Cohen cases).</p> <p>Tr. 381:23-382:2 (Ishimaru) (“Q Again, here is an explanation of the Cohen & Foster investment, how the investment took place, what it was put into, and the reasons why the resolution is taking a little bit longer than expected; is that right? A Um hum.”)</p>	<p>a) The AUPs were never distributed to prospective investors, Div. PFOF ¶ 220,</p> <p>b) The AUPs at times referred to the Cohen cases incorrectly as “settled” cases, even though not one of them had been resolved via a settlement, Div. PFOF ¶ 226, and</p> <p>c) The AUPs did not tell investors that the assets were not settled and had the litigation risks that they described from the moment the receivables were purchased. <u>Id.</u></p>
<p>125. Respondents never denied, mischaracterized, or attempted to hide the Funds’ investments in the Cohen cases.</p>	<p><i>See, e.g., Ex. 1892_8-9</i> (1/17/2014 email from Woodfield to all investors attaching September 30, 2013 AUP describing the status of the investments in the Cohen cases).</p> <p><i>See also Exs. 1186, 1246, 1263, 1431, 1490, 1544, 1712, 1796, 1892, 2018, 2055, and 2092</i> (AUPs from various quarters and years, all describing the status of the Cohen cases).</p> <p>Tr. 381:23-382:2 (Ishimaru) (“Q Again, here is an explanation of the Cohen & Foster investment, how the investment took place, what it was put into, and the reasons why the resolution is taking a little bit longer than expected; is that right? A Um hum.”)</p>	<p>Denied.</p> <p>In addition to the Division’s Response to Resp. PFOF ¶ 124 with respect to the AUPs, the Division denies Resp. PFOF ¶ 125 because Respondents, in telling investors that they invested in “settled cases,” in cases with “no litigation risk,” in cases against large corporations, municipalities or insurance companies, or in “non-appealable judgments,” or “95%” in legal fee receivables on settled cases, or that “All of the Legal Fee Receivables” arose out of settlements, mischaracterized and attempted to hide the Funds’ investments in the Cohen cases. Div. PFOF ¶¶ 155-61, 163-64, 166, 169, 173, 175,</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
		186, 193, 195; <u>see also</u> Div. Br. at 13-15 (establishing the falsity of Respondents' statements with respect to the Cohen investments).
126. The Funds' investments in the Cohen cases would not have materially impacted investors' decisions to invest in the Funds.	<i>See</i> PFOF 122-125	<p>Denied.</p> <p>The evidence cited by Respondents in support of this proposition (their purported support for their previous four proposed findings of fact) relates only to the nature of the Cohen investments, not the materiality of the investments to investors.</p> <p>Investors testified that investing in cases with no litigation risk was the singular most important factor that drove their decision to invest in the Funds. Div. PFOF ¶¶ 629, 631, 634-38.</p> <p>Accordingly, knowing about the Cohen cases, which had litigation risk, would have materially impacted investors' decisions to invest in the Funds.</p>

X. Performance

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
127. The Funds' investments generated	<p>Inability-To-Pay PFOF 59-91</p> <p>Ex. 2928_1 (7/28/2016 Ballentine email to Schaffer and Poirier) ("I just spoke with Michael Bundaun (sp?)</p>	The Division admits that the Respondents show positive returns to investors, but notes that such returns reflect both realized and unrealized gains

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
positive returns for investors.	and Jorge Teneiro at the SEC in NYC. Good news – no money is missing and investors may do quite well. Not so good – the SEC has initiated and enforcement action.”)	and avers that some redeeming investors are still owed money by Respondents, including the repayment of principal. See Div. Resp. to Inability-To-Pay PFOF (“ITPPFOF”) ¶¶ 59-91. Ex. 2928 does not support the Respondents’ contention.
128. An investor who invested in the Funds at their inception in 2007 would have realized a gain of well over two hundred percent by the end of 2016.	See Ex. 2396 (Metzger Report), Appendix C (comparing return on investment to various comparable benchmarks)	Admitted that the hypothetical 2007 investors would have a return of 222.64% by the end of 2016, but denies that such return would reflect “realized” gains, when in fact such return would reflect both realized and unrealized gains to the Funds, and considering redeeming investors are still owned money by Respondents, including the repayment of principal Div. Resp. to Resp. Inability to Pay PFOF (“Div. Resp. to ITPPFOF”) ¶¶ 59-91.
129. As a result of the Osborn workout, Respondents succeeded in recovering all of the principal the Funds had advanced to the Osborn	See Ex. 3117_7 (Law Firm/Plaintiff Report for Osborn Law, PC) (showing \$508,930.99 in net proceeds received from Osborn Law during the period from 1/1/2007 through 10/31/2016); see also Ex. 3116 (same) Tr. 5555:24-5557:16 (Dersovitz) (“I’m going to ask if you’ve seen Exhibit 3116 before. A Yes, I have. (Respondents Exhibit No. 3116 was marked for identification.) BY MR. WILLINGHAM: Q What is Exhibit	Denied. See supra Division’s Response to Resp. PFOF ¶ 121. Denied that such returns were the result of the undefined term “workout” or that such Respondents’ continued investments in Osborn ONJ Cases were necessary to recover the initial \$1.2 million advanced to Osborn. See supra Division’s

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>firm, and the Funds are now profiting from those investments.</p>	<p>3116? A With all the talk about Osborn, I asked my CFO to prepare a table listing the dollars deployed and dollars collected on Osborn. Q Okay. And if you take a look at this, this number in parentheses that says 13.4 - - \$13,442,143, do you see that? A Yes. Q And that's dollars deployed to Osborn since inception? A Yes, it is. Q And then you see two categories; dollars collected for Osborn from CCY? Do you see that? A Yes. Q What -- and there's a number of a little over \$7.5 million? A Yes. Q What is CCY? A CCY is Constant Cash Yield. They are a counterparty with whom we have a participation relationship with. And they purchased \$7.5 million of the Osborn position. So that's a sale or a collection for us. Q A collection for the RD Legal investors? A Yes. Q Okay. That's what you mean by "a participation"? A Yes. Q Okay. We've heard that word a lot. I just want to make sure that's your understanding. And what about the dollars collected from Osborn from cases? A We've collected \$6.4 million to date. And we have expectations of future collections as well. And that nets out to a -- we're 500,000 -- 508,000 in the black to date.")</p> <p><i>Id.</i> at 5559:6-18 ("Q And if you take a look at Exhibit 3117. Is this the underlying data reflecting the payments and advances for the Osborn matter? A Yes. Q If you take a look at page 7. At the end of all the payments and advances, it shows the same numbers we saw previously -- A Yes, it does. Q -- on Exhibit 3116? A Yes, it does. Q And there's a record of</p>	<p>Response to Resp. PFOF ¶ 111 above.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	-- there's various payments that have recently come in? A Yes.")	
130. As of March 31, 2017, the trustee for the Qualified Settlement Fund confirmed that hundreds of millions of dollars still remained to be distributed from the fund.	Ex. 625 (3/31/2017 letter from Locke Lorde to Judge Forrest re status of Qualified Settlement Fund distributions).	Denied. The March 31, 2017 letter states that approximately \$83 million remains unpaid to three funding companies (including RD Legal) because the Trustee temporarily suspended payments to RD Legal and the other funders. <u>See Ex. 625-4.</u>
131. The <i>Ruiz</i> case that served as additional collateral for the Funds' investments in the ONJ cases recently settled	Tr. 5563:22-5564:8 (Dersovitz) ("Q With regard to the Osborn cases, you mentioned other collateral that you expect to collect from -- in addition to the Novartis or Fosamax cases or selling off portions to CCY or others. Page 5564 What other collateral are you referring to? A They had -- first of all, we had expectations of future recoveries from these jaw cases. That's No. 1. Then there are two or three other cases which are near completion in terms of litigation. One is Ruiz vs. Affinity, which is a trucking case where there -- and the other is Vaxserve.") <i>See Ruiz v. XPO Last Mile, Inc., formerly Affinity Logistics Corporation, 3:05-cv-02125-JLS-KSC (S.D. Cal.) (Dkt. 416) (7/27/2017 Order Granting Joint Motion for Extension of Time to File Motion for Preliminary Approval of Class Action Settlement)</i>	Admitted.

XI. Disgorgement

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
132. RDLC's total expenses in operating the Funds exceeded its total revenue during the period covered by the OIP.	Inability-To-Pay PFOF 17-34	Denied. See Div. Resp. to ITPPFOF ¶¶ 17-34.
133. Dersovitz has not received any personal income in connection with the operation of the Funds since the end of 2014.	Inability-To-Pay PFOF 38-40	Denied. See Div. Resp. to ITPPFOF ¶¶ 38-40.
134. Since the beginning of 2015, Dersovitz and his family have contributed more than nine million dollars of their personal assets to permit the continued operation of	Inability-To-Pay PFOF 39-41	Denied. See Div. Resp. to ITPPFOF ¶¶ 39-41.

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
the Funds.		

XII. Valuation

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
135. The Division never presented the issues of how Respondents valued the assets in the portfolio to the Commission's Division of Economic Risk and Analysis ("DERA").	Tr. 27:20-21 ("The truth is we didn't ask for and we never got any information from DERA.")	Admitted.
136. The assets in the Funds are Level 3 assets within the meaning of GAAP.	Ex. 1290-13 – 17.	Admitted.
137. Level 3 assets include financial instruments or obligations for which no secondary market exists and which are restricted as to their transferability.	Ex. 1290-13.	Admitted.

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
138. GAAP requires investment funds to value the assets in their portfolios at "fair value."	<i>See</i> Tr. 1830:1-3 (Robak) ("Q And why do you try to arrive at fair value? A Because the accounting rules require it.")	Admitted.
139. The standards for determining fair value are set forth in Financial Accounting Standard ("FAS") 157.	Tr. 4055:8-14 (Martin) ("Q In short, summary for laypersons, how are assets to be valued under FAS 157? A Market approach. You have to come to some sort of market view of what these are from a market perspective. Not from a legal perspective, but from a market perspective. You have to take a market perspective.")	Admitted.
140. Determining the value of Level 3 assets requires the application of judgment. Under GAAP, there could be a range of values that would be appropriate for the same asset.	Tr. 1928:2-1929:16: (Robak) (A Yeah. Generally, you don't -- GAAP refers to Level 1, Level 2 and Level 3 measurements. So one asset could be classified as Level 2 by one reporting entity and Level 3 by another. But Level 3 measurements are valuations that require a tremendous amount of judgment. You can't just look it up and see, Well, here we have Viacom that traded yesterday for \$100, so we're going to price this asset at \$100. And it didn't trade yesterday itself for \$100, so you can price it at \$100. Level 3 assets are generally assets that require a lot of judgment. Q Some judgment is required in the valuation of a Level three -- A Correct. Q -- asset is that true? A Yes. Q You told us earlier that the market approach would not have been appropriate for RD Legal's assets, because there's not enough market transactions to base a valuation on? A Correct. Q So	Admitted.

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>these Level 3 assets, you're using judgment and creating valuations. Is -- in your experience, can there be a range of valuations which would each be appropriate? A Almost always, yes. Q So two valuation agents, two firms like yourself could be valuating same asset, they could reach different values, but both could be independently appropriate? A This is exactly why GAAP requires classification in Level 1, Level 2, Level 3 measurements. Because it gives investors a sense -- if 50 percent of your book is Level 1 assets, then you don't have to put quite as much of a bracket on the value of the book overall than if -- you know, 90 percent or 100 percent of your book is Level 3 assets." (Emphasis added).</p> <p>Ex. 2396-40 (Metzger Report) ("Valuation of Level 3 assets and liabilities requires good judgment. Experience can lead to better judgment, but judgment is not precise.")</p>	
<p>141. The Funds' Offering Memoranda disclosed that the Funds' accounting policies were "in conformity with United States generally accepted accounting principles</p>	<p><i>See, e.g., Ex. 1290-10.</i></p>	<p>Admitted.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>(“U.S. GAAP”),” and “[a]ll legal fees receivable are recorded at their estimated fair value.”</p>		
<p>142. Since 2011, Respondents have employed a nationally-recognized third-party valuation agent, Pluris Valuation Advisors, LLC (“Pluris”), to value the portfolio assets.</p>	<p>Ex. 2396-9.</p>	<p>Admitted.</p>
<p>143. Pluris uses a proprietary model to value the assets in the Funds based on inputs including the purchase price, interest rate, net book value, contract funding date, and contract ending date.</p>	<p>Tr. 1844:21-1846:9 (Robak) (“Q Okay. Directing your attention back to Exhibit 247-3, what are the inputs into Pluris’s valuation model? A It was many, many inputs. Q Okay. If I direct your attention to paragraph 4. A Okay. Q The paragraph reads, “For each receivable position valued, the following characteristic may be inputs into our models.” And then there’s a bunch of enumerated factors that follow there. Do you see that? A Yes. Q Let’s start with receivable amount. What is that? A That’s the amount of the legal fee purchases. Q And where do you get that information from? A From the file we receive monthly. Q Okay. Receive from RD Legal? A</p>	<p>Admitted.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Correct. Q Okay. And the next thing is the interest rate implicit in receivable arrangement and purchase price. What is that? A That's the interest rate that you would get if you look at the rebate schedules, and essentially look at what would be payable and how that would increase on a monthly basis. Q And where do you obtain that input? A From the file we receive. Q From RD Legal? A Yep. Q Okay. And just to be clear, because I recall being confused about this the first time, but that -- that interest rate is different from the discount rate we discussed earlier, correct? A That's correct.") (Emphasis added).</p> <p>Tr. 1848:23-1850:25 (Robak) ("Q The next factor on Exhibit 247-3 in paragraph 4 is No. 4, "The net book value of each receivable as of the valuation date." Do you see that? A Yeah. Q And what is the net book value? A That's an internal accounting measure that's generated by RD Legal as these receivables essentially accrue greater value. Q Okay. When you say it's a measure, what is it measuring? A It's a -- we've gone back and forth with our accounting staff on that, and, you know, had some analysis. But by and large, it's a -- it's a reflection of -- you know, if you buy something for \$100 and it's eventually going to pay 200, then midway through it might be worth 150. It's an accounting measure more than anything else. Q Okay. And how does that differ from fair value? A It differs from fair value in that fair value starts with the 200 that you're</p>	

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>supposed to receive in the future and discount it back to the present day, whatever point in time you are. Q And the last number -- the last input described in paragraph 4 is the contract funding date and ending date. Do you see that? A Correct. Q And is that what we discussed earlier when we -- you pointed out the -- withdrawn. Is the contract funding date -- withdrawn. What is the contract funding date? A That's when the receivable was initiated or generated. Q And where do you obtain that input? A From the -- from the database we get. Q From RD Legal? A Correct. Q And the ending date, what is that? A The contract ending date is the end of the particular receivable. Q And where do you obtain that information? A From RD Legal. Q With respect to the ending date, how would Pluris know whether that ending date was going to change? A Whether it's going to change? Q Correct. Or whether it has changed. A Well, if we got an updated file with a new ending date or a new contract ending date, then we would reflect that.") (Emphasis added).</p> <p><i>See also Ex. 355A</i></p>	
<p>144. The discount rates Pluris applied factored in a number of risks, such as timing, default, and illiquidity.</p>	<p>Tr. 1909:16-1910:13 (Robak) ("With respect to the risk of nonpayment that might result from the legal system or a legal case -- A Yeah. Q -- how did you come to determine whether that should be captured within the discount rate already? A We believe that for most of these positions it's captured within -- within the discount rates. Q</p>	<p>Admitted.</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
	<p>Why do you believe that? A Well, actually, it is for pretty much all of them captured in the discount rate that we apply. These are very high discount rates. Think about it, 13.5 up to 20 percent, you typically apply throughout this portfolio. Those are very, very high interest rates; very, very high discount rates. So we think that captures a great number of risks, including default risk. But also illiquidity risk. And just timing risk, et cetera Probably timing and illiquidity risk are the greatest risks of these particular portfolio.) (Emphasis added).</p> <p>Tr. 1918:8-16 (Robak) (“A Is that -- our model captures our view of the attractiveness of each receivable, which includes default risk or the potential of not being paid. It captures liquidity risk. It captures payment timing risk. It captures our full view in our judgments of what the discount rate should be in an arms’ length transaction between two parties buying or selling one of these receivables.”) (Emphasis added).</p>	
<p>145. One additional risk that Pluris factors into its discount rate is the risk of nonpayment or default, including nonpayment resulting from litigation or</p>	<p>Tr. 1833: 13-15 (Robak) (“And there’s -- obviously all risk, there’s the risk that someone might not pay.”) (Emphasis added).</p> <p>Tr. 1909:3-8 (Robak) (“A Only what we already talked about. You know, there isn’t any -- there -- in the financing industry and in general, there is no specific hard number that you can put on</p>	<p>Denied. In the testimony cited, Robak states that he could <i>not</i> quantify the risk of nonpayment based on a litigation, and his statement that “there’s the risk that someone might not pay” does not specifically address litigation risk. The evidence set forth in the Division’s PFOF ¶¶ 717-18 shows that litigation risk for</p>

<u>Proposed Fact</u>	<u>Supporting Evidence</u>	<u>Division Response</u>
<p>contested court proceedings.</p>	<p>default risk or nonpayment risk. It's implicit in the discount rates.") (Emphasis added).</p> <p>Tr. 1917:11-21 (Robak) ("A The risk of nonpayment is generally reflected in the discount rate that we apply to these instruments. Q Does that include the risk of nonpayment resulting from litigation or contested court proceedings? A Yes. But if you want a specific number, it has to be a specific likelihood of any particular case not working out in favor of our client or -- indirectly or the obligors directly in these cases. And I don't have a number for you.") (Emphasis added).</p>	<p>contested court proceedings was not a factor taken normally into account in the discount rate.</p>
<p>146. Pluris analyzed the legal risks associated with the Funds' receivables and had sufficient understanding of those risks to apply reasonable discount rates.</p>	<p>Tr. 1911: 10-24 (Robak) ("Q And in coming to that opinion, did Pluris undertake any analysis of the legal risk in any particular position? A We're not lawyers. But we did look at the review of the legal risks that were presented to us. We received an analysis from another law firm, for example. We had discussions with the Perles Law Firm. We had discussions with RD Legal, of course, as well. It depends what you mean by "analysis." Is there some specific hard number that we determined by some spreadsheet? No. But we had a view of the portfolio and a view of the discount rates that is appropriate for it, yes.")</p> <p>Tr. 1979: 19-23 (Robak) ("Q Now, did you feel, Mr. Robak, that you had sufficient understanding of the RD Legal receivables to make an informed opinion about the value of</p>	<p>Denied. Mr. Robak explained that the "possibility of winning a case" is not a number that Pluris determined. <u>See</u> Div. PFOF ¶ 718.</p>

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	those receivables? A Yes, we did.”)	
<p>147. Pluris reviewed legal analysis from law firms and had direct conversations with attorneys involved in the underlying cases in which the Funds invested, including with Steven Perles, lead counsel for the Peterson plaintiffs.</p>	<p>Tr. 1911: 10-24 (Robak) (“Q And in coming to that opinion, did Pluris undertake any analysis of the legal risk in any particular position? A We’re not lawyers. But we did look at the review of the legal risks that were presented to us. We received an analysis from another law firm, for example. We had discussions with the Perles Law Firm. We had discussions with RD Legal, of course, as well. It depends what you mean by “analysis.” Is there some specific hard number that we determined by some spreadsheet? No. But we had a view of the portfolio and a view of the discount rates that is appropriate for it, yes.”)</p> <p>Tr. 1962:3-22 (Robak) (“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. Q Okay. And then Mr. -- did Mr. Perles said to you -- withdrawn. What did Mr. Perles say to you about the risk in that position at that time? A That’s such a long time ago, I can’t recall the specific conversation, except that he went through a detailed analysis of the case, what happened up to that point in time, what was likely to happen, all the multiple avenues that that case could take to -- where there was a handover of the money. It was -- it was a detailed analysis. And we ended up being very comfortable that</p>	<p>Admitted except insofar as the proposed finding of fact does not specify the timing of the “direct conversations with attorneys involved,” and the record shows that Pluris’ contact did not occur at the outset of their valuing of the Funds’ portfolio in June 2011, but rather until much later. See, e.g., Ex. 2193 (July 2015 email from Dersovitz to Robak setting up call with Perles).</p>

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	-- that it hadn't been a real change in the likelihood of collecting.")	
148. Pluris adjusts the discount rates for each receivable in the Funds' portfolios each month, Tr. 1862: 12-13, with higher discounts given to receivables seen as having higher risk. Tr. 1848:8-10.	<p>Tr. 1862: 12-13 (Robak) ("A You adjust the discount rate every month, yes.")</p> <p>Tr. 1848:8-10 (Robak) ("And if you have an a higher discount rate for something, typically that means that there is a little bit higher risk.")</p> <p>Tr. 1939:17-20 (Robak) ("Q And if you thought there was a greater risk in the position, that receivable would have a higher discount rate? A That's correct.")</p>	Admitted.
149. Pluris makes the final determination as to the valuations provided in its reports.	Tr. 1950:16-20 (Robak) ("Q And if there is any disagreement between you and a client, say you and RD Legal, when they first see your draft report, who makes the final determination of what's in your final report? A Pluris does.")	<p>Denied.</p> <p>Respondents stated in the Funds' financial statements that "fair value [was] determined by the Fund's management," Ex. 14 at 19, and that Pluris values are only "recommendations" to the Fund. <u>id.</u> at 20.</p> <p>Respondents could and did influence the values Pluris put in its reports. <u>See, e.g.</u>, Ex. 2958 at 1-2; Ex. 264; Ex. 456.</p>
150. Respondents did not provide Pluris, directly or indirectly, the input for what discount rates to	Tr. 1979:2-8 (Robak) ("Q Did RD Legal provide Pluris directly or indirectly the input for what discount rate to apply? A No. Q Who determined what discount rate would be applied to each receivable? A We did.")	<p>Denied.</p> <p>The discount rates were derived, in part, based on yield rates as derived from the sale of certain older assets in the Funds' portfolio, which information</p>

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<p>apply. Pluris independently determined the discount rate for each receivable each month.</p>		<p>was provided to Pluris from RD Legal. See Div. PFOF ¶ 720; see also Ex. 71 at 3. Moreover, the discount rate depended in part on factors such as timing (see Resp. PFOF ¶ 144), as well as other factors such as obligor ratings, factor that Respondents provided to Pluris. Tr. 2223:4-10 (La Rochelle) (Q: And do you provide that – those obligor ratings to Pluris? A: Yes. Q: How often do you provide those ratings to Pluris? A: Whenever I add a new case into the file or if there's a major change.”); 2248:1-4 (“Q: And did RD Legal provide or estimate, I guess -- estimate the duration of the receivables for Pluris? A: Yes.”); Ex. 255.</p>
<p>151. Pluris had adequate information to make appropriate fair value determinations for the assets in the portfolio.</p>	<p>Tr. 1982:14-19 (Robak) (“Q Did you feel comfortable that Pluris, through yourself and your employees, had adequate information provided to them to make appropriate, fair value determinations for the RD Legal portfolio? A Generally, yes.)</p>	<p>Denied.</p> <p>As Pluris did not take into account litigation risk, see Div. PFOF ¶¶ 717-18, it did not have the information necessary to make the determinations. Moreover, the PFOF is not a proposed finding of fact but a proposed legal conclusion for which Respondents cite no authority in their proposed findings of fact or accompanying brief.</p>
<p>152. Marcum reviewed</p>	<p>Tr. 3157:21-24 (Schall) (“Q Mr. Schall, every year that you headed</p>	<p>Admitted.</p>

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and tested Respondents' valuation processes as part of its regular audit procedures.	the Marcum's audit of RD Legal, did you also look at valuation in terms of the positions? A Yes. We audit valuations.")	
153. Marcum had its own internal valuation expert review the Pluris valuation model and analyze the reasonableness of the methods and assumptions used.	Tr. 3159:8-19 (Schall) ("Q Okay. Now, you have an internal Marcum valuation specialist, don't you? A Yes. Q What's his name? A The name of the individual who worked on the RD Legal, or the person in charge was by the name of Anthony Banks. Q And did Mr. Banks prepare a separate report for your team as part of the -- part of your work? A Yes. He prepares an internal memo that we put in our audit work papers.")	Admitted.
154. Marcum's valuation specialist consistently concluded that Pluris' valuations were reasonable.	<i>See, e.g., Ex. 2476; Ex. 2480; Ex. 2483.</i>	Admitted.
155. The Funds collected approximately \$99 million from the Fay firm and the Perles firm in May and September 2016. These collections included	Ex. 2333; Ex. 2998.4.	Admitted that Respondents collected approximately \$99 million from the Fay and Perles <u>Peterson</u> receivables, <u>see also</u> Div. PFOF ¶ 730, and that the sum included collections on positions owned by CCY and the Funds, but denied that the "net collection to the Funds from Fay and Perles was approximately \$88 million,"

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<p>amounts owed on positions held by Constant Cash Yield. The net collection to the Funds from Fay and Perles was approximately \$88 million.</p>		<p>because the exhibits cited by Respondents do not support that fact. To the contrary, the Funds' received approximately \$69 million of the \$99 million collected. <u>Id.</u> ¶ 731.</p>
<p>156. The combined valuations Pluris had assigned to the Peterson positions, at their highest point, were approximately \$72 million.</p>	<p>Ex. 2393-23; Ex. 2393-48.</p>	<p>Denied because Exhibit 2393 at 23 does not support that the combined valuations Pluris had assigned to the Peterson positions at their highest point was approximately \$72 million. On January 2016, Pluris valued the CCY Peterson positions at over \$50 million, Ex. 1 at H33, and at over \$119 million in the Funds, Ex. 2 at N57. If Respondents meant "the Peterson" positions to cover only the Fay & Perles positions, the Division still denies this proposed finding of fact because Respondents valued the Fay & Perles positions at \$30.2 million in the CCY portfolio by the end of January 2016 and at \$69.9 million in the Funds' portfolio at that time, Div. PFOF ¶ 731. At most, the Division admits that the highest combined valuations Pluris had assigned to the Peterson Fay & Perles positions in the</p>

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		<i>Funds' portfolio</i> , was approximately \$72 million.
<p>157. Pluris applied a “portfolio approach” to valuing the Funds’ assets. Under this approach, some individual assets may end up being marked too high or too low in a given month, but over a number of positions in the portfolio, the errors would offset each other.</p>	<p>Tr. 1977:10-22 (Robak) (“Our approach always when we look at a portfolio like this over many, many items is not to try to hand model every item, but to take a portfolio approach and to say, Well, we’re going to apply some rules to the portfolio as a whole. And if we’re -- if we do that in an unbiased way, we’re going to be wrong on some in the positive direction, and wrong on some in the opposite direction. And over a number of positions in a portfolio, those errors, if you will, will offset each other. And that’s -- we think that is a very reasonable way of thinking of portfolios like these.”)</p>	<p>Admitted.</p>
<p>158. The overall Peterson receivables have collected approximately \$150 million to date and the Osborn receivables have collected approximately \$14 million.</p>	<p>Tr. 6609:6-7 (Dersovitz) (“And when Peterson collected, as it did, we’ve already collected 150 to ‘60 [sic] million.”)</p> <p>Ex. 3116-1.</p>	<p>Admitted that the <u>Peterson</u> receivables have collected approximately \$150 million across all the RD Legal entities that have purchased them, including the Iran SPV, and RD Legal purchases on behalf of non-Fund investors.</p> <p>Denied that the Osborn receivables have “collected” approximately \$14 million. Div. PFOF ¶¶ 44, 728. Exhibit 3116 is a compilation that includes “sales” of certain Osborn positions to CCY, but those are not “collections” from</p>

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		the receivables, and any collection that may occur in the future from Mr. Osborn will have to go, in part, to CCY. See Ex. 713 at 8-9; Ex. 3143 through 3153.
159. There was never a point in time when the Peterson and Osborn receivables were collectively valued in excess of \$164 million.	See Ex. 2, columns F, N.	Admitted.
160. All of the Osborn positions have discount rates "north of 20 percent" and some positions have discounts above 30 percent.	Tr. 1980:17-1981:13 (Robak) ("Q Now, you've already testified that there came a time when you thought some of those receivables had increased payment risk; is that right, sir? A There were -- yeah. We increased the discount rate for the Osborn ones. Q For the Osborn ones when you thought the payment became more doubtful, you made appropriate adjustments to the discount rate? A Correct. Q What approximately is the discount rate that Phuris is applying now to the Osborn positions? A I don't recall exactly. It's well north of 20 percent, I think. And we've split it into -- we've split the cash flows that we believe are more likely and probably going to happen in a shorter time frame, from some that we think are more doubtful and more likely to take longer. And we - - I think we also have a -- so the different discount rate for the	Admitted insofar as the positions currently have discount rates "north of 20 percent," but note that such discount rates did not apply until April of 2015. See Div. PFOF ¶ 726.

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	further-out ones as well. So I think it's a 20 percent and a 30-some percent for the ones that are further out. ") (Emphasis added).	
161. Pluris applied a range of discount rates to the Funds' various receivables.	<i>See Ex. 2319</i> (showing applied discount rates between a low of 13.59% and a high of 40.84%).	Admitted.

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Respectfully submitted,
DIVISION OF ENFORCEMENT



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