Dave Schum

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POSTED 3/1/12

February 21, 2012

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FCC Mail Room

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, S.W.
Washington, D.C. 20554

RECEIVED

RE: File No. BAL-20070216 ABA and BAL– 20070216 ABB

Dear Ms. Dortch:

Enclosed for filing are an original and four copies of the Petition for Leave to File Supplement and Supplement to Application for Review. This filing contains new and relevant information for the above file numbered cases.

Should there be any questions regarding this matter, please contact the undersigned.

Sincerely,

David A. Schum
Watchradio@aol.com

Enclosures

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

Received & Inspected

FEB 27 2012

FCC Mail Room

In re Application of	)	
	)	
BERNARD DALLAS LLC	)	
	)	
and	)	
	)	
PRINCIPLE BROADCASTING NETWORK-DALLAS LLC	)	
	)	
For Assignment of License of KFCD(AM), Farmersville, Texas	)	File No. BAL-20070216ABA Facility ID # 43757
	)	
For Assignment of License of KHSE(AM), Wylie, Texas	)	File No. BAL-20070216ABB Facility ID # 133464

TO: Honorable Marlene H. Dortch
Secretary of the Commission

ATTN: The Commission

PETITION FOR LEAVE TO FILE SUPPLEMENT
AND
SUPPLEMENT TO APPLICATION FOR REVIEW

David A. Schum, on behalf of himself and fellow petitioners, J. Michael Lloyd, Frank D. Timmons, Carol D. Kratville, Brian M. Brown, Robert E. Howard, Edwin E. Wodka, John W. Saunders and Richard J. Drendel (Petitioners), all qualifying parties under FCC 1.106(b)(1), hereby respectfully submits this Petition for Leave to File Supplement and a Supplement to the pending "Application for Review" filed on June 19, 2009 appealing the letter ruling of the Chief, Audio Division, Media Bureau dated and

released February 19, 2008, 23 FCC Rcd 2642, denying Petitioners' "Petition to Deny" against the above-captioned applications related to AM Broadcast Stations KFCD, Farmersville, Texas (KFCD) and KHSE, Wylie, Texas (KHSE). In addition to the facts and arguments already presented by Petitioners including the supplement filed on November 22, 2011, there are newly discovered facts which require the Commission to vacate the grant of the above-captioned application and to dismiss or deny it or designate it for hearing.

For purposes of this filing, petitioners will be referred to as "Schum." Daniel B. Zwirn, Zwirn Holdings, LLC, D.B. Zwirn & Co., L.P., DBZ GP, LLC, Bernard Dallas, LLC, and Bernard Radio, LLC may collectively be referred to as "Zwirn." The hedge funds formerly known as D.B. Zwirn Special Opportunities Fund, L.P. which was domiciled in New York, New York, and D.B. Zwirn Special Opportunities Fund, Ltd. which was domiciled in the Cayman Islands, are now known as "Fortress Value Recovery Fund 1 LLC" and may be referred to as "Fortress Recovery."

Petition for Leave to File Supplement

It is our understanding that a party may seek leave to file a supplement where new information has materialized since the last time the party had an opportunity under the FCC's rules to present information in a pleading recognized by the FCC's Rules. FCC 1.106(2) (i) and (ii) read as follows:

> (2) Where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances are present:
>
> > (i) The petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission; or

(ii) The petition relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.

The Petitioners last had an opportunity to file a pleading in June, 2009, over two years ago. The Petitioners requested leave to file a supplement to the June, 2009 filing on November 22, 2011. The information contained in this filing was not available to the petitioners until after the previous filings although the information was available to Zwirn, Fortress Recovery and their attorneys at an earlier time. The public interest, convenience and necessity would be well served by a consideration of the new information presented in this document. Therefore, we respectfully seek leave to file this Supplement.

Failure to Disclose Full Ownership of Assignor

And

***Failure to Disclose Foreign Ownership* - 47 U.S.C. §310(a-b)**

It has been Petitioners' position from the outset that Zwirn failed to demonstrate that it is a qualified licensee. Zwirn has refused to disclose its ownership to the Commission or to the public. FCC section 1.17(a)(1) & (2) read as follows:

1.17 Truthful and accurate statements to the Commission.

(a) In any investigatory or adjudicatory matter within the Commission's jurisdiction (including, but not limited to, any informal adjudication or informal investigation but excluding any declaratory ruling proceeding) and in any proceeding to amend the FM or Television Table of Allotments (with respect to expressions of interest) or any tariff proceeding, no person subject to this rule shall;

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to

> prevent any material factual statement that is made from being incorrect or misleading; and
>
> (2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

In the Form 314 application filed in 2006, Zwirn disclosed only one principal, Daniel Bernard Zwirn, who is represented to own 1 percent of the equity interests of Zwirn. Zwirn has intentionally withheld disclosure of the other 99% of its ownership classifying them as "insulated." In the same 2006 filing, the 100% equity owner of Bernard Radio, LLC is listed as D.B. Zwirn Special Opportunities Fund, L.P. and Bernard Radio, LLC is shown to be the 100% equity owner of Bernard Dallas, LLC.

NEW INFORMATION

1. United States Court of Appeals For the First Circuit Case

In our November 22, 2011 supplement, we pointed out that on June 1, 2009, Daniel B. Zwirn and the management companies collectively referred to as Zwirn were replaced as investment managers of D.B. Zwirn Special Opportunities Fund, L.P. ("Onshore" fund) and D.B. Zwirn Special Opportunities Fund, Ltd. ("Offshore" fund) as well as other funds and affiliates they managed.

Exhibit A is a copy of an Order dated November 18, 2011 by the US Court of Appeals For the First Circuit for case number 11-1172 titled:

> D.B. Zwirn Special Opportunities Fund L.P.,
> n/k/a Fortress Value Recovery Fund 1 LLC,
> Plaintiff, Appellant,
> v.
> Vikas Mehrotra,
> Defendant, Appellee.

In the first paragraph on page two of the order the judges wrote:

> "Per Curiam. D.B. Zwirn Special Opportunities Fund, L.P., now known as Fortress Value Recovery Fund I, LLC ("Zwirn") ...."

The judges clarify in their order that D.B. Zwirn Special Opportunities Fund, L.P. no longer exists and has been replaced by Fortress Value Recovery Fund I, LLC.

In the November 2010 FCC filing supplement Schum attached the Offshore Proxy. The proxy explained how the shareholders and partners of the Onshore and Offshore Zwirn funds were to decide if Zwirn was to be replaced with Fortress Investments Group LLC (Fortress). In the proxy, Zwirn firmly expressed it did not want to be replaced but the majority of both the Offshore shareholders and the Onshore partners wanted Zwirn out, exercised their control and voted to remove Zwirn. The purpose of replacing Zwirn was to liquidate the Offshore and Onshore hedge funds formerly managed by Zwirn. The removal of Zwirn and replacement by Fortress is confirmed by the First Circuit judges' order in this case (Exhibit A).

This case was originally brought by Zwirn (now Fortress Recovery). They alleged that the defendant had defrauded them out of $7.5 million dollars. The lower court dismissed the case holding that Zwirn's (now Fortress Recovery's) complaint was filed after the statute of limitations had expired. Zwirn (now Fortress Recovery) appealed that decision.

On page three of the order, the judges state:

> "We therefore instructed counsel for Zwirn to file 'an affidavit of jurisdictional facts describing the identities and place of citizenship of each and all of the [members]* as of the date of removal, which is the date that controls.' This filing was to be under seal. We then instructed counsel for Mr. Mehrotra to advise us if he contested the contents of that affidavit.
>
> Zwirn did not comply with our instructions that the identity and citizenship of each member be provided.

- *At oral argument, we instructed Zwirn to inform us of its "limited partners" rather that its "members." As the caption of this matter indicates, Zwirn was once a limited partnership. At the time of removal, however, Zwirn was a limited liability company. The parties understood that we were inquiring about Zwirn's members, as their responsive filings discuss LLCs and members rather than LPs and partners."
-

On page 7 of the order the judges conclude:

"Consequently, we cannot permit this case to proceed to judgment without the additional information that we ordered at oral argument. As noted earlier, the parties have failed to comply with that order. Accordingly, within fifteen days of the date of this order, Zwirn shall file a statement in compliance with this court's previous order. In doing so, Zwirn must not only identify its members and their respective citizenship, but must also trace the citizenship of any member that is an unincorporated association through however many layers of members or partners there may be. This filing will be under seal. Mr. Mehrotra shall inform us whether he contests Zwirn's affidavit within ten days of the filing of Zwirn's affidavit."

Zwirn again chose to not comply with the court order to disclose their ownership and instead agreed to dismiss the appeal with prejudice with each party to bear its own costs and fees (see Exhibits B and C dated December 8 and 9, 2011 respectively).

This case clearly shows that D.B. Zwirn Special Opportunities Fund, L.P., the 100% equity holding limited partnership in the proposed licensee as reported to the FCC on the ownership reports no longer exists and has been replaced by Fortress Value Recovery Fund I, LLC. The case also reveals that Zwirn and their counsel refused to obey a court order to reveal their ownership as required by the First Circuit US Court of Appeals. The instructions given by the judges to Zwirn for ownership disclosure reveal their awareness of the layers of entities used by Zwirn in their business model. The judges wanted full disclosure and not a shell game or smoke and mirrors.

2. **Fortress Investment Group LLC Third Quarter 2011 Financial Results Report**

Fortress Investment Group LLC is a publicly traded company. Exhibit D includes two pages from the Fortress Investment Group LLC third quarter of 2011 Financial Results Report released on November 3, 2011. On page 16 of this report under the Assets Under Management and Fund Management DE title, Value Recovery Funds is listed with a decreasing value over the last two years indicating the liquidation of the Zwirn funds. The footnote for the Value Recovery Funds states that Fortress will receive management fees for managing the funds without differentiating between the offshore and the onshore funds indicating that the foreign and domestic fund owners are now all in the same fund. Exhibit D includes the cover page and the page with the information about Fortress Value Recovery Funds. The entire report is available if needed.

Conclusion

The information that is provided in this supplement has been available to Zwirn, Fortress Recovery and their counsel for months and years and just as in the case with the U.S. Court of Appeals For the First Circuit they have refused to provide the ownership information that is required by law to the FCC. The refusal of Zwirn, Fortress and their counsel to provide the information voluntarily as required and the refusal of the FCC to require full disclosure or a hearing has kept Schum in limbo for over five years resulting in severe financial hardship.

Schum has had discussions with the FBI regarding Zwirn's ownership misrepresentations in the Bankruptcy Court in Dallas and the FBI representative expressed concern that the statute of limitations for fraud may have expired. The delay by the FCC in dealing with this matter has the appearance of complicity with Zwirn.

Hedge funds in general are known to be secretive in their operations as well as their ownership. They are also known for their offshore presence to avoid taxes and scrutiny by US Agencies and Commissions. Zwirn has proven to be both secretive and offshore and as a result, unqualified to have been or ever be an FCC licensee. Schum has repeatedly provided information to the FCC relating to Zwirn's actual ownership and it seems to have been scoffed at by Zwirn's counsel and ignored by the FCC staff.

Dave Schum holds the majority interest in the entity that owned the two radio licenses in this case and that position includes these two responsibilities:

1. He has a duty to the public that the licenses not be transferred to an entity that does not qualify to be an FCC licensee – an illegal transfer.

2. He has a fiduciary duty to the investors in his company that they be treated legally and fairly in the bankruptcy court and at the FCC.

This supplement is yet another attempt to get a wrong corrected. Zwirn's investors, the SEC and the hedge fund industry itself have rejected the Zwirn business model. Zwirn was a predator lender that targeted small broadcast companies as part of their operation. Their plan was not to have the loans repaid but to gain control of the licenses and related assets at a fraction of the market value. This is a strange plan for a hedge fund that was secretly financed by offshore money and that did not want to disclose their ownership as required by FCC rules. It doesn't matter how many entities Zwirn creates for their shell game, they never were and never will be qualified to hold FCC licenses. The FCC has allowed Zwirn and their counsel to drag this process out way beyond a reasonable time period.

Requested Relief

Wherefore, the Petitioners hereby ask the Commissioners to grant Leave to File this supplement, to take into consideration this new and relevant information filed under FCC 1.106(b)(2)(i) & (ii), use it in addition to the existing filings and urge that the above-captioned application BE DISMISSED, DENIED OR DESIGNATED FOR HEARING UPON APPROPRIATE ISSUES.

Pursuant to Section 1.52 of the FCC's Rules, this is to verify the foregoing pleading and state that, to the best of the undersigned's knowledge, it is true and correct.

Respectfully submitted,

DAVID A. SCHUM et al

By

David A. Schum
Individual Petitioner

5051 Les Chateaux Blvd., #139
Dallas, Texas 75235 (physical address)

P.O. Box 12345
Dallas, Texas 75225 (mailing address)

watchradio@aol.com

469-206-6700

February 21, 2012

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing pleading dated February 21, 2012 were served by first-class United States mail, postage prepaid, on this 21st day of February, 2012 upon the following:

Gregory L. Masters, Esquire
Wiley Rein, LLP
1776 K Street, NW
Washington, DC 20006
Counsel for Bernard Dallas LLC

Richard R. Zaragoza, Esquire
Pillsbury Winthrop Shaw Pittman LLP
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Washington, DC 20037
Counsel for Principle Broadcasting Network- Dallas, LLP

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Counsel for RL Transition Corporation

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Washington, D.C. 20036
Counsel for Joy Crane Johns

Service is accepted for DFW Radio License, LLC

David A. Schum

Exhibit A

United State Court of Appeals for the First Circuit
Case Number 11-1172
D.B. Zwirn Special Opportunities Fund, L.P.
n/k/a Fortress Value Recovery Fund 1 LLC
v.
Vikas Mehrotra

Order dated November 18, 2011

8 pages

United States Court of Appeals
For the First Circuit

No. 11-1172

D.B. ZWIRN SPECIAL OPPORTUNITIES FUND, L.P.,
n/k/a FORTRESS VALUE RECOVERY FUND 1 LLC,

Plaintiff, Appellant,

v.

VIKAS MEHROTRA,

Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Rya W. Zobel, U.S. District Judge]

Before
Howard, Ripple,* and Selya,
Circuit Judges.

Eric S. Rein, with whom Michelle K. Schindler, Dykema Gossett PLLC, Allison O'Neil and Craig and Macauley Professional Corporation, were on brief for appellant.

John A. Shope, with whom Thomas J. Bone, Benjamin F. Nardone and Foley Hoag LLP, were on brief for appellee.

November 18, 2011

* Of the Seventh Circuit, sitting by designation.

Per Curiam. D.B. Zwirn Special Opportunities Fund, L.P., now known as Fortress Value Recovery Fund I, LLC ("Zwirn"), brought this action against Vikas Mehrotra, an investment fund manager. The suit was brought originally in Massachusetts state court on May 7, 2010. The complaint alleged various fraud claims under Massachusetts law against Mr. Mehrotra, specifically, that he assisted an associate, Dinesh Dalmia, in defrauding Zwirn of approximately $7.5 million. On June 11, 2010, Mr. Mehrotra removed the action to the United States District Court for the District of Massachusetts, contending that the district court had jurisdiction because the parties were citizens of different states and the amount in controversy exceeded $75,000. See 28 U.S.C. §§ 1332, 1441. On January 31, 2011, the district court granted Mr. Mehrotra's motion to dismiss, holding that Zwirn's complaint was filed after the statute of limitations had expired and that Zwirn had not alleged facts sufficient to support tolling the limitations period. Zwirn then appealed the district court's judgment to this court.[1]

Mr. Mehrotra is a citizen of the State of Rhode Island. The notice of removal alleged that the plaintiff, Zwirn, "is a Delaware limited liability company with a principal place of business in New York, New York." At oral argument, we noted that the allegations in the notice of removal were insufficient to

[1] Our jurisdiction is predicated on 28 U.S.C. § 1291.

establish that the parties were diverse for purposes of diversity jurisdiction because the citizenship of a limited liability company "is determined by the citizenship of all of its members." Pramco, LLC ex rel. CFSC Consortium, LLC v. San Juan Bay Marina, Inc., 435 F.3d 51, 54 (1st Cir. 2006) (citing Carden v. Arkoma Assocs., 494 U.S. 185, 195-96 (1990)). We therefore instructed counsel for Zwirn to file "an affidavit of jurisdictional facts describing the identities and place of citizenship of each and all of the [members][2] as of the date of removal, which is the date that controls." This filing was to be under seal. We then instructed counsel for Mr. Mehrotra to advise us if he contested the contents of that affidavit.

Zwirn did not comply with our instruction that the identity and citizenship of each member be provided. Instead, it attempted to establish diversity in the negative. The affidavit that it filed in response to our request recited: "[A]s of June 11, 2010, according to the Fund's records, there were no members of the limited liability company who were citizens of Rhode Island." In his response, Mr. Mehrotra's counsel did not contest these allegations. He further assented to the constructive amendment of

---

[2] At oral argument, we instructed Zwirn to inform us of its "limited partners" rather than its "members." As the caption of this matter indicates, Zwirn was once a limited partnership. At the time of removal, however, Zwirn was a limited liability company. The parties understood that we were inquiring about Zwirn's members, as their responsive filings discuss LLCs and members rather than LPs and partners.

the pleadings to reflect them and asserted that diversity jurisdiction had been established.

Putting aside for the moment the non-compliance with our order, these allegations are insufficient to invoke diversity jurisdiction under 28 U.S.C. § 1332. That Mr. Mehrotra is a citizen of Rhode Island and that Zwirn is not considered a citizen of Rhode Island "is not sufficient to give jurisdiction in a . . . Court of the United States." Cameron v. Hodges, 127 U.S. 322, 324 (1888). In Cameron, the defendant was an Arkansas citizen who sought to remove an action from Tennessee state court. Id. at 324-25. He attempted to invoke diversity jurisdiction by alleging "'that none of the complainants are or were at that time citizens of said State of Arkansas.'" Id. at 324. In rejecting this attempt, the Supreme Court reasoned:

> That the defendant, Hodges, was a citizen of Arkansas, in connection with the fact that none of the complainants were citizens of that State, is not sufficient to give jurisdiction in a Circuit Court of the United States. Brown v. Keene, [33 U.S.] (8 Pet.) 112, 115 [(1834)].
>
> The adverse party must be a citizen of some other named State than Arkansas, or an alien. All the complainants might be residents and citizens of the District of Columbia, or of any Territory, and they might not be citizens of the State of Tennessee where the suit was brought, or indeed, of any State in the Union. . . .
>
> This court has always been very particular in requiring a distinct statement of the citizenship of the parties, and of the particular State in which it is claimed, in order to sustain the jurisdiction of those

> courts; and inasmuch as the only citizenship specifically averred and set out in the case before us is that of the defendant, Hodges, at whose instance the cause was removed, and as that is the only ground upon which the removal was placed, it seems clear that the Circuit Court did not have jurisdiction of it, and that the suit should have been dismissed or remanded for that reason.

Cameron, 127 U.S. at 324-25.

Cameron remains the governing precedent. Although the word "States" is now defined to include the Territories and the District of Columbia, see 28 U.S.C. § 1332(e), citizens of the United States and other entities still might be citizens of no state at all under the diversity statute. For instance, United States citizens who are domiciled abroad are citizens of no state; their "'stateless' status destroy[s] complete diversity under § 1332(a)(3), and [their] United States citizenship destroy[s] complete diversity under § 1332(a)(2)." Newman Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 829 (1989). Furthermore, Indian tribes are treated as stateless for purposes of the diversity statute. See Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth., 207 F.3d 21, 27 (1st Cir. 2000). Other entities are treated similarly. See, e.g., Petroleum Exploration, Inc. v. Pub. Serv. Comm'n of Kentucky, 304 U.S. 209, 217 (1938) (noting that states are not "citizens" for purposes of the diversity statute). If, therefore, any member of Zwirn is a stateless person, or an

entity treated like a stateless person, we would lack diversity jurisdiction.

We note as well that this jurisdictional issue has the potential to be iterative. If even one of Zwirn's members is another unincorporated entity, the citizenship of each of that member's members (or partners, as the case may be) must then be considered. See Zambelli Fireworks Mfg. Co. v. Wood, 592 F.3d 412, 420 (3d Cir. 2010); Delay v. Rosenthal Collins Grp., LLC, 585 F.3d 1003, 1005 (6th Cir. 2009); Meyerson v. Harrah's E. Chi. Casino (Meyerson I), 299 F.3d 616, 617 (7th Cir. 2002) (per curiam). Therefore, if even one of Zwirn's members is another unincorporated association, and if that association has one member or partner that is either a stateless person or an entity treated like a stateless person, we would not have diversity jurisdiction over this matter.

An issue similar to the one before us arose in Meyerson v. Showboat Marina Casino Partnership (Meyerson II), 312 F.3d 318 (7th Cir. 2002) (per curiam). When Meyerson first reached the appellate court, the court determined that the complaint was insufficient to support diversity jurisdiction because, among other reasons, the complaint contained no allegations about the defendants' citizenship. Meyerson I, 299 F.3d at 617. Although the complaint did allege that one of the defendants was "an unincorporated business licensed by the State of Indiana," the court noted that the citizenship of the unincorporated entity's

owners determined the business's citizenship. Id. The court remanded the case for further jurisdictional inquiry. Id. The district court, on remand, relied on the defendant partnership's assertion that none of its partners was a citizen of Michigan, which was the plaintiff's state of citizenship. Meyerson II, 312 F.3d at 320. When the matter returned to the appellate court, the defendant partnership's jurisdictional statement provided:

> Showboat . . . is an Indiana general partnership whose partners/members are two additional Indiana general partnerships, Showboat Marina Partnership and Showboat Marina Investment Partnership. Neither Showboat nor any of its aforementioned constituent members are citizens of the state of Michigan. . . . Showboat's citizenship is in no other state but Indiana. Thus, diversity is complete.

Id. (alterations in original). The Seventh Circuit concluded that this "statement does not tell us the identity and citizenship of the partners in the two entities that own Showboat. Far from showing jurisdiction, this statement multiplies the questions by increasing from one to two the number of partnerships whose partners' citizenship matters." Id. at 320-21.

The approach in Meyerson is compatible with the Supreme Court's instruction in Cameron. Consequently, we cannot permit this case to proceed to judgment without the additional information that we ordered at oral argument. As noted earlier, the parties have failed to comply with that order. Accordingly, within fifteen days of the date of this order, Zwirn shall file a statement in

compliance with this court's previous order. In doing so, Zwirn must not only identify its members and their respective citizenship, but must also trace the citizenship of any member that is an unincorporated association through however many layers of members or partners there may be. This filing will be under seal. Mr. Mehrotra shall inform us whether he contests Zwirn's affidavit within ten days of the filing of Zwirn's affidavit.

IT IS SO ORDERED.

Exhibit B

United State Court of Appeals for the First Circuit
Case Number 11-1172
D.B. Zwirn Special Opportunities Fund, L.P.
N/k/a Fortress Value Recovery Fund 1 LLC
v.
Vikas Mehrotra

Agreement of Dismissal with Prejudice dated December 8, 2011

3 pages

Case No. 11-1172

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

D.B. ZWIRN SPECIAL OPPORTUNITIES FUND, L.P, n/k/a FORTRESS VALUE RECOVERY FUND I, LLC,

Plaintiff-Appellant,

v.

VIKAS MEHROTRA,

Defendant-Appellee,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

AGREEMENT OF DISMISSAL WITH PREJUDICE

Pursuant to Federal Rule of Appellate Procedure 42(b) and the settlement agreement of the parties, plaintiff-appellant D.B. Zwirn Special Opportunities Fund, L.P., n/k/a Fortress Value Recovery Fund I, LLC and defendant-appellee Vikas Mehrotra hereby agree and stipulate that the above-captioned appeal shall be dismissed with prejudice, with each party to bear its own costs and fees.

Respectfully submitted,

/s/ *Allison O'Neil*
Allison O'Neil (No. 641330)
CRAIG AND MACAULEY
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Counsel for Plaintiff-Appellant D.B. Zwirn Special Opportunities Fund, L.P., n/k/a Fortress Value Recovery Fund I, LLC

/s/ *John A. Shope*
John A. Shope (No. 22211)
Thomas J. Bone (No. 122803)
Benjamin F. Nardone (No. 1140695)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000

Counsel for Defendant-Appellee Vikas Mehrotra

Dated: December 8, 2011

Certificate of Service

I hereby certify that on December 8, 2011, I electronically filed the foregoing document with the Court by using the CM/ECF system. I certify that the following parties or their counsel are registered as ECF Filers and that they will be served by the CM/ECF system:

Allison O'Neil
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/s/ John A. Shope
John A. Shope

Exhibit C

United State Court of Appeals for the First Circuit
Case Number 11-1172
D.B. Zwirn Special Opportunities Fund, L.P.
N/k/a Fortress Value Recovery Fund 1 LLC
v.
Vikas Mehrotra

Judgment dated December 9, 2011

1 page

United States Court of Appeals
For the First Circuit

No. 11-1172

D.B. ZWIRN SPECIAL OPPORTUNITIES FUND, L.P., n/k/a Fortress Value Recovery Fund I LLC

Plaintiff - Appellant

v.

VIKAS MEHROTRA

Defendant - Appellee

JUDGMENT

Entered: December 9, 2011

Upon consideration of the parties' joint motion, it is hereby ordered that this appeal be voluntarily dismissed pursuant to Fed. R. App. P. 42(b) with each party to bear its own costs.

Mandate to issue forthwith.

By the Court:
/s/ Margaret Carter, Clerk.

cc:
Allison M. O'Neil
Benjamin Nardone
Eric S. Rein
John Andrew Shope
Michelle K. Schindler
Thomas Jefferson Bone, III

Exhibit D

Fortress Investment Group LLC
Financial Results Report Third Quarter 2011
Pages 1 and 16

Released November 3, 2011

2 pages

FORTRESS INVESTMENT GROUP LLC

Contact:

Gordon E. Runté
212-798-6082

Fortress Reports Third Quarter 2011 Financial Results

New York, NY. November 3, 2011 – Fortress Investment Group LLC (NYSE: FIG) today reported its third quarter 2011 results.

THIRD QUARTER 2011 HIGHLIGHTS

- Assets under management of $43.6 billion as of September 30, 2011, down slightly compared to September 30, 2010.
- Pre-tax distributable earnings (DE) of $43 million in the third quarter of 2011, down from $78 million in the third quarter of 2010; pre-tax DE of $0.08 per dividend paying share in the third quarter of 2011, down 47% from $0.15 per dividend paying share in the third quarter of 2010.
- Fund management DE of $51 million in the third quarter of 2011, down 28% from $71 million in the third quarter of 2010.
- GAAP net loss, excluding principals agreement compensation, of $102 million in the third quarter of 2011, compared to a net loss of $32 million in the third quarter of 2010; GAAP net loss attributable to Class A shareholders in the third quarter of 2011 was $142 million, compared to a net loss of $95 million in the third quarter of 2010.
- Total cash and cash equivalents plus investments net of debt obligations payable of $2.08 per dividend paying share, and GAAP book value per share of $1.95 as of September 30, 2011.

"Fortress delivered steady, profitable results in a quarter that saw double-digit declines in broad market indices and in which volatility spiked to its highest levels since early 2009," said Daniel Mudd, Fortress Chief Executive Officer. "I believe our ability to maintain assets under management, raise new capital, expand our client base globally, and deliver positive financial performance speak to the benefits of our diversified business model. Looking forward, we see an investment landscape that should present historically attractive opportunities to deploy capital on our client's behalf."

Please see the exhibits to this press release for a reconciliation of non-GAAP measures referred to in this press release to the related GAAP measures.

CONSOLIDATED RESULTS – SEGMENTS

As of September 30, 2011, assets under management totaled $43.6 billion, down slightly from $43.8 billion as of June 30, 2011 and $44.0 billion as of September 30, 2010. During the third quarter of 2011, Fortress (i) invested over $1.0 billion of capital, (ii) raised $583 million of capital, directly adding to assets under management, (iii) returned $484 million of capital to investors, (iv) paid out $335 million in Liquid Hedge Fund redemptions and (v) made RCA payments of $158 million to investors in the Credit Hedge Funds.

Fortress Investment Group LLC
Exhibit 2
Assets Under Management and Fund Management DE
(dollars in millions)

	Three Months Ended March 31, 2010	Three Months Ended June 30, 2010	Three Months Ended September 30, 2010	Three Months Ended December 31, 2010	Full Year 2010	Three Months Ended March 31, 2011	Three Months Ended June 30, 2011	Three Months Ended September 30, 2011	Nine Months Ended September 30, 2011
Credit Hedge Funds									
Assets Under Management									
Drawbridge Special Opportunities Funds [17]	$ 5,227	$ 5,176	$ 5,200	$ 5,474	$ 5,474	$ 5,341	$ 5,272	$ 5,227	$ 5,227
Value Recovery Funds [18]	2,326	2,029	1,786	1,299	1,299	1,204	1,102	987	987
AUM - Ending Balance	$ 7,553	$ 7,205	$ 6,986	$ 6,773	$ 6,773	$ 6,545	$ 6,374	$ 6,214	$ 6,214
Third-Party Capital Raised	$ 76	$ 47	$ 72	$ 242	$ 437	$ 149	$ 204	$ 60	$ 413
Segment Revenues									
Management fees	$ 28	$ 39	$ 27	$ 30	$ 124	$ 31	$ 30	$ 35	$ 96
Incentive income	8	4	40	51	103	38	16	(4)	50
Total	36	43	67	81	227	69	46	31	146
Segment Expenses									
Operating expenses	(24)	(23)	(33)	(31)	(111)	(34)	(28)	(33)	(95)
Profit sharing compensation expenses	(3)	(4)	(19)	(18)	(44)	(17)	(7)	1	(23)
Total	(27)	(27)	(52)	(49)	(155)	(51)	(35)	(32)	(118)
Fund Management DE	$ 9	$ 16	$ 15	$ 32	$ 72	$ 18	$ 11	$ (1)	$ 28
Returns									
Gross Returns [19]									
Drawbridge Special Opportunities LP	7.5%	4.6%	8.5%	7.7%	31.3%	6.7%	3.2%	-0.4%	9.7%
Drawbridge Special Opportunities Ltd.	7.6%	4.1%	11.2%	9.8%	36.7%	7.9%	4.0%	0.7%	13.0%
Net Returns [19]									
Drawbridge Special Opportunities LP	6.9%	4.0%	6.7%	5.8%	25.5%	4.9%	2.2%	-0.8%	6.4%
Drawbridge Special Opportunities Ltd	7.0%	3.4%	8.4%	7.5%	29.0%	5.8%	2.9%	0.2%	9.1%

[17] Combined AUM for Drawbridge Special Opportunities Fund Ltd., Drawbridge Special Opportunities Fund LP, Drawbridge Special Opportunities Fund managed accounts, Worden Fund LP and Worden Fund II LP.

[18] Fortress will receive management fees from these funds equal to 1% of cash receipts and up to 1% per annum on certain managed assets, subject to collectability, and may receive limited incentive income if aggregate realizations exceed an agreed threshold.

[19] The performance data contained herein reflects returns for a "new issue eligible," single investor class as of the close of business on the last day of the relevant period. Gross returns reflect performance data prior to management fees borne by the Fund and incentive allocations while net returns reflect performance data after taking into account management fees borne by the Fund and incentive allocations. Specific performance may vary based on, among other things, whether fund investors are invested in one or more special investments. The returns for the Drawbridge Special Opportunities Funds reflect the performance of each fund excluding the performance of the redeeming capital accounts which relate to December 31, 2008, December 31, 2009, and December 31, 2010 redemptions.