UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17342

In the Matter of

RD LEGAL CAPITAL, LLC and RONI DERSOVITZ,

Respondents.

DIVISION OF ENFORCEMENT'S PREHEARING BRIEF

DIVISION OF ENFORCEMENT
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I. PRELIMINARY STATEMENT

Respondents Roni Dersovitz ("Dersovitz") and the entity he controlled, RD Legal Capital, LLC ("RDLC"), attracted more than $100 million into two RD Legal-branded funds (the "Funds") by fundamentally misrepresenting the nature of the investments Respondents made with investors' money. In short, Respondents marketed their Funds as "factoring" legal receivables relating to cases "past the point of any potential appeals or other disputes," distinguishing their Funds as focusing on "post-settlement" financing, in contrast with "pre-settlement" funding strategies that exposed investors to litigation risks. The truth was that Respondents put investors' money in "pre-settlement" funding strategies, unbeknown to the investors.

As a number of investors will explain at the hearing, the Funds' purported confinement to resolved cases was critical to their decisions to participate in the Funds. Those investors' understanding of the Funds' strategy was based on statement after statement that Dersovitz and others at RDLC made, from oral and emailed representations to marketing materials including the Funds' Offering Memoranda and a detailed "Due Diligence Questionnaire."

In reality, since at least 2011, Respondents invested heavily in cases that had not reached the level of finality Respondents claimed the Funds' investments achieved. This exposed investors to the very litigation risks Respondents had assured investors they would not face. For example, Respondents advanced millions of dollars to an attorney pursuing mass tort cases against three drug companies despite knowing those cases were not settled or otherwise resolved; advanced millions to another attorney for fees owed by an insolvent criminal defendant and other potential fees relating to an unsettled *qui tam* action; and advanced even more—at times over 70% of the Funds' value—to finance protracted litigation (the "Peterson Case") over whether certain assets

could be used to satisfy a default judgment against the Islamic Republic of Iran, which vigorously contested the collectability of those assets all the way to the United States Supreme Court.

Respondents misrepresented the kinds of investments they made because they knew investors were attracted to the safety of investing in settled or otherwise final cases. For the same reason, when Respondents discussed potential risks relating to investments in the Funds, they described risks relating to settled or otherwise resolved matters (along with ways Respondents could mitigate those risks), and studiously avoided the kinds of risks, such as litigation risk, attendant to the assets in the Funds' portfolios that had not been settled or otherwise finally adjudicated. Respondents even assured investors that the Funds' strategy would be diversified despite pursuing a strategy that placed outsized bets on the aforementioned Peterson Case.

Respondents understood the kinds of risks that accompany investments in cases that are neither settled nor otherwise past the point of litigation disputes. Indeed, when Respondents offered a "special purpose vehicle" (SPV) created to invest solely in the Peterson Case they used marketing materials that (i) described the SPV as "separate" from the "post-settlement strategy" Funds; (ii) described the predicate litigation steps and concomitant risks associated with obtaining recovery in the Peterson Case; (iii) disclosed the possibility that other risks, such as unpredictable geopolitical factors, could impact collection; and (iv) offered a higher rate of return commensurate with the level of additional risk in a concentrated investment in the Peterson Case. Such risk disclosures were conspicuously absent from statements made with respect to the Funds.

And although the overwhelming majority of individuals refused to invest in the SPV, at times explicitly expressing to Respondents that litigation and other risks relating to the Peterson Case made them wary of doing so, Respondents sold them the Funds without letting them in on the secret that by 2013 the Funds' investments were nearly indistinguishable from the investments of

the SPV. Accordingly, when those investors later found out so much of their money had been invested in the Peterson Case, many chose to redeem immediately rather than be subject to the kinds of risks to which they were told they would not be exposed.

Eventually, the toxic combination of displeased investors seeking redemptions and delays in collecting on unsettled legal matters made Respondents unable to meet growing redemption requests, and redemptions were frozen in April 2015. But while the Peterson Case and other unresolved matters wound their way through the courts, Respondents cashed in, withdrawing compensation of over $41 million from the Funds from 2012 through 2015 based on the supposed fair value of the Funds' assets (as derived by a valuation agent using inputs Respondents provided). Meanwhile, investors—to whom the Funds' assets were often described in terms of "dollars deployed" to downplay the concentration of the Peterson Case—nervously awaited the outcome in court of the Peterson Case and of various other unsettled cases, hoping those proceedings would extinguish the litigation risk to which they never wanted to be exposed in the first place.

In the end, despite their undisclosed dice-roll with investors' funds, Respondents successfully capitalized on some but not all of the risks they took, and investors in the Funds have recovered, or might still recover, their investments plus interest. But while some of Respondents' outsized bets turned out to be winning ones, the securities laws do not permit them to lie about what assets they invested in or intended to invest in, even if those lies and undisclosed plans later prove to be profitable. Investors have a right under the law to truthful information so that they may properly evaluate the true nature of the investments and risks presented to them. Tomorrow's victims of Respondents' deception may not be so lucky.

By their conduct, Respondents have violated Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and

Rule 10b-5 thereunder, and Dersovitz willfully caused and aided and abetted RDLC's violations of these provisions.

II. CONTENTIONS OF FACT

A. Respondents

Dersovitz, age 57, was a personal injury lawyer licensed in New York. He began operating a litigation financing business through RDLC in 2007. He is the CEO and sole Member of RDLC and the 99% Member of RD Legal Funding, LLC. As the sole Member of RDLC, he was vested exclusively with the management and control of that company.

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

B. Other Relevant Entities and Individuals

RD Legal Funding Partners (the "Onshore Fund"), is a Delaware limited partnership organized in 2007. From 2007 through at least 2015, Respondents marketed, offered, and sold limited partnership interests in the Onshore Fund.

RD Legal Funding Offshore, Ltd. (the "Offshore Fund"), is an exempted company organized in 2007 under the laws of the Cayman Islands. From 2007 through 2015, Respondents marketed, offered, and sold common shares in the Offshore Fund (together with the Onshore Fund, the "Funds").

RD Legal Funding, LLC ("RDLF"), is a New Jersey Limited Liability Company formed in 1998. As of January 1, 2012, 99% of the membership interests in RDLF were allocated to Dersovitz, and 1% was allocated to The Dersovitz Family, LLC, of which Dersovitz and his wife were signatory members.

C. Respondents Fraudulently Market the Funds

Respondents marketed themselves as "the only significant sized . . . entity that [they] are aware of with a 'post settlement' strategy,'" in contrast to "many groups doing pre-settlement funding." As such, Respondents described the Funds as purchasing portions of legal fee receivables derived from an attorney's contingency fee work on cases that had settled or reached a judgment past the point of disputes. Respondents' pitch was clear: unlike other litigation funding firms, "there is no litigation risk in the [Funds'] strategy."

But these statements were false. They were plainly untrue when made in 2011, because, by then, (1) Respondents had funded and were continuing to fund the expenses of an attorney in the middle of litigating a complex, multi-district mass tort that was nowhere near settlement; (2) a significant portion of the Funds was tied down on advances made to an attorney starting in 2007 with respect to a not-settled *qui tam* action and fees owed to that attorney by an insolvent criminal defendant; and (3) Respondents were actively advancing millions to attorneys engaged in a protracted and heavily contested collection action with respect to a default judgment obtained against the Islamic Republic of Iran. And these statements were even more egregiously false when repeated from 2012 through 2015. By then, the overwhelming majority of Fund assets, around 90% by the end of the period, were tied down in these and other non-settled and unfinished cases.

The Funds were *not* pursuing a post-settlement strategy. The investments *were* exposed to litigation risk. Simply put, and contrary to Respondents' repeated oral and written statements to numerous investors, the Funds contained risks that were essentially indistinguishable from the pre-settlement funding firms from which Respondents took pains to differentiate themselves.

1. The Structure of the Funds

The Funds were marketed as pooling investor monies to purchase, at a discount, rights to legal fees owed to attorneys, and, later, rights to and portions of awards due to plaintiffs. In

exchange for a fee, RDLF found and underwrote these receivables, which the Onshore Fund purchased and held in its name through maturity. After seasoning them for tax purposes, the Onshore Fund sold "participation interests" in some of the assets to the Offshore Fund.

Every month the Funds calculated their net asset value and allocated to each limited partner's capital account returns of up to 1.06% (13.5% annually). Additional returns on capital were allocated to RDLC's account. The Funds featured essentially a two-year investment-to-redemption cycle. Investors could not seek redemption of their investments until a year after investing, after which a full redemption occurred in four quarterly installments. RDLC, by contrast, could draw cash from the Funds as returns were allocated to its capital account. Should net asset value changes be insufficient to cover investors' preferred return allocation in a given month, nothing could be allocated to RDLC's account until prior shortcomings to investors had been caught up, and, consequently, RDLC could not add new funds into its capital account to draw from. But there was no mechanism to claw back from RDLC's previously-withdrawn amounts.

2. Respondents' Misstatements Regarding the Funds' Investments

a. Respondents Falsely Told Prospective Investors that the Funds Purchased Legal Receivables Related to Settled or Otherwise Final Litigation, Such that There Was No Litigation Risk in the Funds

Numerous individuals and asset managers who invested in the Funds from 2010 through 2015 will testify that Respondents misled them about the nature of the investment strategy from the first meeting, and that the deception remained consistent in successive explanations of the Funds' strategy, permanently infecting investors' subsequent understanding of the Funds' assets.

The fraudulent pitch was as follows: the Funds supposedly "factor" the legal fees earned by attorneys with respect to their representation of contingent-fee clients *only after* a settlement or memorandum of understanding had been reached by the litigants, or after the case had reached a final judgment and was past the point of potential disputes. That the Funds entered the picture

after resolution was supposed to be the defining and distinguishing characteristic of this strategy. It was the one Respondents emphasized to investors, underlining that whether the Funds would fail to obtain payment due to exogenous litigation risks was never in question. One investor has explained that based on his "extensive dialogue with both Mr. Dersovitz" and the Funds' head of investor relations, Katarina Markovic, he believed he was investing in "receivables that were settled cases just awaiting collection." Deposition Tr. of A. Sinensky, Jan. 17, 2017 ("Sinensky Tr.") at 103:21-104:19. Another prospective investor captured an audio recording the foregoing explanation, where Dersovitz says that "[w]hat we're dealing with primarily, 100 percent, are settled cases. So there is no litigation risk in the strategy." To another investor, Respondents distinguished the competition by noting that they were "lending against work[s] in progress."

Moreover, investor witnesses will explain that the "settled" or "final" nature of the investments was a key reason they were attracted to the investment. Investors did not want to take on litigation risk—some were not attorneys and felt uncomfortable with court processes, while some simply were not attracted to that type of investment—they wanted to invest in "done" deals.

And while the misstatements were frequently made orally, they were driven home by the core documents Respondents typically handed to investors before they made an investment, as well as by other pre-investment communications from Respondents, such as emails. For example:

- The Funds' Offering Memoranda twice stated that the Funds purchased from law firms "accounts receivable representing legal fees derived . . . from litigation, judgments and settlements" and that "[a]ll [such] Receivables . . . arise out of litigation in which a binding settlement agreement or memorandum of understanding among the parties has been reached."

- A one page summary introducing the Funds to investors repeated that premise, explaining that "RD Legal purchases legal fee receivables from law firms once cases have settled," and that banks do not lend in this space because "[t]hey simply do not have the expertise to evaluate settlement agreements."

- A firm presentation titled "RD Legal Capital Alpha Generation and Process" ("Alpha Presentation") similarly stated that the portfolios RDLC managed were "principally

comprised of purchased legal fees associated with settled litigation." A subsequent version of the Alpha Presentation likewise explained that "[t]he primary strategy of the Funds . . . is to factor Legal Fee receivables associated with settled litigation."

- A "Frequently Asked Questions" ("FAQs") brochure, described by Dersovitz as "crystalliz[ing] for many people exactly what it is [Respondents] do," likewise noted that "[t]he primary strategy employed is one in which receivables arising from settled law suits are purchased at a discount" and that "[t]he receivables factored stem primarily from the legal fee [due the attorney], but in some cases plaintiff proceeds." This document also emphasized the difference between Respondents and their competitors by noting that the Funds were the "only significant sized entity" Respondents were aware of pursuing a "'post-settlement' strategy."

- A "Due Diligence Questionnaire" ("DDQ") stated that "Fee Acceleration (Factoring)" was the Funds' "primary investment product and represents approximately ninety-five (95) per cent of assets under management," explaining that "a fee acceleration investment is the purchase of a legal fee at a discount from a law firm, once a settlement has been reached and the legal fee is earned."

- A subsequent version of the DDQ, shared with investors in 2014, explained that Respondents had "not identified any other registered entities that traffic solely in post-settlement legal fee receivables." It also reinforced how RD Legal distinguished itself from other funds that invest in law-related activities: "[T]here are entities that lend money to contingency fee attorneys, but they take litigation risk, which we don't."

- Dersovitz conveyed the same message to investors by email, distinguishing other litigation financing firms as "deal[ing] with pre-settlement funding which is very distinct from what we're doing."[1]

The contours of Respondents' oral and written descriptions changed slightly over time. In 2013, they began explaining that the Funds may discount settlement or judgments or advance monies to plaintiffs. The Offering Memoranda were belatedly amended in 2013 to clarify this point, while continuing to state that "[a]ll of the Receivables purchased by the [Funds] arise out of litigation in which a settlement agreement or memorandum of understanding among the parties has been reached" or where "a judgment has been entered against a judgment debtor." The Alpha

[1] Dersovitz had final approval authority over all of Respondents' marketing materials. See Div. Ex. 210 (Testimony Tr. of K. Markovic, Apr. 21, 2016) at 22:18-24:11 (the Alpha Presentation was "vetted and approved by Roni" who has "the final sign-off, he – he has to approve all materials"); id. at 55:19-20 ("everything was always finalized and signed off on by Roni"); id. at 210:2-4 ("nothing goes out without Roni's approval"). References to "Div. Ex." are to the Division's pre-marked trial exhibits. Copies of such cited exhibits are submitted herewith.

Presentation was amended to explain that the Funds now included "legal receivables associated with settled litigation or judgments where a corpus of money has been identified."

But the basic premise remained gospel: there was no litigation risk because the Funds only invested in a case once it was settled or was otherwise past the point of appeals or other disputes. As Ms. Markovic wrote to prospective investors as late as 2014, "[u]nlike other legal funding strategies you may be familiar with, RD Legal does not take litigation risk."

b. Respondents' Description of the Funds' Other Risks and Level of Diversification Further Misled Investors

In explaining how they controlled for the risks they did disclose (the risks of theft of funds, obligor default, and duration), Respondents further misled investors into thinking the interests they purchased related only to settled or otherwise final cases, further depriving investors of the ability to make fully informed decisions about the actual risks of investing in the Funds.

Dersovitz would typically explain the risk that an attorney might abscond with the amounts due to the Funds, i.e., the "theft of funds" risk, but state that it was mitigated by the fact that attorneys could lose their licenses if they misappropriated funds and by the fact that RDLC typically obtained either "control of cash" by notifying lawsuit counterparties of the Funds' claims or by securing a lien on a selling attorneys' assets.[2]

Dersovitz also discussed the "greatest overall risk in [the] strategy" as "duration risk"—i.e., the risk relating to the time inherent in any court processes required to finalize a settlement. Here too, Dersovitz downplayed any risk, characterizing settlement-approval processes as *pro forma*

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[2] See, e.g., Div. Ex. 66-14 (should the attorney not remit proceeds, "the relevant attorneys' license to practice law could be forfeited for life"); Div. Ex. 41-1 (when a law firm receives Fund money it "effectively becomes a fiduciary to the Funds which puts the selling attorney's license at risk if proceeds are not remitted upon collection"); Div. Ex. 43-12 ("conversion risk is mitigated by the resulting license forfeiture"); Div. Ex. 44-3 ("any attorney guilty of theft from an escrow account can be permanently disbarred from practicing law in the United States").

proceedings that served essentially to rubberstamp an agreement between two willing parties but that nevertheless could take some time. He noted, for example, that some settlements involve minors which statutorily require court approval, or that settlements with government entities are subject to delays in payment by law. He also explained that "99.99999 percent of the time" the judge simply approves the settlement and, in other circumstances, the judge orders the amount of the settlement to increase. Dersovitz added that some "[s]ettled court cases do not pay immediately—lag 9 to 18 months," and in others "delays can range from nine months to upwards of 2 years." In all, Respondents stated that collection on most receivables took between 12 and 36 months, with longer cases such as mass torts taking up to 48 months, but Respondents explained such longer cases were "rarely purchased due to the duration mismatch."

Finally, Dersovitz discussed the risk that a party who had agreed to pay a settlement became insolvent or otherwise refused to pay, the so called "obligor risk" or "credit risk." But he noted that parties "have no incentive to settle if they cannot make payment" and that the litigation counterparties were "investment-grade" as opposed to "mom and pop" obligors.[3]

To further address any obligor-specific risks, Respondents assured some investors that the Funds' investments would be diversified. One investor testified that during Dersovitz's oral presentation of the Funds, one thing that "st[ood] out in [his] mind was that it was a highly-

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[3] See also Div. Ex. 66-18 (because "[a]ll of the Receivables purchased by the Fund arise out of litigation in which a settlement agreement or memorandum of understanding among the parties has been reached, or a judgment has been entered . . . the credit risk to the Fund is dependent primarily upon the financial capacity of the defendant or the defendant's insurer in the settled lawsuit to pay the stipulated settlement amount, or judgment" but "[s]ince the defendants in these lawsuits are either city, state or Federal governmental entities or agencies, large corporations that are self-insured or an insurance company, the defendant generally has significant financial resources"); Div. Ex. 43-4 ("Fees are generally payable by bond rated entities, such as municipalities, insurers and public corporations"); Div. Ex. 43-12 ("Defendant(s) have no incentive to settle if they cannot make payment.").

diversified portfolio of many different investments." Sinensky Tr. at 55:3-56:5. This message of diversification was reinforced by many of the Funds' written materials.[4]

By focusing on the foregoing risks to the exclusion of the kinds of risks attendant to unresolved litigation—namely the risk that an unwilling defendant will not be forced to pay or will succeed in blocking collection efforts—Respondents' reinforced their false message that the Funds were different from those that invested in unresolved cases. In sum, Respondents stressed to investors, "[o]nly in the event that the defendant defaults in its obligation pursuant to the settlement and the [law firm] itself is having financial difficulty may the [Funds] be exposed to losses."

3. The True Nature of the Funds' Investments

The foregoing descriptions of the Funds' strategies and risks were fraudulent. Since their inception in 2007, and increasing dramatically in late 2010, the Funds were invested in, and continued to invest in, numerous cases where no settlement agreement had been reached and where collection was subject to the very litigation risks Respondents renounced.

First, starting in 2007, Respondents used Fund assets to finance the ongoing litigation activities of an attorney engaged in what Respondents knew were protracted, unsettled litigations against three pharmaceutical companies (the "Jaw Cases"). These cases were filed on behalf of individuals who had suffered osteonecrosis of the jaw after taking a class of drugs known as bisphosphonates. By June of 2011, Respondents had used over $5.5 million to fund the litigated Jaw Cases, out of the $58 million the Funds had deployed at that point, i.e., nearly 10% of the

[4] See, e.g., Div. Ex. 43-12 (stating concentrations to obligors would be limited based on their credit ratings); Div. Ex. 30-6 ("portfolio obligor investment matrix [was] designed to create a diversified portfolio in investment positions"); Div. Ex. 44-5 (the Funds "offer a diversified approach to the standard legal receivable strategy"); Div. Ex. 39-13 ("diversification is managed by limiting the level of portfolio exposure based on the obligor's (the financial party responsible for the payment of the settlement) credit worthiness").

Funds' deployed assets.[5] This amount continued to grow so that by the end of 2013, nearly $11 million of the Funds' approximately $100 million in deployed assets had been used on the Jaw Cases.[6] Respondents concede the Jaw Cases were not settled in 2008 when Respondents first funded them and that monies were advanced to support the Jaw Cases' "substantial litigation costs and expenses." See Div. Ex. 214 (Deposition Tr. of R. Dersovitz, Jan. 19, 2017) at 124:17-125:3 ("Q: . . . did you have any understanding at [the time of funding] as to whether the jaw cases were settled? A: They were not."). The bulk of the Jaw Cases did not settle until 2014. Despite this fact, Respondents knowingly invested in the Jaw Cases on over 35 different occasions prior to 2014, often contemporaneously with their oral misrepresentations.

Second, from 2007 to 2009, Respondents used Fund assets to purchase interests in the portfolio of an attorney, Barry Cohen, which included both non-contingent fee work and unsettled cases. Between 2007 and 2009, Respondents advanced Mr. Cohen over $3.5 million for an interest in approximately $4.8 million of fees that a criminal defendant (i.e., a non-contingent fee client) owed Mr. Cohen (the "Licata Case"). In 2008, Respondents advanced another $3 million to purchase $4.2 million supposedly due to Mr. Cohen for his representation of a whistleblower in a civil *qui tam* action filed against WellCare Health Plans, Inc. (the "WellCare Case," together with the Licata Case, the "Cohen Cases"). When Respondents purchased interests in the WellCare Case fees they knew that a settlement agreement had been reached between WellCare and the United States in the related criminal matter but that Mr. Cohen's client was neither a party to that

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[5] Respondents at times used different inputs to calculate the Funds' concentrations. The Division's adoption of Respondents' "dollars deployed" approach here is not an acknowledgement that it is the proper measure.

[6] Starting in 2013, Respondents began to "participate out" (i.e., sell) certain of the Funds' assets to a Swiss investor known as Constant Cash Yield or CCY, including certain assets relating to the Jaw Cases, and the Division's calculations of assets deployed does not include any amount that may have been later sold to CCY.

settlement nor otherwise a party to that award, and that, therefore, Mr. Cohen was owed no fee from the criminal settlement. By June 2011, over $6.6 million of the total $58 million assets deployed by the Funds had been used to fund the Cohen Cases, over 11% of the Funds' assets. In fact, the Cohen Cases represented 16% of the total Fund value Respondents reported (about $76 million) in June 2011 and, combined with the Jaw Cases, over 20% of the Funds' reported value.[7]

Third, Respondents used substantial investor funds to finance the efforts of two law firms pursuing the Peterson Case, which had its origin in the 1983 terrorist bombing of the Marine barracks in Beirut, Lebanon. Starting in 2001, multiple civil actions were filed on behalf of service members and their relatives alleging that Iran had provided material support to the terrorist bombers. In 2007, a default judgment was entered, awarding plaintiffs approximately $2.65 billion. In 2008, the plaintiffs' attorneys (Steve Perles and Thomas Fay) filed restraints on bonds held by Citibank worth $1.75 billion, which they believed belonged to Iran and could be used to satisfy the judgment. In 2010, they filed suit against Citibank, the Islamic Republic of Iran, and Bank Markazi (Iran's Central Bank), seeking turnover of these assets (the "Turnover Litigation"). By June 2011, Respondents had advanced $9.5 million in investor funds to Mr. Perles and Mr. Fay, over 16% of the $58 million deployed by the Funds at that point, in exchange for a portion of the legal fees they hoped to derive from the Turnover Litigation. That amount continued to grow to $28.5 million by August 2012, nearly 35% of the total dollars deployed by the Funds.

Then, in August of 2012, President Obama signed legislation, codified at 22 U.S.C. § 8772, which singled out the assets at issue in the Turnover Litigation as assets subject to turnover under that law. Shortly thereafter, Respondents began advancing funds to the Peterson plaintiffs directly.

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[7] In March 2008 Respondents also advanced $1.5 million of investor funds to Mr. Cohen to purchase portions of a contingency fee owed to him with respect to another case Respondents knew was not settled or final, but instead was then still on appeal to the Florida Supreme Court.

In total, Respondents disbursed nearly $60 million of the Funds' investors' assets to plaintiffs and lawyers to fund the Turnover Litigation from 2010 through the middle of 2014, over 50% of the total $112 million deployed by the Funds at that point. When stated as a percentage of the value of the Funds that Respondents reported to investors (and upon which they calculated their own returns), the position was nearly 65% of the total portfolio value by mid-2014.

Bank Markazi vigorously defended the Turnover Litigation by, among other things, challenging the constitutionality of § 8772. The District Court and the Second Circuit rejected the challenge in February 2013 and July 2014, respectively, but the Supreme Court granted certiorari in late 2015 to consider it. The Court finally upheld the law in a 6-2 decision in April 2016. But as with the Jaw Cases, Respondents steadily increased the Funds' massive exposure to the unresolved Peterson Case through dozens of incremental investments from 2010 through 2014 while also assuring investors that the Funds were different because they invested in resolved matters.

Finally, starting in March 2012, Respondents advanced funds in connection with the Deepwater Horizon oil spill by BP plc (the "BP Cases"). Respondents advanced funds to law firms, accountants, and "claims aggregators" (non-law firms established to submit claims) with respect to claims these entities' clients had, which were still subject to a claims determination process. These entities served as gateways between individuals or businesses allegedly harmed by the oil spill and a recovery fund set up by BP. However, because some borrowers were not attorneys, they were not subject to the threat of losing their license if they misappropriated funds, and Dersovitz's representations regarding mitigating the risk of theft did not apply. By June 2015, Respondents had advanced nearly 10% of the Funds' assets to the BP Cases.

In all, by June 2011, over 37% of the Funds' assets had been deployed to fund the ongoing Jaw Cases litigation, the Cohen Cases, or the Turnover Litigation. The percentage of the Funds'

stated value tied to these cases was even higher—nearly 45%. By the middle of 2014, as Respondents continued to advance funds for those cases and the BP Cases, these figures had skyrocketed to 75% and 86% of the Funds' assets deployed and stated value, respectively.

It was simply not true that the Funds "did not take litigation risk" or that they were pursuing a post-settlement strategy. What the Funds were pursuing was precisely the opposite—a strategy of making bets on cases where recovery was in question. Nor were the risks associated with this strategy as Respondents described—at least not with respect to the foregoing cases. For all of Respondents' emphasis on the credit quality of the settlement obligors, the "obligors" for the Jaw Cases and WellCare Case were neither highly-rated corporations nor government entities—because the cases had not settled, the obligors were, at best, the attorneys themselves. The obligor for the Licata Case was also not one of those entities—it was Mr. Licata. And the obligor in the Peterson Case was not Citibank or the United States, as Respondents suggested in Fund documents, but Iran, who was fighting tooth and nail to avoid payment.

Furthermore, these cases were not of the short duration that Respondents touted in selling the Funds. To the contrary, the Jaw and Cohen Cases have lingered in the Funds' portfolios for over seven years and, as Respondents' proffered expert admitted, the Peterson Case extended the average anticipated duration of the Funds' assets by at least 12 months during the relevant time period, and collection on those assets has taken over six years. Statements that the Funds were diversified were also plainly untrue given the overwhelming proportion of Fund assets deployed to investments in a single case—the Turnover Litigation.[8] Finally, investors could not gain comfort

[8] In advancing funds, Respondents used two different contract types each for Peterson plaintiffs and attorneys—one which consisted of a simple purchase of an amount of potential recovery at a discount, and another which provided, essentially, for the accrual of interest over the amount advanced until the date of repayment. For advances to attorneys, Respondents also held liens against the attorneys' other case inventory. For advances to plaintiffs, Respondents had the

in an attorney losing his or her license in connection with advances made to claims aggregators to fund the BP Cases, entities which by definition had no license to lose.

Eventually, Respondents cashed in on some of these bets while losing money on others. The Turnover Litigation was successful and Respondents and investors are collecting on that gamble. Other investments have been less successful. The Jaw Cases settled, but the attorneys' recovery was lower than hoped for and Respondents have received only a fraction of the value they assigned to these positions. The defendant in the Licata Case did not have the cash resources to pay Mr. Cohen, and Mr. Cohen's client in the WellCare Case received a relatively low award. After years of protracted litigation to collect on the Cohen Cases, Respondents wrote down a significant portion of their value in late 2015.[9]

4. The Special Opportunities Funds

Dersovitz has maintained that he always spoke about the Peterson Case because he believed it represented an "incredible investment opportunity." Indeed, in early 2012, when he began contemplating making advances to Peterson plaintiffs, Dersovitz started marketing mechanisms to invest in the Turnover Litigation, including offering an SPV that would invest

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potential to recover if the plaintiffs lost the Turnover Litigation but were successful in obtaining turnover of other assets belonging to Iran. These distinctions are not relevant here—Respondents advanced funds for the Turnover Litigation to individuals who hoped to recover and pay Respondents back from that lawsuit, and because those individuals had stakes in *that* litigation.

[9] Respondents argue that certain documents disclosed the truth and were available for investors who asked for them: a quarterly "Agreed Upon Audit Procedures" ("AUPs") and the Funds' annual financial statements ("Financials"). But these documents were typically provided to individuals *after* they invested. Moreover, they neither contradict Respondents' fraudulent and misleading pitch to investors nor clearly disclose the true nature of the assets in the Funds, particularly not to investors who had listened to Respondents steadfastly accentuate that the Funds' business was investing in finalized cases with no litigation risks or who had read many similar statements in Respondents' marketing materials. Few AUPs mention the Peterson Case, calling it a settled matter when they do; the AUPs refer to the Jaw Cases as both settled and ongoing litigations; and the AUPs do not disclose that the Cohen Cases were unsettled when funded. The Financials merely disclose the Funds' top five "obligors," not the underlying case for which those funds were advanced, and misleadingly refer to "obligors" for non-settled cases.

solely in that asset as well as other forms of separately-managed funds. This marketing, however, further deceived prospective Fund investors (and even some then-existing Fund investors) about the true nature of the main Funds' investment strategy.

The proposed return structure of the SPV was different from that of the Funds. Instead of a 13.5% return, SPV investors were promised 70 or 80% of the gross returns, with the rest going to RDLC after a one-time 1% origination fee. Respondents' internal projections suggested net returns to SPV investors far above the Funds' 13.5%. And the SPV's materials disclosed different risks from the Funds', including that "payment of the judgment proceeds to [Peterson plaintiffs] is subject to continuing litigation (the 'Turnover Litigation')" and that it was not "predicable whether any such claims . . . will be successful or how long the Turnover Litigation will continue before its final conclusion." The document discusses the risk that § 8772 could be struck down, that the United States may normalize relations with Iran, and that the SPV will not be diversified.

When Dersovitz floated the idea of investing in Peterson plaintiff assets to some but not all of the then-existing investors in the regular Funds starting in 2012, many responded coolly and told Dersovitz their reasons: discomfort at taking on the litigation risk of the Turnover Litigation and distaste with either "headline risk" (the risk that they would end up in the newspaper as having profited from the suffering of Marines who had been victims of terrorism) or "political risk" (that the United States' foreign policy towards Iran could change and jeopardize their positions). Some new investors approached in 2012 were told about the concentration of the Peterson Case in the Funds, and declined to invest in the Funds because of that concentration.[10]

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[10] For example, the potential investors who recorded a call with Dersovitz indicate in the recording that they knew about the Peterson Case (which Markovic incorrectly calls a "settlement"). Div. Ex. 216 at 35:21-36:20. Nearly one hour into the phone call in which Dersovitz had described the Funds as "100 percent" invested in settlements it was the investor who brought up the Turnover Litigation. This investor ultimately did not invest in the Funds.

The icy reception prospective investors showed to the SPV and the Peterson Case put Respondents on notice that many existing investors had not previously understood that the Funds were financing this type of matter and that the existence of the case and its concentration in the portfolio was important—and potentially problematic—to investors. This would have led an honest investment manager to henceforth be careful to be transparent about the existence of Peterson Case assets in the Funds. But Respondents did exactly the opposite.

After their experiences in 2012, Respondents generally avoided disclosing the existence of the Peterson positions *within* the Funds. To some investors, Respondents offered both the SPV and Funds, marketing the SPV as a "separate" vehicle from the Funds. A typical email to prospective investors described the "primary strategy" as "factoring legal fee receivables associated with settled litigation" and then stated: "In addition to our fund offerings, we are also in the process of raising an SPV which will invest in one large opportunity: the [Peterson Case]." To some existing Fund investors, Respondents similarly reached out "to discuss an opportunity separate from our flagship fund in which you are invested." And while prospective and existing investors consistently refused the SPV, Respondents nevertheless induced new investors into purchasing interests in the Funds (heavily invested in the same asset as the SPV) without explaining to them or existing investors that the Funds contained many of the same risks (i.e. the very asset they were rejecting in the SPV) but without the higher returns.

Respondents' marketing documents further cemented in investors' minds the "separate" nature of the SPV from the Funds. The FAQ, for example, stated that "RD Legal offers" the Funds, which "offer a diversified approach to the standard legal receivable strategy," as well as the SPV, which "is a special opportunity/concentrated fund that invests in a single opportunity." The Alpha Presentation began making a similar distinction in July of 2014.

But the SPV never raised anywhere near the amounts Respondents hoped to raise. In October of 2013, Respondents launched the onshore SPV with only $250,000 from a single investor, plus an additional $250,000 contributed by an entity Dersovitz controlled. In 2014, Respondents raised approximately $3.5 million from others to fund the SPV—far below the over $50 million deployed into the Turnover Litigation through the Funds by that point.

D. Respondents Continued to Mislead Investors After Their Fraud Was Discovered

Respondents' scheme began to unravel in March of 2014 when the Wall Street Journal published an article discussing RDLC's investments into the Turnover Litigation. The piece did not clarify which of the funds RDLC managed was investing in this case (stating only that RDLC "plans to bet as much as $100 million" to fund the case and that "RD is already buying rights to some of the payments received by victims' families"), but was sufficient to prompt questions from investors who had been told the Peterson Case was "separate" from the Funds.

But Respondents refused to provide complete and accurate answers to these questions. Instead, they misled investors into thinking that the amount invested in the Turnover Litigation was lower than it really was. The typical trick was to compare the total amounts expended to purchase assets relating to the Turnover Litigation to the much higher "indicated portfolio value" of the Funds (or, even higher, of the entire set of RDLC-managed funds, such as the increasingly large portfolio RDLC managed for CCY). For example, Dersovitz told one investor in March 2014 that the amount of "dollars deployed" to buy interests in Peterson Case recoveries was approximately $55 million and that all the funds managed by RDLC were valued at approximately $168 million. Both statements may have been literally true. But the apples-to-oranges comparison, particularly to an investor who did not know the size of the CCY portfolio, gives the impression that only 30% of the Funds were invested in the Peterson Case when, as of March 2014, the *Funds* had *deployed* only about $102 million in total assets, meaning that Turnover Litigation deployments constituted

over 50% of the investments. Similarly, at that time, the stated value of the Peterson Case was $106 million, about 63% of the *Funds'* stated value of $178 million. In other words, both of these percentages are markedly higher than the 30% that Dersovitz's misleading response implies.

But no amount of investor questions in 2014 altered Respondents' marketing of the Funds—they continued to pitch them as "post-settlement" strategies, despite being well-aware of how investors had been misled by those statements.

Eventually, enough investors sought redemptions that, with around 90% of the Funds' stated value tied down in the Peterson Case and the other matters in which the Funds invested before cases were resolved, Respondents suspended new withdrawals from the Funds in April of 2015, and existing redemptions as of May 29, 2015. Fortunately for investors, the Supreme Court ruled in favor of the Peterson plaintiffs in April 2016, finally putting an end to the six-year Turnover Litigation. Once the Supreme Court announced its decision, Mr. Fay and Mr. Perles were able to refinance their Peterson-related accounts through other lenders, enabling them to pay back the Funds. These cash infusions permitted Respondents to pay out portions of pending redemptions requests. Payments to investors have continued as actual distributions to the Peterson litigants began in late 2016.

E. Respondents' Gains

Unlike the Funds' investors, Respondents did not have to hold their breath to find out whether the Supreme Court would rule in favor of the Peterson plaintiffs or wait until 2016 to see their money. While Respondents were misrepresenting the nature of the Funds' assets and obtaining their property through fraudulent statements and downplaying concentrations by looking at "dollars deployed," they were withdrawing large amounts of money from the Funds based on the larger "indicated portfolio values"—to the tune of over $41 million from 2012 through 2015, with at least $6.75 million going to Dersovitz.

These withdrawals were based on valuing the Funds' interests in unsettled cases using inputs from cases that had *actually settled.* Respondents' and investors' returns on capital were calculated on a monthly basis by looking at the "indicated portfolio value" of the total assets in the Funds' portfolio. This figure was derived with the purported help of a valuation agent, Pluris Valuation Advisors ("Pluris"). Pluris provided little if any relevant input into the process, which derived an "indicated portfolio value" for each receivable by discounting to present value the expected cash flows until repayment date, using an assumed expected yield for the asset. Both of these key inputs—the expected repayment date and the assumed yield—were provided by Respondents. However, this assumed yield was the yield implied by sales of past Fund assets, all of which were receivables associated with settled litigation. In other words, the yields used to value the Jaw Cases, the Cohen Cases, and the Turnover Litigation—all ongoing litigations—were derived from cases that were *actually settled.*

In addition, Pluris mostly took its cues from Respondents with respect to whether to write down key portfolio assets. For example, in January of 2013, Respondents filed suit against Mr. Cohen with respect to the Cohen Cases, having been informed by Mr. Cohen that he would only pay approximately $1.7 million of the $16 million or so that Respondents alleged Cohen owed them. Despite this, Respondents continued to increase the value of the Cohen Cases in the Funds' portfolio—from $16 million in January of 2013 up to $26.3 million in September of 2015—before taking a significant write down. Had Respondents taken that write down when they filed suit against Mr. Cohen, the Funds would have suffered an immediate loss in stated value of anywhere between 5% and 11%, and would have never accrued an additional $10 million, both of which would have temporarily impeded Respondents' ability to withdraw cash from the Funds.

Similarly, in December of 2014, Respondents filed suit against the attorneys involved in the Jaw Cases at a time when Respondents knew that the total recovery would not be anywhere near the $15 million at which these assets were valued. Still, through January 2016, Respondents intermittently continued to increase the value of the Jaw Cases in the Funds' portfolio. Had they impaired these positions to the approximate $8 million the Jaw Cases' attorneys were actually to receive, they would have again been impeded from withdrawing assets from the Funds.

But none of these write downs occurred—at least not before the freeze of the Funds in April 2015. Instead, the stated values continued to increase, leading to mostly positive returns on paper, enabling Respondents' withdrawals from the Funds while investors were gated, while a significant portion of the Funds' value (the nearly 25% that the Jaw and Cohen Cases represented) was mired in a morass of litigation, and while the main asset of the Funds (the nearly 65% invested in the Turnover Litigation) worked its way to the Supreme Court.[11]

III. CONTENTIONS OF LAW

A. Respondents Violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

To establish a violation of Section 17(a) of the Securities Act, the Division must demonstrate that Respondents, in the offer or sale of a security, (1) "employ[ed] any device, scheme, or artifice to defraud"; (2) "obtain[ed] money or property by means of any untrue statement of a material fact" or a material omission; or (3) "engage[d] in any transaction, practice, or course of business which operates . . . as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a). Section 17(a)(1) requires a showing that Respondents acted with scienter, but a

[11] In another example of Respondents' brazenness, the onshore SPV vehicle that invested solely in the Peterson Case, whose investors largely consisted of Respondents' and their employees, paid out profits in the middle of 2015, months before the actual resolution of the Peterson Case, while the Funds' investors were frozen out, anxiously and unwittingly awaiting the result of the appeal to the Supreme Court.

showing of negligence is sufficient to establish liability under Sections 17(a)(2) and (a)(3). Aaron v. SEC, 446 U.S. 680, 697 (1980). To establish a violation of Section 10(b) of the Exchange Act and Rule 10b-5(b), the Division must show that Respondents, in connection with the purchase or sale of a security, made untrue statements of material fact or omitted material facts. 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5. To establish a violation of Rule 10b-5(a) through (c), the Division must demonstrate conduct similar to that which establishes a violation of Securities Act Sections 17(a)(1)-(a)(3). SEC v. Monarch Funding Corp., 192 F.3d 295, 308 (2d Cir. 1999). The Commission has read the Rule's three subsections as "mutually supporting" so that a violation of one may be viewed as a violation of the others. Matter of Dennis J. Malouf, S.E.C. Rel. No. 4463, 2016 WL 4035575, at *9 (July 27, 2016) (citation omitted). Each of the Rules' provisions requires a showing of scienter. Aaron, 446 U.S. at 695.

1. Respondents Made False and Misleading Statements and Omitted Facts Necessary to Render Statements Made Not Misleading

The statements at the heart of this case—claims that the Funds avoid litigation risks by focusing their investment strategy on settlements or finalized cases—were false and misleading.

As Dersovitz has now admitted, the Jaw, Peterson, and Licata Cases were not settled at the time of funding. All of those cases had meaningful hurdles to overcome before the Funds could obtain any return on their investments, and the litigation risks presented by those hurdles were qualitatively different from the kinds of obstacles Respondents described as ordinarily delaying payment in the cases for which Respondents claimed to employ their strategy.

Accordingly, investors will attest to how they were misled by Respondents' statements that the Funds invested in cases post-settlement or completion. And the Division's expert will further explain how the language Respondents employed obscured the significant "completion risk"—i.e., the risk one will not recover because of legal or factual developments in the underlying litigation—

to which the Funds' investments were exposed. See generally Div. Ex. 223-38 to 223-43. Furthermore, by describing certain risks in the Funds' strategy—credit risk, risk of theft, duration risk—while failing to address the most salient risk of all, litigation risk investors sought to avoid, Respondents omitted information needed to make their other statements not misleading.

2. Respondents' False and Misleading Statements Were Material

Misleading statements are material if "there is a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information available." SEC v. DiBella, 587 F.3d 553, 565 (2d Cir. 2009) (citation and quotation marks omitted).

The Court will hear from many Fund investors who will attest to the significance of Respondents' myriad assurances that the Funds were not like their competitors who bet on unresolved litigation. They will explain that they would have wanted to know about possible litigation risks to which the Funds were exposed when making their investment decisions, and that they expressed all this to Respondents, including their discomfort with the Turnover Litigation.

The materiality of Respondents' misrepresentations is underscored by Respondents' own actions: they repeatedly and emphatically emphasized the settled nature of the Funds' assets and distinguished themselves from their "pre-litigation funding" competitors, suggesting they understood the importance of these statements as selling points. See, e.g., Matter of Reliance Financial Advisors LLC, et al., I.D. Rel. No. 941, 2016 WL 123127, at *18 (Jan. 11, 2016) ("the very fact that [Respondent] repeatedly made many of the same misleading statements . . . is indicative of the materiality of those misrepresentations") (citing United States v. Phillip Morris, USA, Inc., 566 F.3d 1095, 1122-23 (D.C. Cir. 2009)).

Respondents have, in testimony and various submissions in this matter, argued that their misstatements were immaterial because: (1) disclaimers in the Offering Memoranda and the

marketing materials warned investors not to rely on any information not provided in writing and that Respondents had flexibility to pursue other investments; (2) the documents at issue were just summary marketing materials; (3) investors could have discovered the truth had they asked Respondents for a breakdown of the positions in the Funds; and (4) relatedly, Respondents were counting on sophisticated investors to ask the right questions. These arguments are all unavailing.

First, to the extent Respondents' argument is that investors may not reasonably rely on the misstatements made to them (for whatever reason), the argument is misguided. Reliance—reasonable or otherwise—is not an element in a Commission fraud action. See SEC v. Morgan Keegan & Co., 678 F.3d 1233, 1244 (11th Cir. 2012) (collecting cases).

Second, warnings not to rely on Respondents' statements, or that a statement's accuracy could not be guaranteed, do not save Respondents. "For cautionary statements to be 'meaningful,' they must 'discredit the alleged misrepresentations to such an extent that the real risk of deception drops to nil.'" Reliance Financial Advisors, 2016 WL 123127, at *18 (quoting In re Bear Stearns Cos., Inc., Sec., Derivative & ERISA Litig., 763 F. Supp. 2d 423, 495 (S.D.N.Y. 2011)). Boilerplate language disclaiming responsibility for virtually all representations does no such thing.

Similar defenses have accordingly failed. For example, in Bernerd E. Young the Commission rejected respondent's argument that disclaimers, more specific than those Respondents advance here, relieved that respondent of responsibility for his false and misleading statements. S.E.C. Rel. No. 4358, 2016 WL 1168564 (Mar. 24, 2016). In that case, to induce investors to purchase CDs issued by a bank, an investment adviser's marketing materials noted that a bank held several types of insurance to protect it, even though the CDs were not covered. The respondent pointed to a specific disclaimer in another document disclosing that exact fact, but the Commission concluded the materials were misleading because (1) the brochures "highlighted" the

insurance program and spoke of the bank's "well diversified portfolio"; (2) these statements "were repeated and expanded on" during other presentations; (3) the document contained "inconsistent and ambiguous statements about insurance"; and (4) the respondent "continued this emphasis [on insurance] after it was aware that such statements fostered confusion." Id. at *3, *12; see also SEC v. True N. Fin. Corporation, 909 F. Supp. 2d 1073, 1096-97 (D. Minn. 2012) (rejecting contention that because investors signed agreements explicitly stating they did not rely on any statements outside of the signed document, the oral and marketing materials statements were immaterial).

The same is true here. The misleading tenor of Respondents' persistent misstatements is not dissipated by general and confusing platitudes buried in various Fund documents, particularly given the entire context in which these statements were made: Respondents stressed in oral and written statements that the assets related to settled cases with little collection risk, see supra at II.C.2.a; and Respondents continued to emphasize the settled and safe nature of the cases even after they realized—as early as 2012—that their investor presentations were misleading. Supra at II.D.

Statements that Respondents "will seek to capitalize on attractive opportunities, wherever they might be" fare no better. These statements are similarly generic and do not warn exactly of the risks that Respondents did not disclose. Moreover, these prospective statements stand in sharp contrast to the statements of present portfolio composition set forth in the Offering Memoranda—and repeated by Respondents orally and in other marketing materials—that "[a]ll of the Receivables purchased by the [Funds] arise out of litigation in which a settlement agreement or memorandum of understanding among the parties has been reached." June 2013 OM at 7 (emphasis added). See also Div. Ex. 223-34 (construing the Offering Memoranda's statements regarding in what the Funds *may* invest in contrast to in what the Funds *actually* invest).

And Respondents' appeal to isolated statements in particular documents is unavailing given Respondents' invitation, to certain investors, not to focus too much on the specific documents Respondents now claim should save them (for example, Dersovitz admonished one group of investors that "regardless of what is 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").[12]

Third, there is nothing talismanic about "marketing materials." False statements contained therein are as actionable as those made orally or written elsewhere. See, e.g., Bernerd E. Young, 2016 WL 1168564, at *12-14 (finding violations of the antifraud provisions of the Investment Advisers' Act of 1940 based on oral statements and written statements in marketing brochures); see generally Matter of Harding Advisory LLC, I.D. Rel. No. 734, 2015 WL 137642, *58 (Jan. 12, 2015) (collecting cases for the proposition that "pre-offering circular marketing materials, including pitch books with . . . disclaimers, have been found actionable" under Section 17(a) of the Securities Act, particularly where there was no specific "language in the offering circular that would have negated or clarified questionable representations in the pitch book") vacated in part on other grounds by Matter of Harding Advisory, LLC, S.E.C. Rel. No. 10277, 2017 WL 66592 (Jan. 6, 2017) (assuming arguendo that marketing materials are actionable).

Finally, there is no support for the proposition that one may lie to the investing public and then leave clues elsewhere as to the truth to skirt liability. Rule 10b-5 requires stating "all material facts necessary to make other statements not misleading. Such a duty is not discharged merely by

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[12] In fact, some individuals invested immediately after their first meeting with Respondents or their agents, or shortly thereafter, rendering irrelevant the availability of other documents Respondents did not affirmatively provide such individuals. See, e.g., Matter of Lawrence M. Labine, I.D. Rel. No. 973, 2016 WL 824588, *33 (Mar. 2, 2016) (reasoning that respondent's "argument that he relied on the contents of the [offering document] to inform investors about the risks is undercut by the fact that, in some cases, the first meeting in which [respondent] pitched the investment . . . was the same meeting in which the investor was induced to make the purchase").

giving the purchaser access to company records and letting him piece together the material facts if he can." Metro-Goldwyn Mayer, Inc. v. Ross, 509 F.2d 930, 933 (2d Cir. 1975). As one court has noted, in an SEC enforcement action "omissions . . . are not rendered immaterial ... simply because the omitted facts were available to the public elsewhere," and the law does not require investors to "pore through" all available documents or otherwise "connect the dots" in various documents. SEC v. Mozilo, No. 09-Civ-3994 (JFW), 2010 WL 3656068, *9 (C.D. Cal. Sept. 16, 2010) (quoting Miller v. Thane Int'l, Inc., 519 F.3d 879, 887 n.2 (9th Cir. 2008)).[13]

The thrust of the foregoing is that Respondents may not blame their victims for their own misdeeds. Because "due diligence is a distinct and subjective element of a private action under Rule 10b-5, unrelated to the objective materiality test . . . it is properly considered only in a private action brought by an investor, not an SEC action." Morgan Keegan, 678 F.3d at 1253. Courts have thus held that defendants may not "excuse themselves from liability on the basis that they did not provide the right answers because they were not asked the right questions." Stier v. Smith, 473 F.2d 1205, 1208 (5th Cir. 1973).

And this is particularly so when Respondents *were* asked the right questions by disgruntled investors who started to learn about the Peterson Case investments, but continued to provide untruthful answers. Supra at II.D. "If it would take a financial analyst to spot the tension between [the true and the deceptive], whatever is misleading will remain materially so, and liability should follow." Virginia Bankshares, Inc. v. Sandberg, 501 U.S. 1083, 1097 (1991) (discussing materiality in the context of claim under Section 14(a) of the Exchange Act).

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[13] In the analogous context of common law fraud, courts have been equally clear that the supposed "foolishness" of the victim is not a defense. See, e.g., United States v. Thomas, 377 F.3d 232, 243 (2d Cir. 2004); United States v. Fiumano, No. 14 Cr. 518 (JFK), 2016 WL 1629356, *7 (S.D.N.Y. Apr. 25, 2016).

3. Respondents Acted with Scienter

Scienter is a mental state embracing an intent to deceive, manipulate, or defraud. Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976). The Division may demonstrate scienter by proving knowing misconduct or recklessness, defined as "an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it." Matter of Joseph P. Doxey, Rel. No. 33-10077, 2014 WL 2593988, at *2 (S.E.C. May 5, 2016) (quotations omitted).

Here, Dersovitz knew that his statements were false.[14] As the principal owner in charge of RDLC, there is no doubt that Dersovitz knew of the Funds' actual investments. And, as a plaintiff's attorney with years of experience, Dersovitz understood the difference between a settled action or a final judgment past the point of appeals and ongoing litigation. See Div. Ex. 214 at 124:17-125:3; 135:7-24; 178:5-8; 166:14-167:6. That he understood the true nature of the risks associated with the Funds' core investment—the Turnover Litigation—is further demonstrated by the disclosure of those very risks in the SPV marketing materials. See supra at II.C.4.

Dersovitz's scienter is also demonstrated by attempts at confusing investors after asked directly about the concentration of the Peterson Case in the Funds' portfolio starting in 2012, see supra at II.D, and by the fact that Dersovitz, knowing that some investors did not want to invest in the Peterson Case, nevertheless induced them into investing in the Funds, which he knew contained a significant portion of that same asset. Finally, Dersovitz's scienter is evident in the fact that, while assuring investors his Funds did not take on litigation risk, he was actively shifting the Funds' portfolio toward unsettled cases, particularly the Peterson and Jaw Cases, through a series of dozens of incremental investments into those matters.

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[14] Dersovitz's scienter is properly attributable to RDLC given his ownership and control of that entity. SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1089 n.3 (2d Cir. 1972).

Dersovitz has suggested that he did not intend to deceive investors, but rather sincerely relied on attorneys and "marketing professionals" such as Ms. Markovic and Amy Hirsch, a due diligence consultant, to help him prepare presentations. The evidence will show the implausibility of these assertions. As Ms. Markovic put it, "part of the advantage of investing in funds managed by Mr. Dersovitz was his experience as a plaintiff's lawyer and his firsthand understanding of cash flow issues affecting attorneys and their clients; Mr. Dersovitz was proud of this fact, and it was a marketing tool used with investors." Div. Ex. 179 (Wells Submission of Katarina Markovic) at 35. Moreover, Dersovitz had approval authority over RDLC's documents, see supra at note 1, and investors will testify that it was Dersovitz from whom they heard the bulk of the misstatements. See, e.g., Sinensky Tr. at 53:14-16 (describing that in pitch to investors: "[t]he focus was all on Mr. Dersovitz. He did, you know the presenting and the dialogue").

Respondents also may not rely on any supposed advice they received from attorneys in drafting marketing materials and the Offering Memoranda, as they have explicitly refused to permit the Division to inquire as to the nature and extent of that advice. See, e.g., Div. Ex. 214 at 36:21-38:19 (instructing witness not to answer questions about advice outside firms provided over marketing materials); id. at 56:22-57:19 (instructing witness not to answer questions about what advice was provided over the Offering Memoranda); id. at 61:7-63:11 (instructing witness not to answer questions about advice provided by in-house counsel regarding marketing materials).[15]

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[15] As the Court is aware, Respondents have also advanced an amorphous "reliance on other professionals" defense with respect to the Division's allegations. For the reasons set forth in the Division's motion in limine, that defense is not properly before this Court. See Div. Motion in Limine to Preclude Respondents' Reliance Defense for Offering Memoranda and Marketing Materials. In any event, Respondents have not asserted at any time that counsel or other professionals advised them they were allowed to tell investors that they were investing in non-settled cases while they were not doing so, or that they were allowed to withhold information about or mislead investors regarding the Peterson Case. Accordingly, a reliance defense, even if considered, does not undermine Respondents' scienter.

Respondents may also argue that they did not act with scienter because they expected investors to conduct due diligence, but they may no more "blame the victim" in an attempt to neutralize the materiality of their misstatements, than they may attempt to do so to diminish their scienter. See, e.g., Fiumano, 2016 WL 1629356, *7 (rejecting the notion that a fraud "victim's later act could tend to make a defendants' earlier culpable mental state more or less probable").

Respondents have stated that they sincerely believed that the Turnover Litigation was as safe, if not safer, than the Funds' other assets, and that accordingly, they believed the distinction would not be material to reasonable investors. But given that Respondents understood the risks of the Turnover Litigation to be *precisely the risks* they advertised the Funds as not including (no matter how small they claim to have believed those risks to be), they acted at least recklessly by not discussing the existence of the Turnover Litigation in the Funds when they knew that this position represented nearly the entire portfolio and that many investors had explicitly refused to invest in that case. See, e.g., Lawrence M. Labine, 2016 WL 824588, *34 (crediting respondent's "testimony that he believed [his] company could succeed" but noting that he nevertheless made misrepresentations with scienter because it was "at the very least, reckless for him to misrepresent the investment opportunity's safety while not discussing known risk factors"). Moreover, Respondents' protestation of innocence is untenable given that, starting in 2012 and through 2014, many investors made clear to Respondents they did not know the Turnover Litigation was part of the Funds—let alone the enormous concentration of those Funds in that asset—see supra II.C.4.[16]

[16] Respondents undertook deceptive acts in addition to their misrepresentations. For example, they marketed the SPV alongside the regular Funds, misleading investors into thinking they were distinct investments; they exploited the Funds' valuation process to pad the returns on speculative positions so that Dersovitz could extract the economic benefit of the positions well in advance of payoff; and they carried the Cohen and Jaw Cases without write-downs to ensure that their scheme to cash out early could continue. Because Dersovitz was the "architect" of this scheme and "took a series of actions over several years to implement" it, and made affirmative and implied

4. Respondents' Additional Arguments Are Unavailing

Respondents have also maintained that their statements were not false or misleading, because the Peterson Case involved a judgment and certain of Respondents' documents mentioned investments in judgments in addition to settlements, and because, Respondents claim, the Peterson Case strongly resembled the kinds of finalized cases they told investors the Funds pursued.

But the inherent differences (and concurrent risks) between enforcing a default judgment against a sovereign nation and obtaining pro-forma approval of an agreed-upon settlement, see generally Div. Ex. 233, foreclose this conclusion. And the falsity of a statement is not analyzed as circumspectly as Respondents would have it. As the Commission concluded in affirming this Court's Initial Decision in Bernerd E. Young, "it is well settled that a literally true statement may nevertheless be fraudulent based on the context in which that statement is made." 2016 WL 1168564, at *12, n.41 (citation omitted). Accordingly, "[t]he veracity of a statement or omission is measured not by its literal truth, but by its ability to accurately inform rather than mislead prospective buyers." Operating Local 649 Annuity Tr. Fund v. Smith Barney Fund Mgmt., LLC, 595 F.3d 86, 92 (2d Cir. 2010). Thus, even though it is literally true that the Peterson Case involves a kind of judgment and that enforcing a default judgment requires court action, Respondents' descriptions of the judgments in which they invested (or lack thereof), did far more to mislead than inform potential investors as to the existence and nature of the actual asset and risks at issue in the Peterson Case.

Indeed, Respondents' sales pitch often included assurances that any legal process remaining for truly settled cases did not present meaningful collection risks because (i) settling obligors had already agreed to pay (unlike a default judgment debtor), (ii) courts rarely rejected

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misrepresentations, he can be found liable for violating all three prongs of Rule 10b-5. See VanCook v. SEC, 653 F.3d 130, 139 (2d Cir. 2011).

settlements, and (iii) on those rare occasions when courts did reject settlements, such rulings typically led to the parties settling for a *greater* amount of money. None of these are true of the Turnover Litigation, regardless of the sincerity of Respondents' belief in the merits of the litigation. Thus, in the context in which Respondents' statements about "settlements and judgments" was delivered—with Respondents speaking of "obligors" such as insurance companies and pharmaceutical companies—these statements were all the more misleading because none applied to the Turnover Litigation. See, e.g., SEC v. Gabelli, 653 F.3d 49, 57 (2d Cir. 2011), rev'd on other grounds sub nom. Gabelli v. SEC, 133 S. Ct. 1216 (2013) (antifraud provisions prohibit not just direct falsehoods but also "half-truths—literally true statements that create a materially misleading impression."); SEC v. C.R. Richmond & Co., 565 F.2d 1101, 1106-07 (9th Cir. 1977) (a group of statements can be "deceptive and misleading in their overall effect even though when narrowly and literally read, no single statement of a material fact was false") (citation omitted).[17]

B. Dersovitz Knowingly Caused and Aided and Abetted RDLC's Violations

To establish that Dersovitz aided and abetted RDLC's violations of the antifraud provisions, the Division must establish: (1) a primary violation of those provisions; (2) Dersovitz substantially assisted in the violations; and (3) Dersovitz provided that assistance with the requisite scienter – knowing of, or recklessly disregarding, the wrongdoing and his role in

[17] Respondents similarly aver that they belatedly explained—starting in 2013—that the Funds advanced monies to "plaintiffs" as well as "attorneys." Some investors will testify that, depending on the timeframe of their investments, they were only told of attorney funding and not plaintiff advances. With respect to such investors, these are also actionable misrepresentations. But that Respondents spoke of advances to plaintiffs to later investors is immaterial. The core of the Division's case is that Respondents misled investors into believing was that these cases (whether described as settlements or judgments, as attorney awards or plaintiff awards) were *finalized or beyond the point of potential disputes*. Respondents have also averred that cases without any settlement or final judgment of any kind, like the Jaw Cases, should be ignored because Respondents told investors that not every investment would work out as planned and the Fund would face some number of "work out" situations. This argument fails because Respondents cannot credibly contend that they informed investors that they were investing in *already existing* "work out" situations and exploiting them to support withdrawals of cash from the Funds.

furthering it. See Matter of Joseph John VanCook, Rel. No. 34-61039A, 2009 WL 4026291, at *14 (Nov. 20, 2009) aff'd VanCook, 653 F.3d at 130. "[T]o satisfy the 'substantial assistance' component of aiding and abetting, the [Division] must show that the defendant 'in some sort associate[d] himself with the venture, that he participate[d] in it as in something that he wishe[d] to bring about, [and] that he [sought] by his action to make it succeed.'" SEC v. Apuzzo, 689 F.3d 204, 212 (2d Cir. 2012) (citation omitted). Similarly, under Section 21C(a) of the Exchange Act, to establish causing liability, the Division must establish (1) a primary violation of the provisions; (2) the respondent's act or omission contributed to the violation; and (3) the respondent knew or should have known that the act or omission would contribute to the violation. 15 U.S.C. § 78u-3(a). In an administrative proceeding, a respondent who aids and abets a violation also is a cause of the violation, but only negligence is required to establish that a respondent caused a violation of a provision that does not require scienter. Joseph John VanCook, 2009 WL 4026291, at *14, n.65.

Here, the same facts supporting primary liability against Respondents also establish that (1) primary violations occurred; (2) Dersovitz provided substantial assistance for and contributed to the violations by making most of the misleading statements at issue himself; and (3) Dersovitz, as the principal officer of RDLC and the ultimate beneficiary of RDLC's profits, willfully associated himself with the venture as something that he wished to bring about and was well aware of his role in the entity, and of the fact that his statements were misleading.

IV. RELIEF REQUESTED

A. Respondents Should Be Required to Disgorge Their Ill-Gotten Gains and Pay Prejudgment Interest

Respondents profited considerably from their fraud. RDLC received over $41 million from January 2012 through December 2015, $6.75 million of which went to Dersovitz. "The

primary purpose of disgorgement as a remedy for violation of the securities laws is to deprive violators of their ill-gotten gains, thereby effectuating the deterrence objectives of those laws." SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1474 (2d Cir. 1996) (citations omitted). Moreover, "effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable." Id. (citation omitted). Accordingly, Respondents should be ordered to disgorge the profits earned through the fraudulent sale of partnership interests and shares in the Funds. See Matter of Thomas Capital Mgmt. Group LLC, I.D. Rel. No. 693, 2014 WL 5304908, at *30 (Oct. 17, 2014) ("Management fees and incentive fees are appropriately disgorged where they constitute ill-gotten gains earned during the course of violative activities"), review granted, 2014 WL 6985130 (Dec. 11, 2014). In this case, the amounts Respondents extracted from the Funds were precisely the ill-gotten gains of their scheme to defraud investors into turning over money to invest in cases they did not wish to invest in, and to cash in on these bets by relying on the (inflated) fair values of the investments while simultaneously directing investors to the lower "dollars deployed" values.[18]

That there have been no investor losses here is not relevant, because "disgorgement and restitution are separate remedies with separate goals," the latter seeking "to make the damaged persons whole, while disgorgement aims to deprive the wrongdoer of ill-gotten gains." SEC v. Smith, 646 F. App'x 42, 44 (2d Cir. 2016) (quoting SEC v. Drexel Burnham Lambert, Inc., 956 F. Supp. 503, 507 (S.D.N.Y. 1997)). Nor is it relevant that some of the $41 million extracted from the Funds were used by Respondents to run the Funds' business, particularly given that it was Respondents who set up and touted the Funds' structure as leaving Respondents and not

[18] It is also relevant that, had Respondents' invested the investors' assets in the SPV instead of the Peterson-saturated Funds, the returns would have inured more to investors than to Respondents. See, e.g., Div. Ex. 45 (70% of returns inuring to investors in the SPV).

investors responsible for expenses. "[I]t is well established that defendants in a disgorgement action are not entitled to deduct costs associated with committing their illegal acts." FTC v. Bronson Partners, LLC, 654 F.3d 359, 375 (2d Cir. 2011) (citations omitted).

Holding Respondents jointly and severally liable is also appropriate as the fraud was committed by Respondents together. SEC v. Pentagon Capital Mgmt. PLC, 725 F.3d 279, 288 (2d Cir. 2013) (affirming decision to hold all "collaborating" parties, including relief defendants, jointly and severally liable for disgorgement). Prejudgment interest is necessary, to deprive Respondents of an interest-free loan in the amount of their ill-gotten gains. SEC v. Grossman, No. 87 Civ. 1031 (SWK), 1997 WL 231167, at *11 (S.D.N.Y. May 6, 1997), aff'd in part and vacated in part on other grounds sub nom. SEC v. Hirshberg, 173 F.3d 846 (2d Cir. 1999).

B. Respondents Should be Required to Pay Substantial Third-Tier Civil Penalties

Securities Act Section 8A(g), Exchange Act Section 21B, and Advisers Act Section 203(i) permit civil monetary penalties where Respondents willfully violated, aided and abetted, or caused a violation of, the provisions of the respective Acts, if such penalties are in the public interest. Six factors are relevant to the public interest determination: (1) deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require. See 15 U.S.C. § 77h-1(g); id. § 78u-2; id. § 80b-3(i). "Not all factors may be relevant in a given case, and the factors need not all carry equal weight." Matter of Robert G. Weeks, I.D. SEC Rel. No. 199, 2002 WL 169185, at *58 (Feb. 4, 2002).

Section 21B(b) of the Exchange Act specifies a three-tier system identifying the maximum amount of civil penalties, depending on the severity of the respondent's conduct. Second tier penalties are awarded in cases involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. Third-tier penalties are awarded in cases where

such state of mind is present, and, in addition, where, as here, the conduct in question created a significant risk of substantial losses to other persons, or resulted in substantial pecuniary gain to the person who committed the act or omission.

In this case, the Division respectfully submits that third-tier penalties are appropriate for Respondents' violations of the securities laws.

C. Dersovitz Should Be Barred from Serving in the Securities Industry

Exchange Act Section 15(b)(6)(A), Advisers Act Section 203(f) and Investment Company Act Section 9(b), all authorize the Commission to permanently bar from the industry any person associated with an investment adviser at the time of the alleged misconduct if the sanction is in the public interest and the adviser or associated person has (i) willfully violated any provision of the Securities Act or the Exchange Act or its rules or regulations, see 15 U.S.C. § 78o(b)(6)(A); id. § 80b-3(f), (e)(5); id. § 80a-9(b)(2), or (ii) willfully aided or abetted another person's violation of the Securities Act or the Exchange Act or its rules or regulations. Id. § 78o(b)(6)(A); § 80b-3(f), (e)(6); id. § 80a-9(b)(3). A "willful violation of the securities laws means intentionally committing the act which constitutes the violation and does not require that the actor 'also be aware that he is violating one of the Rules or Acts." Matter of S.W. Hatfield, CPA, Rel. No. 34-73763, 2014 WL 6850921, at *9 (S.E.C. Dec. 5, 2014) (internal quotations omitted).

Because Respondents violated Securities Act Section 17(a) and Exchange Act Section 10(b), and because Dersovitz willfully aided and abetted and caused RDLC's violations of these provisions, the Division need only show that a permanent industry bar against Dersovitz is in the public interest. In assessing the public interest, the Commission considers:

> the egregiousness of [the respondent's] actions (including his aiding and abetting of [his entity]'s fraudulent conduct), the isolated or recurrent nature of the infraction, the degree of scienter involved, his recognition of the wrongful nature of his conduct, the sincerity of

> his assurances against future violations, and the likelihood that his occupation will present opportunities for future violations.

Matter of Edgar R. Page, Rel. No. IA-4400, 2016 WL 3030845, at *5 (S.E.C. May 27, 2016) (citing Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981)) (the "Steadman factors"). "[N]o one factor is dispositive." Id.

The Steadman factors establish that Dersovitz should be permanently barred from the industry. This is so because, among other evidence the Division will adduce at the hearing, (1) Dersovitz's conduct continued for more than four years; (2) Dersovitz acted intentionally to hide the true facts of the Funds' investments when confronted by suspicious investors; and (3) Dersovitz put nearly the entirety of his investors' funds at risk by investing in one case, while knowing that he would enjoy most of the upside if the case paid out and that investors alone would bear the loss if it did not. Finally, Dersovitz has devoted the past seventeen years or so of his life to raising money to invest in legal fee receivables, and is currently engaged in precisely that sort of endeavor. It is therefore not only likely, but certain, that his present occupation is presenting opportunities for future violations of the very same nature as the ones he has already committed.

D. Respondents Should Be Ordered to Cease and Desist from Violations of the Securities Laws

Respondents should also be ordered to cease and desist from committing (and, in the case of Dersovitz, also from causing) future violations of Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 thereunder, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, respectively. 15 U.S.C. § 77h-1; id. § 78u-3.

To obtain a cease-and-desist order the Division must show that there is some likelihood of future violations, but "a single past violation ordinarily suffices to establish a risk of future violations." Matter of optionsXpress, Inc., Rel. No. 33-10125, 2016 WL 4413227, at *34 (S.E.C. Aug. 18, 2016) (citation omitted), order corrected on other grounds, Rel. No. 33-10206, 2016 WL

4761083 (S.E.C. Sept. 13, 2016). Moreover, the Commission considers the same Steadman factors to determine whether a cease-and-desist order is appropriate, in addition to "whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions." Hatfield, 2014 WL 6850921, at *10 (quotation omitted). Here, the additional factors point to the need for a cease-and-desist order because the violations occurred as recently as 2015.

V. CONCLUSION

Based on the foregoing, and after the presentation of the evidence, the Division will respectfully request that this Court make findings of fact with regard to the misconduct discussed above and that the requested sanctions be imposed on Respondents.

Dated: New York, NY
March 8, 2017

Respectfully submitted,

DIVISION OF ENFORCEMENT

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Michael D. Birnbaum
Victor Suthammanont
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"Excerpts of Deposition of Arthur Sinensky"

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
)
)
RD LEGAL CAPITAL, LLC)
and RONI DERSOVITZ,)
)
Respondents.)

VIDEOTAPED DEPOSITION OF ARTHUR SINENSKY
NEW YORK, NEW YORK
Tuesday, January 17, 2017

Reported by:
CORINNE J. BLAIR, CRR, CCR, RPR, CLR
JOB #: 118044

January 17, 2017

10:08 a.m.

Videotaped Deposition of ARTHUR SINENSKY, held at the offices of CARTER, LEDYARD & MILBURN, LLP, 2 Wall Street, New York, New York, before Corinne J. Blair, a Certified Realtime Reporter, Certified Court Reporter, Registered Professional Reporter, Certified Livenote Reporter, and Notary Public of the State of New York.

really inside the investment, I think we invited Mr. Dersovitz to come back in; not to give a presentation, but just for a question and answer session.

Q Okay. A question and answer session after you had already invested?

A Yes.

Q Let's go back to that -- what I'll call the first presentation --

A Yes.

Q -- by Mr. Dersovitz.

Approximately, how many Group Five members were in the audience?

A I would have to guess it was on the order of ten to 12.

Q Okay. And Mr. Dersovitz came to the presentation, himself?

A Yes.

Q Who else from RD Legal was present?

A I don't know with certainty, but my -- my guess is that Katarina -- I don't remember her last name, but she's kind of the investor relations lead person.

Q Is that Katarina Markovic?

A Yes. Now, I don't remember specifically whether she was there. However, it's typically the case that a presenter will have a team, one or more people with them. Usually it's the investor relations people.

The only other people I had met over that time at RD was Katarina and I believe the CFO, Leo. I don't remember his last name. Zapat (ph) -- I don't remember his last name. I don't think he was there, but it's three years ago. So I don't remember who else was there.

The focus was all on Mr. Dersovitz. He did, you know, the presenting and the dialogue.

Q Okay. You don't recall whether Leo Zatta was present at the meeting or not?

A I don't.

Q And you certainly don't recall whether he had said something to influence your investment decision --

MR. SUTHAMMANONT: Objection.

Q -- at that meeting?

A Well, I don't recall him being

there --

Q Right.

A -- so it's -- so, by definition, he didn't say anything that influenced my decision.

Q Fair enough.

And you don't recall with certainty whether Katarina Markovic was there or not?

A I don't recall. That's correct.

Q I assume then you don't recall then whether she said anything at that meeting or not?

A Correct.

Q You do recall Mr. Dersovitz being there and giving a presentation?

A Yes.

Q What did Mr. Dersovitz say at that meeting?

Let me ask a better question.

Do you recall with any specificity what Mr. Dersovitz said at that meeting?

A Not with specificity.

Q Do you recall, in general, what Mr. Dersovitz said?

A In general, I do.

Q What did Mr. Dersovitz say?

A He presented a hedge fund, RD Legal. The returns would be 13-and-a-half percent per-year credited to the account monthly.

There was a one-year lock-up period, so you have no access to your funds in the first year.

And then in the second year, you could liquidate one-quarter of your investment; each quarter in the second year after the investment; and then in the third year -- by the end of the second year, you would have complete access to your funds, which include the principal and the profit.

And then the only other thing that -- a couple of other things that stands out in my mind was that it was a highly-diversified portfolio of many different investments. And the one question that I recall either I or someone else asked was, you know, what -- why would a lawyer sell their receivable at such a deep discount? And I remember asking that

question, because that underlies an important component of the fund. And I remember asking that question. I remember the response, which I still to this day remember.

Q What was that response?

A Well, it was a response to that question: Why would a lawyer do this? And the response was: Well -- not any particular order. What I do remember, he said, you know, lawyers have -- sometimes have cash flow issues, like anyone else, and I recall when I was practicing law -- this is -- I'm paraphrasing.

Q Mm-hmm.

A -- Mr. Dersovitz. When I was practicing law, I would win a case, and I'd come home and my wife would say, "Well, where's the money?" And I'd say, "Well, we have to wait, you know, six months or 12 months, whatever the case is."

So that's the reason that a lawyer might be willing to sell this -- this to us at a discount to alleviate their cash flow -- their personal cash flow issue.

Q And do you recall asking Mr. Dersovitz that same question by e-mail?

A I don't.

Q Do you recall anything else Mr. Dersovitz said in the meeting at The Townhouse at Tiger 21?

A No.

Q Following the presentation at the Tiger 21 Townhouse, what was the the next step that you recall in leading you to become an investor in the Offshore Fund?

A Well, as with all presentations, the immediate next step is a discussion within the group as to the merits of the investment, and different people expressing points of view about it. And that dialogue -- and, again, I don't remember, specifically, but I'm guessing just knowing how I go through this process, that dialogue probably continued somewhat casually after the meeting, you know, in the ensuing month or two -- I don't remember exactly -- until I made the investment.

But I was probably reasonably

Sinensky

MR. SUTHAMMANONT: Vague and foundation.

THE WITNESS: I'm sorry. You are not reading a sentence?

Q No. I'll ask the question --

A Can you ask the question? Yeah.

Q Under the heading of "Flexibility," the Confidential Explanatory Memorandum provides information related to the flexibility given to the investment manager to pursue attractive investment opportunities on behalf of the fund; is that right?

MR. SUTHAMMANONT: Objection.

THE WITNESS: Well, this comes back to my point from before.

Sure, it provides flexibility, but I think it would be ludicrous to assume he's going to buy gold. That was never discussed, or trade in currencies, or anyone -- any number one of the myriad of things.

So my feeling here -- my belief is that there was a very firm expectation set about some of the characteristics

of the investment opportunity.

And so, yes, this specifies flexibility, but I don't think anyone would read that to say, you know, like ultimate flexibility in all dimensions in the investment world.

Q Okay. And your reading of that language would not entitle the manager to buy gold, for example, you said; is that right?

A No. Reading the language, he would be entitled to buy gold, as I read the language. But I -- no one would ever imagine that -- that he would do that based on how he represented the investment.

Q Understood.

So reading the language, it's your belief the language would entitle the manager to buy gold or trade in currency as --

MR. SUTHAMMANONT: Objection.

Q To use your example; is that right?

A This paragraph in a vacuum, yes.

This paragraph in conjunction with the presentation and the extensive dialogue with both Mr. Dersovitz and Katarina would

indicate otherwise.

Q In any event, you said, Mr. Sinensky, that there's certain expectations that you had as to how the investments would be handled; is that right?

A Yes.

Q And you said earlier that your expectation, I believe, was that all the investments would relate to legal receivables; is that right?

MR. SUTHAMMANONT: Objection.

THE WITNESS: That -- yes, legal receivables with a certain set of characteristics.

Q And what are those characteristics?

A Diversified portfolio of domestic receivables that were settled cases just awaiting collection.

Q Well, we've already seen information provided to you that the fund would invest in also non-appealable judgments, right?

MR. BOXER: Objection to form.

MR. SUTHAMMANONT: Objection.

THE WITNESS: We saw it in the

documents.

Q And those are documents provided to you as --

A Yes.

Q -- an investor in the Offshore Fund?

A Yes.

MR. BOXER: Objection.

Q And you said one of the characteristics you expected to see was domestic receivables; is that right?

A Yes.

Q In your understanding, have all the receivables that RD Legal invested in, in fact, been domestic?

MR. SUTHAMMANONT: Objection.

THE WITNESS: That was my understanding.

Q Is your understanding now?

A Well, now I know that's not the case.

Q How is that not the case?

A Because of the Peterson claim.

Q How is the Peterson case claim not a

Div. Ex. #30

RD Legal Funding Partners &
RD Legal Funding Offshore Fund

Material Updated as of August 31, 2011

Div. Ex. 30 - 1

SEC-TCG-E-0005951
SECLIT-EPROD-000839539

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Table of Contents

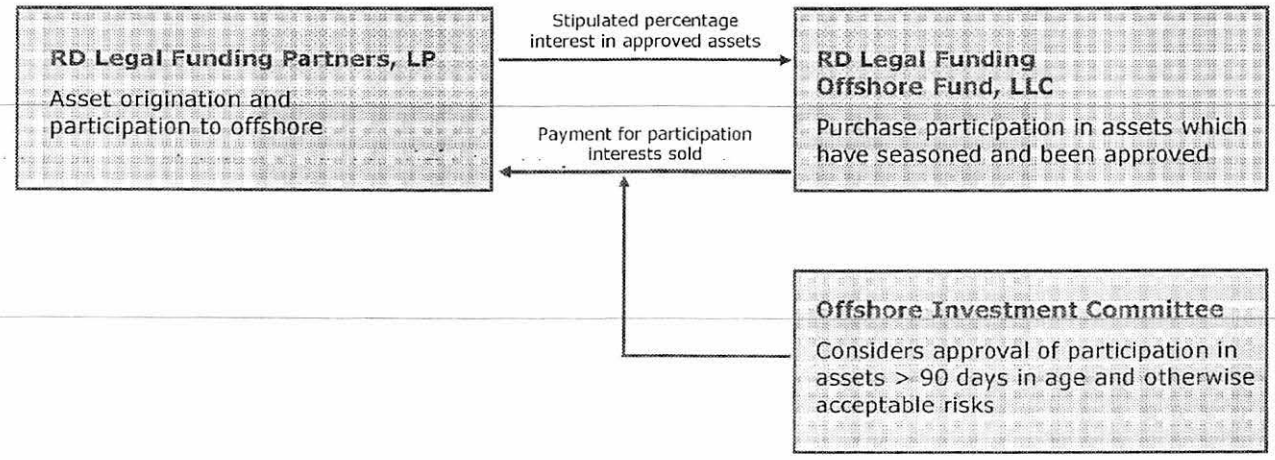
RD Legal Funding "Funds": Highlights

Our low volatility, low market correlation, historical double digit returns offers investors a way to complement more volatile correlated investment

- Firm founded as specialist in receivables, and collateralized lending with an initial focus on providing capital to US based legal community
- Onshore/Offshore Vehicles Launched October 2007
- Fund return target of 13.5% fixed annual cumulative preferred return*
- No Correlation to Equity or Fixed Income Markets
- Stringent Portfolio Risk Management
  - Cases paid by rated insurers, municipalities and corporations
  - Portfolio Moody's weighted avg. long term bond rating of A3
  - Multi layered verification and back office controls to protect your capital
- Full Investor Transparency to Portfolio Positions

*Past performance is not indicative of future results. Target returns are not guaranteed returns.

Domestic & Offshore "Funds" Structure



OFFSHORE ECI CONSIDERATIONS ARE MITIGATED BY SEASON & SELL METHODOLOGY

Commitment to Investors

- The Investment manager has a rigorous due diligence process designed to control investment and operational risk
- Investment manager is committed to retain capital in a first loss reserve account for the benefit of investors[1]
- Outside administrator and trustee for accounting and cash control. All transactions are reviewed.
- Portfolio obligor investment matrix is designed to create a diversified portfolio in investment positions
- Individual transaction transparency via direct electronic access to case files
- Quarterly compliance report from CPA to confirm that all assets are consistent with RDLF policies and procedures

[1]For further details regarding the fund structure, investor returns and investment manager compensation, please review the Confidential Private Offering Memorandum (CPOM) or Confidential Explanatory Memorandum (CEM).

RD Legal Funding LLC

("RDLF"-Operating Affiliate of the Investment Manager)

The concept for RD Legal was established by Roni Dersovitz while practicing law in NYC in a firm he co-founded. He began executing in this opportunity set in 1996.

1996	Mr. Dersovitz starts marketing the fee acceleration product to attorneys
2001	He stops practicing law and dedicates 100% of his time to building RD Legal
2002	Enters into an Asset Based Lending relationship with Textron Financial
2003	Entered into participation agreements with Lenders Funding and Porter Capital
2005	Becomes a borrower of hedge funds and enters into a commercial paper facility with DZ Bank
2007	Launched RD Legal Funding Partners Fund

1325	Cases funded and collected since formation
$199.14 mil.	Value of legal fees funded and collected since formation
$860k	Credit losses on purchased fees since formation
$69.23 mil.	Total advances of current managed portfolio
> 22%	Yield on collected legal fees for most recent 18 months
443	Weighted average duration on collected fees for most recent 18 months
21	Present staffing

All data as of August 31, 2011

RDLF History of Factoring Success

Annualized Historic Legal Fee Factoring & Portfolio Size

Fiscal Year Ending	Avg. Legal Fees Outstanding in Portfolio	Purchase Price of Legal fees Collected	Number of Transactions Collected
Prior to 2005*	$17,792,486.00	$19,323,354.00	813
2005	$28,921,097.00	$13,856,750.00	111
2006	$44,034,239.00	$23,267,972.00	90
2007	$45,014,174.00	$22,548,465.00	91
2008	$46,809,248.00	$37,732,734.00	63
2009**	$51,218,694.00	$13,862,482.00	65
2010	$53,692,651.00	$8,840,902.00	48

As assets have grown, so has the transaction size in the portfolio. This is a result of the continued growth trend in the collateralized lending space, as well as significant increased annual volume.

*All years prior to 2005 are combined, as assets and transactions were smaller before the 2005 asset raising effort began.
**2009 collections reflect a shift to Multi District Litigation, which has a longer tenure. The primary driver is the investment we made in Vioxx which RDLF funded in 2008 and has recently began settlement payments.

The Market Opportunity

I. Funding for lawyers who undertake contingency fee litigation
- Attorney paid a percentage of client's settlement only upon disbursement
- Personal injury, wrongful death, class action
- Settlements typically paid by investment grade obligors

II. High working capital demands due to long average case life
- Large, complex and valuable litigation
- Litigation beginning until Settlement timeframe 1-5 years
- Settlement until disbursement timeframe: up to 3 years

III. Large market of investment opportunities
- Tort System Costs $252 billion per annum
- Claimant Attorney Fees and expenses: $100 billion per annum

Legal and Finance Expertise

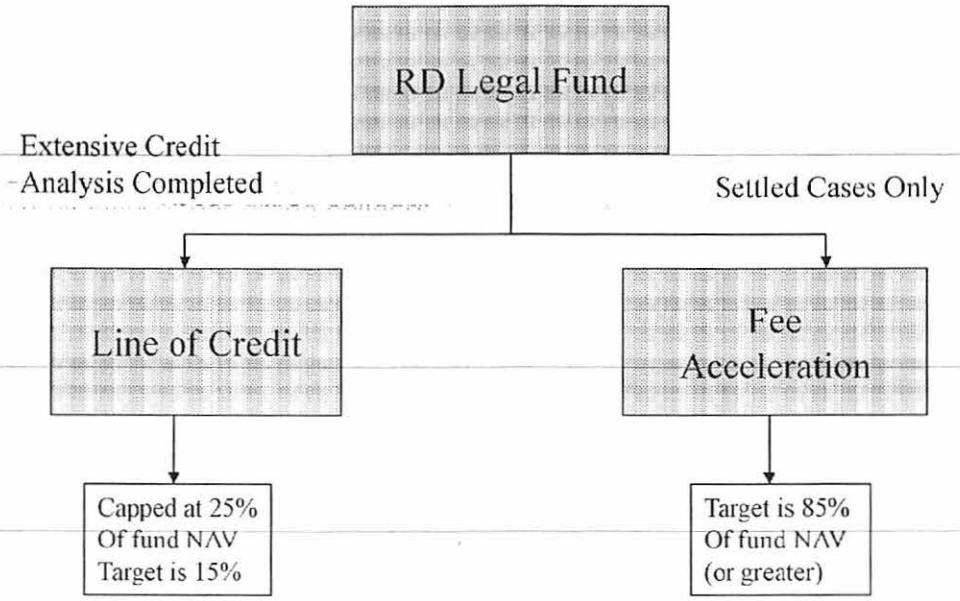
Roni Dersovitz, Esq. Founder & CEO

- 16 years practicing personal injury attorney
- Practice grew to five attorneys and ten support staff
- Early adoption of technology and paperless office environment
- Developed underwriting, documentation and marketing strategies
- BA Biological Sciences University of Chicago
- Juris Doctor Benjamin Cardozo Law School

Richard Rowella IP and Business Development

- 27 years experience within financial services
- Director of $1 billion alternative investment firm responsible for underwriting $100 million in ABL investments
- Partner in a specialty finance franchise lending firm growing the business to $250 million in assets
- Started career in commercial finance with GE Capital and held positions with increasing responsibility in credit and sales
- BA Economic and Communications DePauw University

Two Financial Solutions for Attorneys



Two Financial Solutions for Attorneys
Solution I: Fee Acceleration

Fee Acceleration, a form of factoring:

- Purchase attorney fees only on settled cases
- Attorney receives discounted upfront payment for all or a portion of the legal fee
- Settlements are generally paid by ***investment grade obligors***
  - Insurance carriers
  - Municipalities
  - Large public corporations
- Target: 85% or greater of the Fund portfolio
  - Fee Acceleration balances are 94.99% as of 08/31/11

Rigorous Investment Process

Fee Acceleration Investment Process

I. New Seller/Attorney Affidavit Submitted

- Law practice & attorney diligence
- Lien searches (personal & firm)
- Disciplinary history
- Selling entity status

II. Seller/Attorney Application

- Payor rating directly correlated to and limits our funding capacity
- Case Type & status verification
- Advance amount requested
- Aggregate legal fee owing

III. Assignment & Sale Contract

- Legal fee purchased & amount advanced
- Case status warranty & reps.
- Added purchase price (rebate) schedule
- UCC 1 financing statement filed
- Approval by Operations, independent legal counsel, accounting & CEO or COO for funding

IV. Asset Administrator

- Review signed A&S contract & related documentation
- Initiate disbursement in wire transfer system
- Wire then released by RDLF
- Input transaction in fund books and records

Two Financial Solutions:
Solution II: Credit Lines

Credit Lines:

- Eliminates the "factoring" stigma for larger law practices
- Provides capital during intervals when attorneys do not have settled legal fees to factor
- Monthly borrowing base and case status certification
- Advances are limited to 20% of the anticipated legal fee
- Operating and escrow account cash monitored continuously
- Capped at 25% of the portfolio - target 15%
  - LOC balances are 5.01% as of 08/31/11

Investment Process:
Line of Credit

I. Application Received

- All factoring steps after receipt of affidavit plus:
- Credit bureau on principals
- $500,000 facility eligibility preliminarily confirmed
- Case backlog evaluation for case type & concentrations

II. Underwriting

- Tax returns & interim spread
- Facility level determined based on avg. cash flow, collateral and revenues
- Approval document drafted
- CEO & COO tentative approval
- Terms conveyed to borrower for acceptance

III. Document preparation & field examination

- Legal prepares Loan & Security Agreement template for deal terms
- Documents signed in escrow subject to field examination results

  Field examination conducted & values reviewed relative to borrower estimates
- Case values assigned and borrowing base prepared

IV. Asset Administrator

- Review signed Loan & Security Agreement and related documents
- Initiate disbursement in wire system
- Release of wire by RDLC

Risk Management: Fee Acceleration

RD Risk Mitigation

RISK 1: Seller & Obligor Default →	- Defendant(s) have no incentive to settle if they cannot make payment- the settlement validates financial capacity - If financially material, the bond rating already reflects the probable outcome- public disclosure requirements - Excess Risk is participated out - Selling attorney is our fiduciary so conversion risk is mitigated by the resulting license forfeiture
RISK II: Portfolio Concentration →	- Portfolio exposure limits on Obligors (corporate, municipal insurance company) based on bond ratings - Selling attorney limitations established based upon prior funding history and new seller diligence
Risk III: Time Value of Money →	- Expertise and experience of knowing the typical tenure of payment for each of the various settlements - Using a cushion of at least 2x for all investment tenures

Risk Management: Line of Credit

RD Risk Mitigation

Risk I:
Borrower Case Fraud

- Rigorous due diligence including in client field examination.
- Review of the attorney case files for status, discovery, ongoing activity.

Risk II:
Valuation Error

- Field examinations conducted by experienced defense counsel
- Continuously monitor settlement values vs. audit value
- Values adjusted for large concentrations and recurring low settlements

Risk III:
Unreported collection or lost case(s)

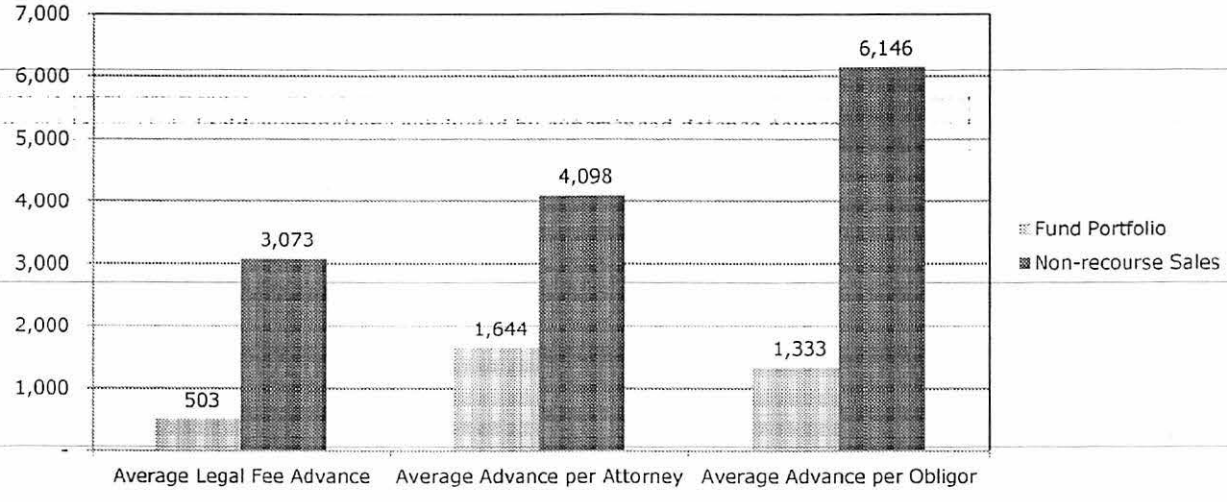
- Escrow accounts are monitored for deposits to update the borrowing base weekly.
- Monthly certification for both the remaining open cases and case values by Borrower
- Follow-up field examinations occur on average every six months.

Risk IV:
Firm dissolution

- Every 10% owner provides an unconditional guarantee of the total facility.
- Typically owners retain control of their cases at a new firm the guarantees ensure proceeds are applied to alleviate personal liability

Fee Acceleration
Fund AUM Portfolio Characteristics

Fund and Non-Recourse Portfolio Averages (000s)



NON-RECOURSE PARTICIPATIONS SOLD ARE USED TO MANAGE PORTFOLIO CONCENTRATION RISKS

All data as of August 31, 2011

Portfolio Risk Management
Exposure Limits

Fee Acceleration

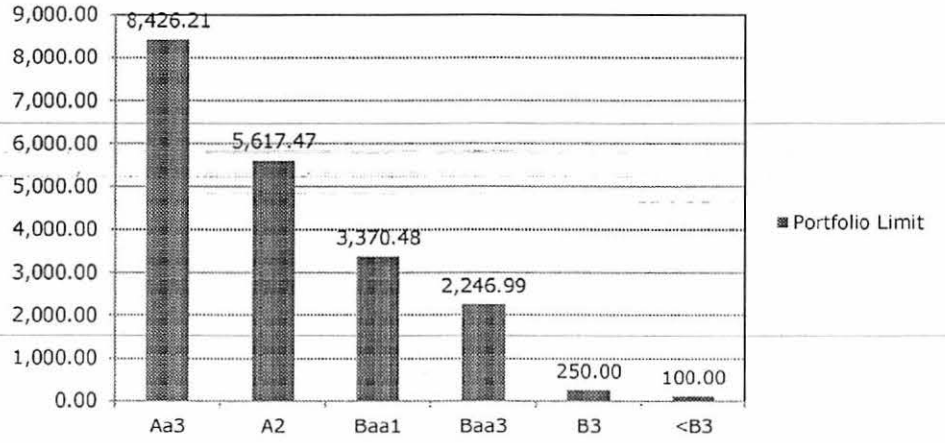
- Target 85% or more of the portfolio
- The weighted average portfolio rating has been consistently over Moody's rating of A3
- Rating based portfolio limitations ensure that the portfolio will become more granular if the average rating declines.
- Obligor default risk may rise with a rating decline but the portfolio revenue impact drops

Line of Credit

- Aggregate outstanding balance will not exceed 25% of the total Fund portfolio
- Target 15% of balances
- Total borrower exposure (factoring + line of credit) will not exceed seller limitation as determined by factor calculation

Portfolio Risk Management and Characteristics

8/31/11 Portfolio Limits per Minimum Moody's Unsecured Long Term Bond Rating (000s)



As of 08/31/2011 (* In 000s)	
Portfolio Moody's Average bond rating	A3
Avg. Legal Fee Advance	503*
Number of advances	98
Avg. advance per attorney	1,644*
Number of attorneys	30
Avg. advance per obligor	1,333*

As of 08/31/2011 (* In 000s)	
Largest obligor advance	12,875*
Rating of largest obligor	A1
Number of obligors	37
Total line of credit outstanding bal.	2,603.34*
Number of lines of credit	2

Note: The largest obligor advance exceeds the level two threshold on a temporary basis, per investor base approval received.

Fund Terms and Service Providers

- Target Return *
  13.5% annual return
  (1.0609%/month compounded monthly)
- Minimum Investment
  - $1,000,000
- Liquidity
  - Monthly, 90 day notice
- Initial Lock-up
  - One year lock (for investments after 7/1/09)
  - Then quarterly redemption for up to 25% of the investors Capital Account each quarter
- Investment Manager
  - RD Legal Capital LLC
- Administrator
  - Woodfield Fund Administration, LLC (www.woodfieldllc.com)
- Auditor
  - Rothstein Kass (www.rkco.com)
- Quarterly Compliance Review
  - Wiss & Co., LLP - CPAs (www.wiss.com)
- Fund Legal Counsel
  - Seward Kissel, LLP (www.sewkis.com)
- Bank
  - BMO Harris Bank N.A

*Past performance is not indicative of future results. Target returns are not guaranteed returns.

Summary of the Fund

- Fourteen year history of successful asset origination, documentation, and collection.
- Organizational structure to manage current and future asset growth within the fund.
- Rigorous portfolio management
  - Parameters ensure direct correlation between credit quality and granularity.
  - After a deal is funded we continue to monitor the investment every 45 days to update the payment status.
- Superior transparency and monitoring, independent monitoring and asset verification.

An Investment in the Funds Provides:

An investment niche that compliments all hedge fund strategies and provides un-levered pure alpha to the portfolio

- Fee Acceleration investments collateralized with investment grade receivables
- Target return of 13.5% per annum buffered by a first loss taken by the firm.*
- An investment which is non-correlated to all equity and bond markets
- Management team with over a decade of originating, analyzing, collecting factored legal fees
- Advances within the portfolio are non-correlated beyond the obligor which are capped based upon long term bond ratings to lower event risk
- Studies show litigation tends to be positively correlated to economic trauma which provides significant growth opportunities going forward

** Returns are not guaranteed. All investors should read the risk disclosure in the offering memorandum prior to investing.*

Appendix

Further information on staffing

RDLC Key Staffing

Leo Zatta Chief Financial Officer

- Leo Zatta has 30 years of experience in the public accounting industry where he was a partner of a large regional public accounting firm, WISS & Company, LLC and served on the firm's executive committee as well as Partner-in-Charge of the WISS Law Firm Services Group.
- Mr. Zatta's specialities included valuation and financial forensics in addition to providing accounting, tax and consulting services to privately held companies.
- Mr. Zatta earned a Bachelor of Science Degree in Accounting, a Master of Business Administration in Finance and a Master of Science in Taxation from the Stillman School of Business at Seton Hall University, South Orange, NJ.
- He is licensed as a Certified Public Accountant in the States of NJ, NY and FL and is a member of the American Institute of Certified Public Accountants and the New Jersey Society of Certified Public Accountants.
- In addition, he is a Certified Fraud Examiner, Certified Valuation Analyst, Accredited in Business Valuation and is Certified in Financial Forensics.

RDLC Key Staffing

Joseph Genovesi SVP, Deal Origination

- 10 years of experience in the hedge fund industry
- Joseph is responsible for deal origination for the fund's portfolios
- Prior to RD he was the Senior Vice President at a hedge fund consultant and was responsible for manager due diligence in all of clients' portfolios and securing new business
- He was Vice President at a global asset manager with over $3 Billion in hedge fund investments and responsible for manager due diligence and sourcing new managers for portfolios
- Started career doing hedge fund manager due diligence for a consultant with over $1B in discretionary assets
- Joseph has an MBA in Finance from Rutgers University and a BS in Finance from Villanova University

RDLC Key Staffing Continued

Irena Leigh Norton General Counsel

- Ms. Norton has 17 years experience as a litigator and is responsible for providing the fund's business activities legal support. She is responsible for the legal and compliance review of the underwriting and evaluation processes, and manages external counsel on a variety of projects.
- Partner at SHULMAN HODGES & BASTIAN, LLP (2005 to 2011) in California in charge of the Inland Empire office and practiced bankruptcy litigation, as well as litigating contract and business disputes.
- Counsel with AKIN, GUMP, STRAUSS, HAUER & FELD, LLP (1999 to 2005) Plenary responsibility for all aspects of complex civil litigation practice, in state and federal courts, arbitration and mediation.
- Litigation Associate with BURKE, WILLIAMS & SORENSEN, LLP (1993 to 1999) Extensive experience in all aspects of civil litigation practice, including appeals, court and jury trials.
- Juris Doctor from Georgetown University Law Center
- Bachelor of Arts, with Honors in Political Science from the University of California: Regents' Scholar; Member, *Pi Sigma Alpha*; Member, *Kappa Kappa Gamma*
- Member of the California Bar, U.S. District Courts: Central, Southern, Eastern, and Northern Districts of California, Ninth Circuit Court of Appeal, and the North Carolina Bar. She is a Member, Riverside County Bar Association, Orange County Bar Association, and Inland Empire Bankruptcy Forum.
- Author of a variety of Bankruptcy law related articles, and serves on several Community Boards.

RDLC Key Staffing Continued

Barbara Laraia Office & Factoring Operations Manager

- Ms. Laraia has 32 years of management, operational, and book-keeping experience, and has been with RD Legal since 2002.
- Barbara is responsible for all underwriting and due diligence aspects of the fund's fee acceleration activities. She manages the underwriting, contract preparation, case updates, and loan payment / tracking processes.
- In conjunction with Mr. Dersovitz, Barbara developed diligence, underwriting, approval and payment confirmation process for the Assignment and Sale product
- Manager and bookkeeper for large East Coast insurance agency (1982-2002) where she was responsible for all accounts receivable/payable, bank reconciliation, and general bookkeeping processes for three companies.
- Project Coordinator at Communications Research, a division of Yankelovich, Skelly & White (1978-1982)
- Assistant, Otto Sherman, Esq. (1976-1978)

Contact Information

Mr. Richard Rowella
RD Legal Capital LLC
45 Legion Drive 2nd Floor
Cresskill, NJ 07626
Office: 201-568-9007 x118
Fax: 201-568-9307
Cell: [redacted]
email: RRowella@rdlegalcapital.com
web: www.legalfunding.com

Div. Ex. #39

CONFIDENTIAL
RD Legal Funding Partners, LP and RD Legal Funding Offshore Fund, Ltd. Due Diligence Questionnaire

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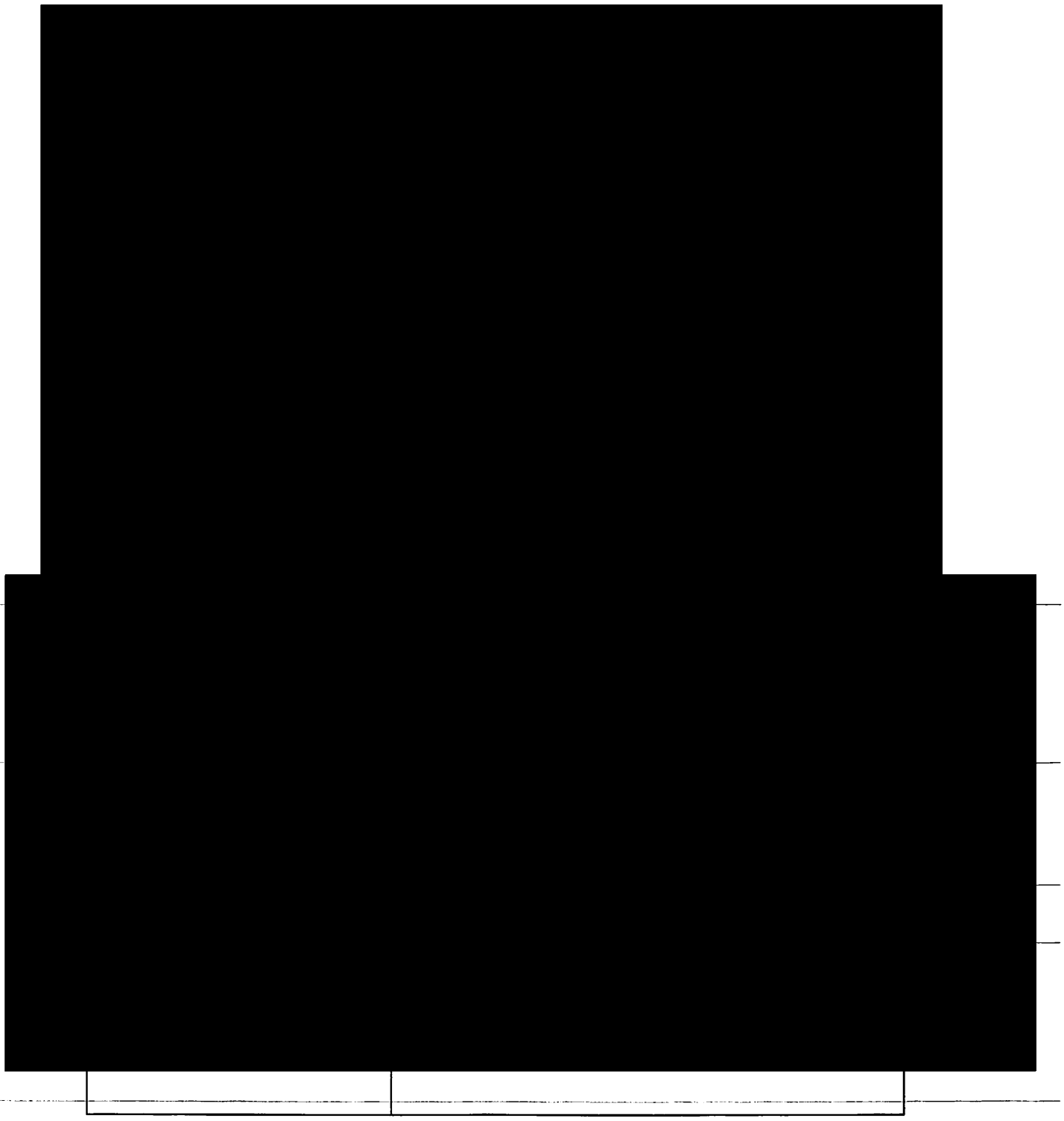

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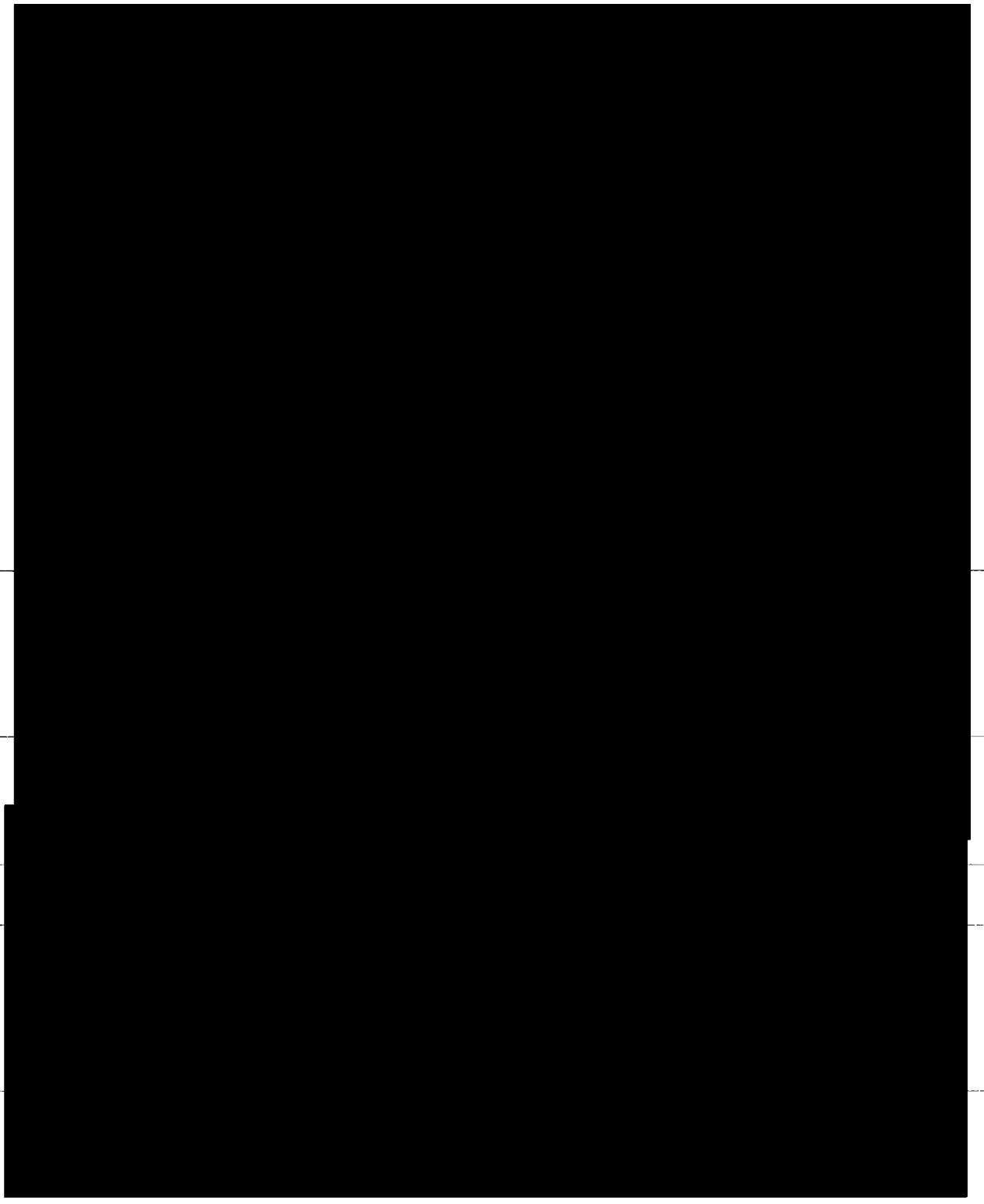

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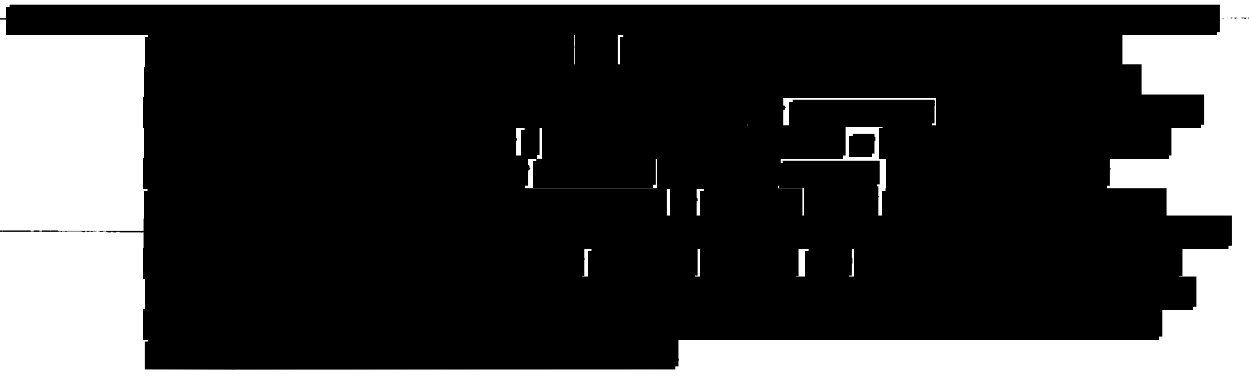

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Div. Ex. #43

Alpha Generation and Process

Please see disclosures on page 2

RD LEGAL CAPITAL

Disclosures

RD Legal Capital, LLC is an investment adviser registered with the U.S. Securities and Exchange Commission. You should not assume that any discussion or information contained in this brochure serves as the receipt of, or as a substitute for, personalized investment advice from RD Legal Capital, LLC. It is published solely for informational purposes and is not to be construed as a solicitation nor does it constitute advice, investment or otherwise. This information should only be used by investors that understand the risks of investing. This information was compiled from sources believed to be reliable, but its accuracy cannot be guaranteed nor is every material fact represented. To the extent that a reader has questions regarding the applicability of any specific issue discussed above to their individual situation, they are encouraged to consult with the professional advisor of their choosing. A copy of our written disclosure statement regarding our advisory services and fees is available upon request. Our comments are an expression of opinion. Past performance is no guarantee of future returns.

RD LEGAL CAPITAL

Highlights

Our low volatility, non-correlated, historical double digit returns offer investors a pure alpha complement to more volatile, correlated investments.

- RD Legal Capital, LLC (RDLC) is the investment manager for the Funds; RD Legal Funding Partners, LP (RDLFP), RD Legal Funding Offshore Fund, Ltd. (RDLFOF), RD Legal Offshore Unit Trust (Japan) (RDLUT), and RD Legal Special Opportunities Funds, LP/Ltd.* (collectively, the "Fund" or "Funds").
- RD Legal Funding (RDLF) was founded as a specialist in receivables, and collateralized lending with an initial focus on providing capital to the US based legal community.
- RD Legal Group, LLC (RDLG) is the marketing and client service provider for the Funds.
- RDLFP and RDLFOF launched in October 2007.
- The Funds target a return of 13.5% structured as a fixed, annual, cumulative preferred, rate of return.**
- No correlation to equity or fixed income markets.
- Stringent portfolio risk management:
  - Cases paid by rated insurers, municipalities and corporations.
  - Portfolio Moody's weighted avg. long term bond rating of A2.
  - Multi layered verification and back office controls to protect your capital.

** Anticipated Launch 3Q 2013*
*** Past performance is not indicative of future results. Target returns are not guaranteed returns.*

RD LEGAL CAPITAL

Highlights Cont'd.

- Full investor transparency to portfolio positions.
- The Fund's portfolio is principally comprised of purchased legal fees associated with settled litigation. This portfolio has the following key characteristics:
  - In general, 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.
  - Transaction documents convey ownership of the fee to the Fund. When the law firm receives any money assigned to the Fund, the law firm will have a fiduciary responsibility to turn over such money to the Fund. This puts the selling attorney's license at risk if proceeds are not remitted upon collection.
  - Fees are generally payable by bond rated entities, such as municipalities, insurers and public corporations, with aggregate portfolio exposure guidelines based upon the credit worthiness of the relevant Payor.

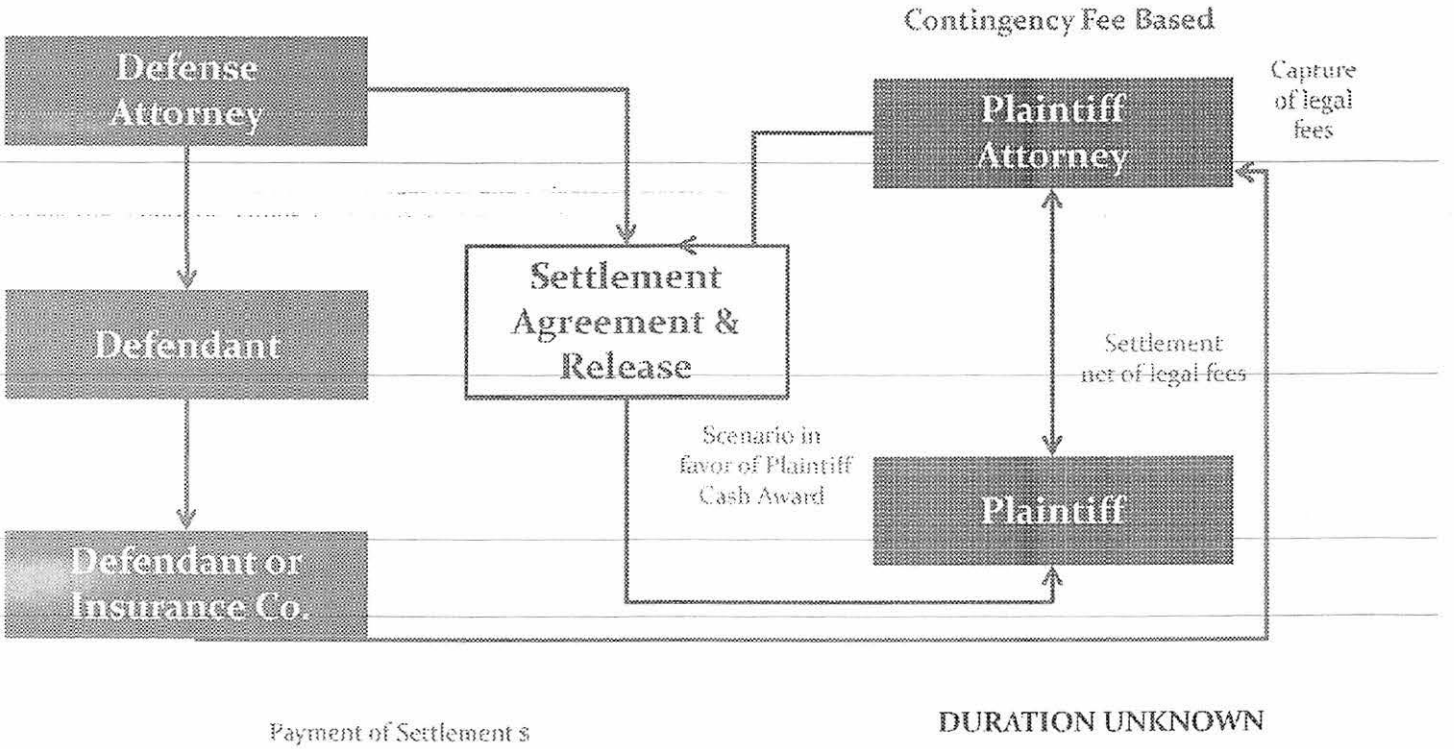
RD LEGAL CAPITAL

Opportunities

- Approximately $270 Billion dollars in settlement dollars from contingency fee based legal cases are paid annually in the United States.[1]
- $100 Billion of the $270 Billion is allocated to legal fees and associated expenses.[1]
- RD Legal Funding focuses on a subset of settlements that have post-payment settlement delays.
- Settled court cases do not pay immediately-lag 9 to 18 months.
- Attorneys need to match liabilities with current assets.
- Banks do not accept settlement agreements as collateral, and look to real estate, securities, or other types of hard collateral.

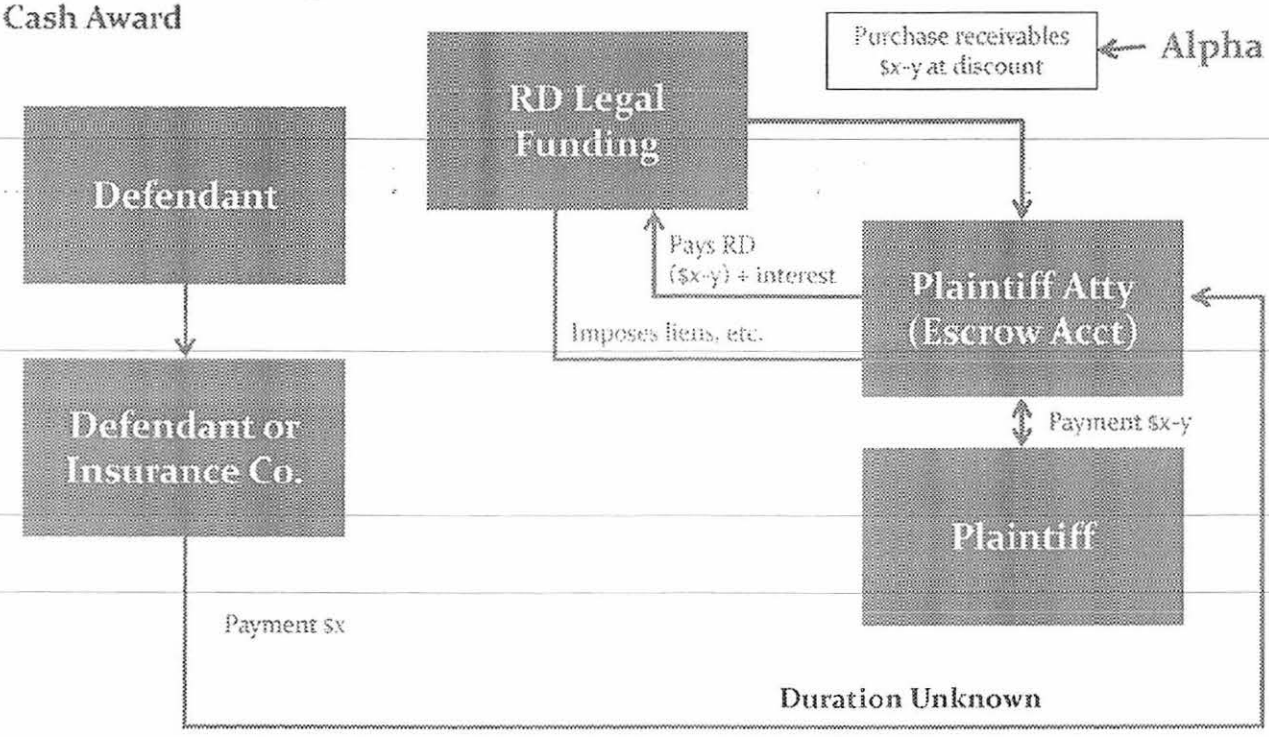
[1] http://www.towerswatson.com/assets/pdf/6282/Towers-Watson-Tort-Report.pdf

Alpha Generation

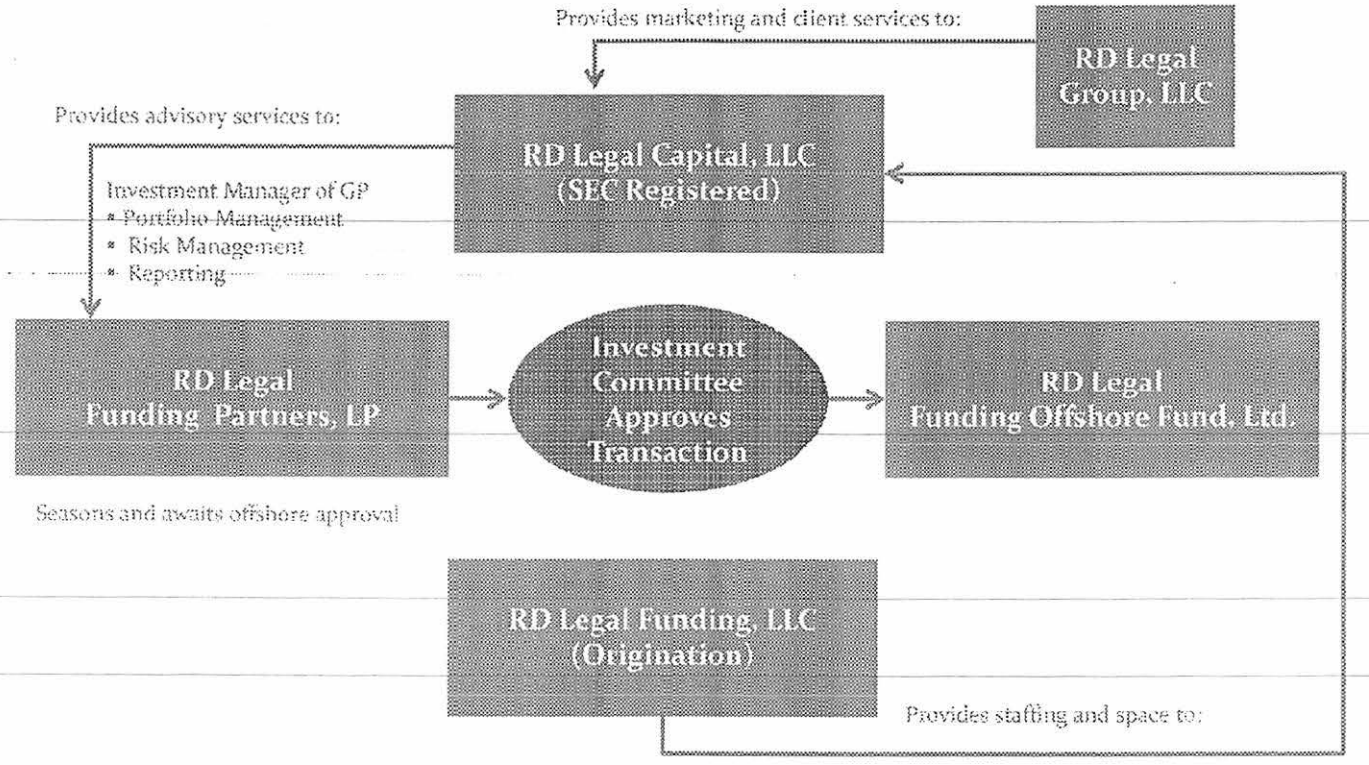


Alpha Capture

Scenario in favor of plaintiff
Cash Award

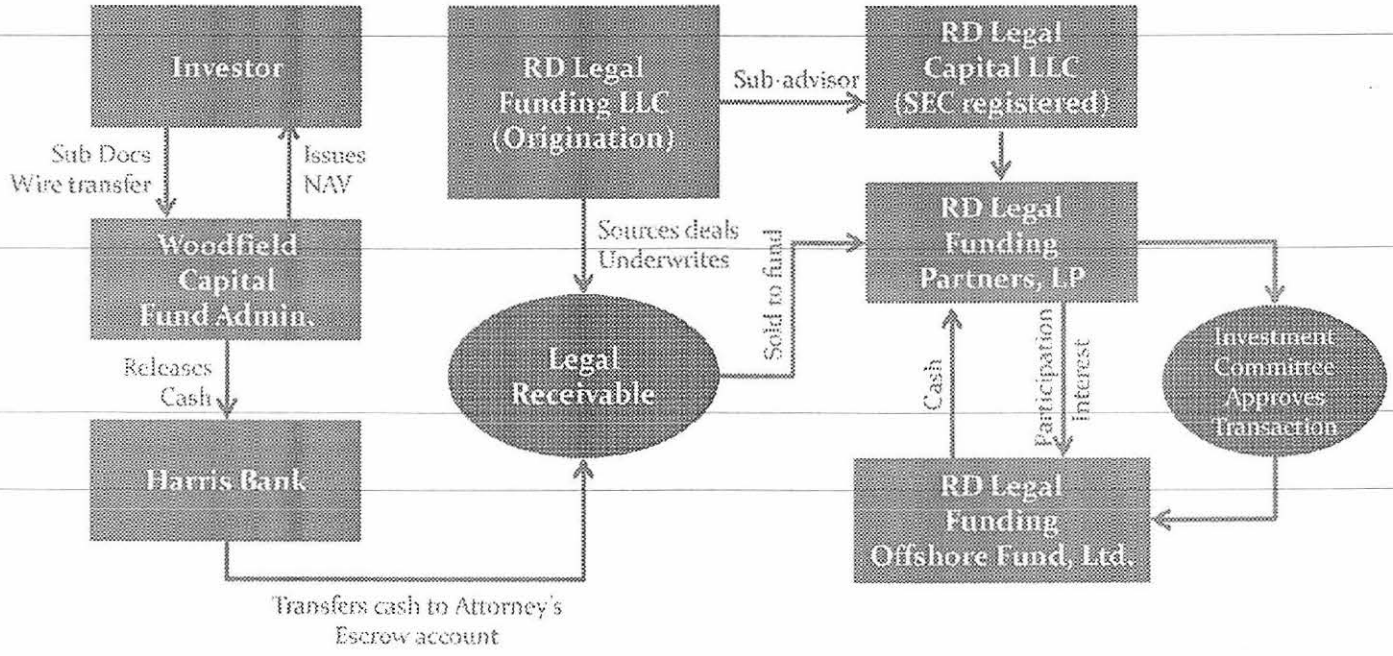


Structure

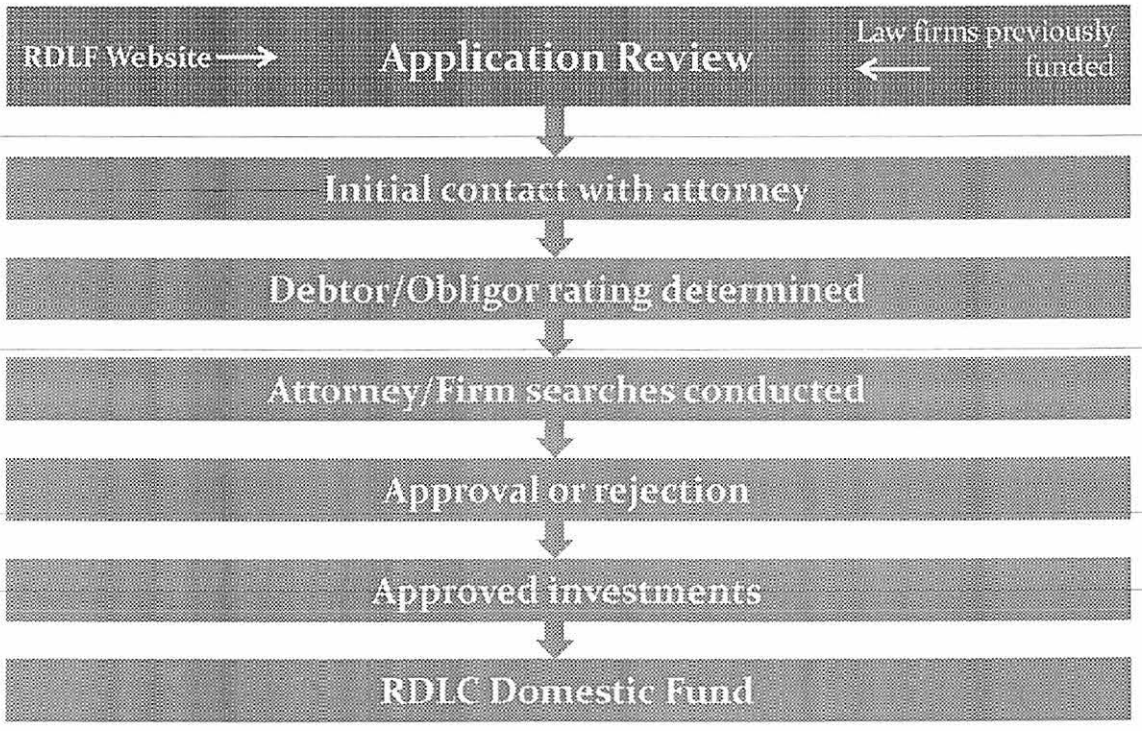


Cash Flow Structure

RDLC Accounting instructs Woodfield on which assets to purchase and ensures that all investments are completed accurately.



Underwriting Process



RD LEGAL CAPITAL

Underwriting Cont'd

- Attorney is required to complete, sign, and return notarized copy of provided Lien Affidavit (also establishes authorization for us to obtain a credit report, etc).
- Organizational documents are requested according to entity type.
- AML (Anti-Money Laundering) check is conducted on both the firm as well as the entity, as required by Homeland Security. (This is done by Woodfield, the fund administrator.)
- Suits, Liens and Judgment searches are conducted on the business entity as well as on the individual attorney via LexisNexis (along with a comprehensive People search on the attorney).
- Secretary of State/Dept. of State, etc. (UCC-1 Liens are filed and recorded with the SOS, entity is checked to confirm active status.)
- State Bar Association (To confirm attorney is in good standing with the Bar.)
- Credit report is obtained.

Note 1: *RDLFF MUST have first priority lien position (any existing liens, etc. must be satisfied prior to funding).*

Note 2: *Updated searches are conducted when doing a deal and 30 days (or more) has elapsed since previous search.*

Risk Management
Fee Acceleration

RD Risk Mitigation

RISK I: Seller and Obligor Default

Defendant(s) have no incentive to settle if they cannot make payment. The settlement validates financial capacity.

- If financially material, the bond rating already reflects the probable outcome-public disclosure requirements.
- In the event there is excess risk, it is participated out.
- When the law firm receives any money assigned to the Fund, the law firm has a fiduciary responsibility to turn over the money to the Fund so conversion risk is mitigated by the resulting license forfeiture.

RISK II: Portfolio Concentration

Portfolio exposure limits on Obligors (corporate, municipal insurance company) based on bond ratings.

- Selling attorney limitations established based upon prior funding history and new seller diligence.

RISK III: Time Value of Money

Expertise and experience of knowing the typical tenure of payments for each of the various settlements.
In general, use a cushion of at least 2x for all investment tenures.

RD LEGAL CAPITAL

Terms & Service Providers

Investment Manager	RD Legal Capital, LLC
Administrator:	Woodfield Fund Administration, LLC (www.woodfieldllc.com)
Auditor:	Marcum, LLP (www.marcumllp.com)
Qtr. Compliance Review:	Wiss & Co. LLP- CPAs
Fund Legal Counsel:	Reed Smith, LLP (www.reedsmith.com) Seward & Kissel, LLP (www.sewkis.com)
Bank:	BMO Harris Bank, NA
Valuation:	Pluris Valuation Advisors, LLC (www.pluris.com)
Target returns:	13.5% annually
Minimum investment:	$1,000,000
Liquidity terms:	One year lock for investments. Quarterly redemption for up to 25% of the investors Capital Account with 90 day notice.

RD LEGAL CAPITAL

Fund Performance

The Funds offer investors a flat 13.5% net preferred return per annum. The numbers below are solely to show the gross monthly returns for purposes of understanding the actual pattern of returns.

Proforma Consolidated Gross Monthly Returns

Returns represent the consolidation of both the domestic and offshore funds after payment of all direct expenses of the funds but before allocation to investors of a portion of this return.

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD
2007										1.77%	1.45%	1.42%	4.72%
2008	1.50%	1.64%	1.43%	1.59%	1.61%	1.53%	1.53%	2.66%	1.24%	1.67%	1.58%	1.78%	21.62%
2009	1.56%	1.68%	1.77%	1.55%	1.64%	1.69%	1.64%	1.62%	1.95%	1.51%	1.64%	1.60%	21.78%
2010	2.36%	1.69%	1.93%	1.53%	1.61%	2.18%	1.42%	1.31%	2.45%	2.33%	1.10%	1.94%	24.17%
2011	1.49%	1.64%	5.38%*	1.38%	1.14%	1.19%	1.74%	1.63%	1.41%	1.44%	1.43%	1.64%	23.69%
2012	1.65%	1.55%	1.97%	1.36%	1.41%	1.86%	1.35%	1.63%	1.74%	2.06%	-0.73%	1.34%	18.56%
2013	2.23%	1.50%	3.64%	1.06%	0.75%	1.72%							11.38%

The Investment Manager periodically reviews the methodology of determining the fair value of Legal Fees Receivable. An element considered is the net present value of the assets which is determined based upon current interest rate environment, the rates relating to the enterprise responsible for payment of the settlements from which the legal fees are remitted and the risk characteristics of the attorney business relationship.

During the past year, the Investment Manager has taken proactive steps to reduce risks associated with the attorney business relationships. During March 2011, the Investment Manager considered the reduced collection risk and adjusted annual rates for present value purposes which range from 11.59% to 30.00% resulting in a greater return than the fund has typically reported for the month of March 2011.

Past performance is not indicative of future results. Target returns are not guaranteed returns.

RD LEGAL CAPITAL

The Funds

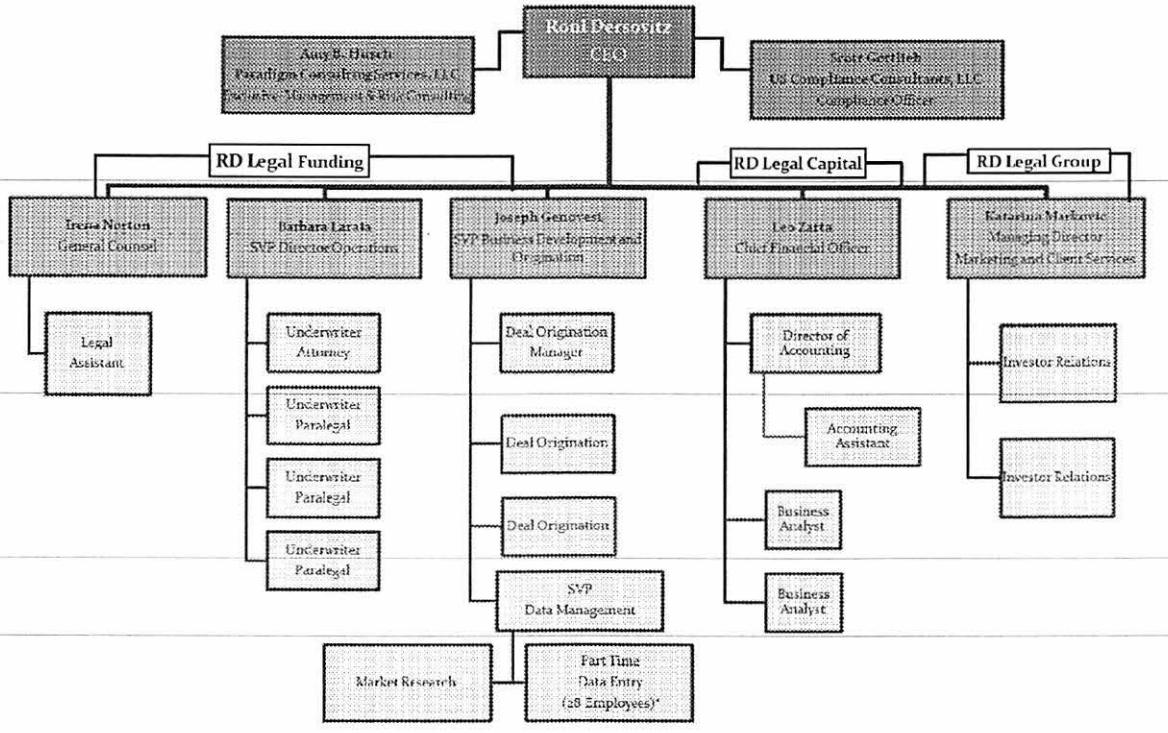
An investment niche that complements all hedge fund strategies and provides un-levered pure alpha to the portfolio.

- Fee Acceleration investments collateralized with investment grade receivables.
- Target return of 13.5% per annum buffered by a first loss taken by the firm.*
- An investment which is non-correlated to all equity and bond markets.
- Management team with over a decade of originating, analyzing, collecting factored legal fees.
- Advances within the portfolio are non-correlated beyond the obligor, which are capped based upon long-term bond ratings, to lower event risk.

** Returns are not guaranteed. All investors should read the risk disclosure in the offering memorandum prior to investing*

RD LEGAL CAPITAL

Organizational Chart



*Varies between 25-30 Employees based on need

LEGAL CAPITAL

Portfolio Manager

Roni Dersovitz, Esq. Founder & CEO

- Mr. Dersovitz is a pioneer in the purchase of legal receivables as a hedge fund strategy and has over 16 years portfolio management experience.
- Having practiced personal injury law for over 14 years, he recognized the need for this type of product to better match an attorney's assets and liabilities. He began investing in this strategy in 1996, then in 1998 he launched RD Legal Funding (RDLF) which originates and purchases receivables from contingency fee law firms. RDLF has funded and successfully collected $230M spread over 1,500 positions in this space since inception.
- In 2007, Mr. Dersovitz formed RD Legal Capital, a registered investment adviser with the U.S. Securities and Exchange Commission.
- As an early adopter of technology and a paperless office environment, he created an online underwriting, documentation and portfolio tracking system which is at the heart of the portfolio management process. Mr. Dersovitz remains the CIO and Portfolio Manager overseeing portfolio construction and risk management.
- Mr. Dersovitz holds BA Biological Sciences from the University of Chicago and a Juris Doctor from the Benjamin Cardozo Law School.

Please see disclosures on p.2

RD LEGAL CAPITAL

Finance & Accounting

Leo Zatta Chief Financial Officer

- Leo Zatta has 30 years of experience in the public accounting industry where he was a partner of a large regional public accounting firm, WISS & Company, LLC, and served on the firm's executive committee as well as Partner-in-Charge of the WISS Law Firm Services Group.
- Mr. Zatta's specialities included valuation and financial forensics in addition to providing accounting, tax and consulting services to privately held companies.
- Mr. Zatta earned a Bachelor of Science Degree in Accounting, a Master of Business Administration in Finance and a Master of Science in Taxation from the Stillman School of Business at Seton Hall University, South Orange, NJ.
- He is licensed as a Certified Public Accountant in the States of NJ, NY and FL. He is a member of the American Institute of Certified Public Accountants and the New Jersey Society of Certified Public Accountants.
- In addition, he is a Certified Fraud Examiner, Certified Valuation Analyst, Accredited in Business Valuation and is Certified in Financial Forensics.

RD LEGAL CAPITAL

Investor Relations

Katarina Markovic: RDLG Managing Director of Marketing & Client Services

- Ms. Markovic is Managing Director of Marketing and Client Services at RD Legal Group, LLC.
- With over 16 years of experience in alternative investment marketing and investor relations, Ms. Markovic has developed relationships with institutional investors globally. She most recently served as the Director of Business Development and Investor Relations for LKS Capital, a global special situations manager. Prior to joining LKS, she held the position of VP Investor Relations for Epsilon Investment Management, a $2.9 billion hedge fund firm where the product suite included the following global strategies: opportunistic, event-driven, fundamental value, synthetic structured credit, distressed debt , direct lending, CDO/CLOs, CPPI Notes.
- Ms. Markovic began her career with Merrill Lynch in 1996.
- She has an MBA in finance with a minor in marketing from Rollins College and a Bachelors degree in International Economics from Marymount College of Fordham University.

RD LEGAL CAPITAL

Operations

Barbara Laraia: RDLF Director of Operations (Factoring)

- Ms. Laraia has 38 years of management, operational, and bookkeeping experience and has been with RDLF since 2002.
- She is responsible for all underwriting and due diligence aspects of the fund's fee acceleration activities. She manages the underwriting, contract preparation, case updates, and loan payment / tracking processes.
- In conjunction with Mr. Dersovitz, Ms Laraia developed diligence, underwriting, approval and payment confirmation process for the Assignment and Sale product.
- Prior to joining RD Legal, Ms. Laraia was a Manager and bookkeeper for a large East Coast insurance brokerage, where she was responsible for payment of commissions, accounts receivable/payable, bank reconciliation, and general bookkeeping processes for three companies and held NJ resident Insurance License (Life / A&H authorities).
- Ms. Laraia held the position of Project Coordinator at Communications Research, a division of marketing company Yankelovich, Skelly & White.
- She began her career as the Assistant to Otto Sherman, Esq.

RD LEGAL CAPITAL

Origination

Joseph Genovesi: RDLF SVP Deal Origination

- Mr. Genovesi is responsible for deal origination for the Fund's portfolio.
- He oversees the management of one of the key components of deal origination, the firm's database, which houses information of over 85,000 law firms and attorneys.
- He liaises with attorneys and plaintiffs and is responsible for all potential deals to be underwritten.
- Mr. Genovesi comes to RD Legal with 11 years of experience in the hedge fund industry.
- Prior to joining RD Legal, he was the Senior Vice President at Paradigm Consulting Services, an alternative investment consultancy, responsible for manager due diligence in all of clients' portfolios and securing new business.
- He was Vice President at Unigestion, a global asset manager with over $3 Billion in hedge fund investments and responsible for manager due diligence and sourcing new managers for portfolios.
- Mr. Genovesi began his career conducting hedge fund analysis and manager due diligence for a consultant with over $1B in discretionary assets.
- He has an MBA in Finance from Rutgers University and a BS in Finance from Villanova University.

RD LEGAL CAPITAL

Contact

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Managing Director
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Div. Ex. #44

RD Legal Capital: Frequently asked Questions

RD Legal Capital, LLC (RDLC) is the investment manager of the following private investment funds organized as pooled investment vehicles:

- RD Legal Funding Partners, LP (RDLFP); a Delaware Limited Partnership
- RD Legal Funding Offshore Fund, Ltd.(RDLFOF); a Cayman Islands Exempted Company
- RD Legal Offshore Unit Trust (Japan) (RDLOUT); a Cayman Islands Unit Investment Trust
- RD Legal Special Opportunities Funds, LP/Ltd.; Anticipated Launch 3Q 2013

Roni Dersovitz is the Chief Investment Officer (CIO) of RDLC.
RD Legal Funding, LLC (RDLF) is the origination arm of the business.
RD Legal Group, LLC (RDLG) is the marketing and client service provider of RD Legal Capital and its affiliates.

We have compiled a list of frequently asked questions to help you better understand the general organization of RDLC's business, the investment strategy employed by RDLC in its management of the Funds and certain of the associated risks. Potential investors should read carefully the disclosures set forth in RDLC's disclosure brochure, a copy of which is available upon request, and the terms and conditions contained in the applicable fund's offering documents before making any investment decision.

What is the basic strategy that RD Legal Capital employs?

The primary strategy employed is one in which receivables arising from settled law suits are purchased at a discount. The firm focuses on contingency legal fee cases of United States based law firms. The settlement proceeds consist of two portions: the legal fee due the attorney, and the balance due the plaintiff. The receivables factored stem primarily from the legal fee, but in some cases plaintiff proceeds.

- Transactions are structured as a purchase and sale agreement, not a loan. This is a critical aspect of risk management in this strategy (as discussed in the risk management section on page 4 of this document).
- The primary focus is on purchasing the aforementioned receivables of settled cases, or non-appealable judgments.
- Investment criteria includes:
  - Proof of Settlement
  - Proof of Total Amount of Legal Fee
  - First priority lien position over the assets of the law firm
  - Proof of good standing with the applicable State Bar Association(s)
  - Credit review does not show bankruptcy or poor judgment as defined by RDLC.
- All of the assets will not be with a single obligor.

What is the difference between contingent legal fees and other types of attorney fees?

- Most attorneys are referred to as 'transactional' attorneys. These attorneys work on a variety of issues such as estate planning, mergers and acquisitions, corporate documentation, and other types of personal or corporate legal matters. These law firms bill their clients an hourly rate and typically invoice on a monthly basis. Transactional attorneys can easily match their liabilities (such as payroll or rent) and income (monthly) as they have a predictable and recurring cash flow.
- Contingent fee attorneys only get paid once they collect a settlement from the obligor in the case (such as a corporate entity, insurance company, or government entities). A contingent fee attorney, unlike a transactional attorney, gets a percentage of the final cash settlement award, receiving the cash only when the settlement is paid. The unpredictable natures of the cash flows make it difficult for contingent fee attorneys to match their assets and liabilities.

If the attorney has won a settlement and stands to make a large percentage of the cash award, why do they pay a premium to get cash now?

- We get involved upon settlement, which may be as long as 3-5 years after litigation first began. Even after a settlement is reached, there is a subset (which is our focus) of settlements that have 'post-settlement payment delays'. 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. .Attorneys have tremendous out-of-pocket expenses during the pendency of the litigation and the duration of any post-settlement payment delays. Not only do they need funding for recurring expenses such as payroll and rent, but they may also want to expand their practice to include more cases of a certain type if they have recently been successful in prosecuting or settling a new type of case that they had not previously pursued. (Think of the Erin Brockovich film, which was based on a lawyer who had just successfully litigated his first environmental mass tort. That firm is now a sizeable firm and handles a significant number of environmental & mass tort cases). These facts, combined with the episodic nature of settlements, cause the need for immediate cash flows to fund current expenditures. Contingency fee attorneys are therefore willing to pay a significant percentage for the fee acceleration of their legal fees on settled cases.

Why do attorneys need RD Legal? Why don't they simply go to a bank for capital?

- Banks do not accept settlement agreements as collateral, and look to real estate, securities, or other types of hard collateral for loans. In addition, the lending ratios used by banks in the United States are very strict. While contingent fee attorneys pay their bills, most do not pay on time due to the episodic nature of their own cash inflows. This leads to a severe downgrading of their FICO scores, which banks use as a baseline to lend.

- We are often asked why these attorneys are willing to pay a high interest rate. The reason that these litigation firms can periodically absorbs an 18-24% cost of capital is simply due to the very high return on equity these types of cases generate.

- By way of background, Roni Dersovitz, Founder and Chief Investment Officer of RDLC had been working as a contingent fee attorney for a number of years and found that while he had a sound business he was always struggling with cash flow. He eventually realized that it was not just his firm, but rather it was endemic to the way contingency fee based law firms earn their revenue and pay their bills. This invaluable experience led him to implement the strategy on his own and later form the firm.

How is this strategy different from your competitors that execute legal fee strategies?

- We are the only significant sized, SEC registered entity that we are aware of with a 'post settlement' strategy. There are many groups doing pre-settlement funding to varying degrees of success. In addition, most firms that are involved in this space are lenders issuing credit lines to individuals rather than taking the risk of an obligor. This is a major difference, as we are not taking 'individual' counterparty risk. Another critical difference is that we structure our transactions as a purchase and sale, which allows for the legal fee receivable to pass outside of a bankruptcy proceeding whereas a credit facility does not.

- Another difference is that most other 'legal fee' firms are not established as funds, making it very difficult to verify their underlying positions.

- Further, while there are established funds that may have a portion of their fund in legal fee receivables, it is usually a small allocation and is typically lending or credit line oriented.
- The fact that it takes a large financial commitment to start is one barrier to entry. Between RDLC and our affiliate, RD Legal Funding, LLC. We have 22 full time staff and 30 part time employees, so our infrastructure to originate and underwrite is quite robust. Building this type of a business also takes time; a large percentage of our clientele is repeat law firms who come back repeatedly over time. Enormous resources have been devoted to developing a model to prescreen potential investments and systematize the process so that key man risk becomes de minimis.

What is the size of the total opportunity in legal fees and is the strategy sustainable and repeatable?

- It is estimated that there are $270 billion dollars in contingency cases settled annually in the United States. Of this, approximately $100 billion can be allocated to legal fees and expenses. RDLC participates in a small percentage of this total which has a 'post settlement payment delay' associated with the payment of the settlement.
- Mr. Dersovitz executed a similar strategy well before creating RDLC in 2007 and formalizing the models used today. He executed his first transaction in 1996 while still practicing law as a litigator. The formal record of the strategy began when he incorporated RD Legal Funding, LLC in October of 1998. It is both the track record and models implemented that make this an easily repeatable strategy that is difficult for others to replicate.

What level of transparency does RDLC offer investors?

- RDLC has always been a paperless 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.
- In addition, each investor receives:
  - Monthly performance update from RDLC with quarterly firm updates (sent via email)
  - Monthly NAV statement from the fund administrator, Woodfield Fund Administrator, LLC
  - Quarterly 'Agreed Upon Procedure' report from RDLC's regional accounting firm, Wiss & Company, LLP (posted on the Firm Website)
  - Annual audited financials from the auditor, Marcum, LLP (posted on Firm website)

What are the main risks in this strategy and their respective mitigants?

- The first clear and present risk is the fact that we do not have complete control of cash. Cash collections are received either directly from an Obligor / Administrator or via the attorney's escrow account. The breakdown of cash collections has averaged as follows: approximately 70% of the firm's collections come directly from insurance companies, administrators, and other corporate entities, while approximately 30% of all cash first flows through the attorney escrow (trust) account.
- A related risk is therefore attorney theft of cash.
  - Both of the above risks are mitigated in related ways. In the United States, all attorneys must be registered with the State Bar Association and are held to a very high standard of conduct. Further, the attorney escrow account is sacred. All attorneys are fiduciaries for all of the client money in their escrow account. This means that any attorney guilty of theft from an escrow account can be permanently disbarred from practicing law in the United States. This is a tremendous mitigant and provides for significant leverage in situations where an attorney misappropriates our cash. In the rare instance this occurs, the attorney is offered only two options: pay the money owed, or provide suitable alternate collateral with control of cash.

- Second, since the receivable is essentially 'cash' that remains to be paid, the risks one has to address are the Obligor ('who' is paying the settlement) and the duration of the collection (how long before cash is actually transferred). As we stated above, there is always the risk of theft in this type of strategy if the cash is resident in the attorney's escrow account. In addition to what was discussed in the preceding paragraph, we further mitigate this risk by holding a first lien security interest in the attorney's entire case inventory and a performance guaranty which becomes a personal guarantee in the situation of theft.
- Finally, the greatest overall risk in this type of strategy is duration and its effect on risk/reward. The longer a fee is outstanding, the greater the impact on performance if the case extends beyond contract terms and no per diem agreement is entered into. In order to mitigate this risk, we take the following approach when setting the original discount rate:
    - RDLF purchases legal fees from attorneys/plaintiffs at a discount taking into consideration:
        - Interest Rate
        - Origination Fee
        - Duration
    - The actual purchase price is a net present value computation taking into account the above factors.
    - The typical discount rate used is between 18% and 24%. Rates may be adjusted within the stated ranges taking into account the magnitude of available capital, the market place, returning clients and other factors.
    - The contract duration will typically depend upon the type of matter being funded, for instance, historically:
        - Personal Injury – 24 months
        - Class Actions – 36 months
        - Mass Torts/MDLs – 48 months (these cases are rarely purchased due to the duration mismatch)

    (Contract duration is not negotiable without the IM's consent)

Unlike a typical hedge fund, we do not have 'fat tail' risks but rather 'outlier' risk. For example, a payment in New Orleans was delayed after Hurricane Katrina put the law courts under water, which in turn slowed down the legal process until they got back into court and dealt with the log jam of unprocessed cases. While this elongated the duration, any performance impact would have been mitigated by the above guidelines.

Is there a risk that someone comes back to question the settlement amount?

- Once a settlement is reached by two parties, it is unusual for any change to be made. In the instances where court approval is required, or an objection is raised, the settlement might be increased. In the case of class action suits, it is possible that one of the many plaintiffs in the case could question a settlement amount. In any instance, there has never been (to date) a plaintiff requesting a lower payment, only a higher payment. This, while increasing duration slightly, increases the settlement amount so that there is additional collateral protection.

What keeps you awake at night?

- Idiosyncratic risk. While we do everything in our power to mitigate all risks we are aware of, there is always the possibility that some unforeseen event might occur. This can be said for any portfolio. Unlike many funds, we are not correlated to any public market nor is the strategy interest rate sensitive. So, while we do not worry about 'beta' or the direction of the markets, we think about potential events that might impact the individual transactions rather than the strategy as a whole.

What products are offered to investors?

RD Legal offers the following funds:

Name	Target Return Profile
RD Legal Funding Partners, LP	13.5% net annual cumulative preferred return
RD Legal Funding Offshore Fund, Ltd.	13.5% net annual cumulative preferred return
RD Legal Offshore Unit Trust (Japan)	13.5% net annual cumulative preferred return

- All of the above funds offer a diversified approach to the standard legal receivable strategy. Unlike a traditional 2/20 hedge fund fee structure, we do not charge a management fee. Instead, the investment manager receives the difference between the gross return and the 13.5% net to the investor.

RD Legal Special Opportunities Funds, LP/Ltd.	Anticipated Launch 3Q 2013

- This is a special opportunity / concentrated fund that invests in a single opportunity. It is a highly unique case in which the Escrow account is being administered by the United States Department of Treasury, and the cash available for payment has been allocated to the plaintiffs of this specific case by Executive Order and an Act of Congress.

Fee Structure:	1% one-time origination fee
	20/80 split of gross with investor

Why is there a preferred cumulative rate of return and not the standard 2/20 fee structure?

- It is really a function of supply and demand. At the time RDLC began executing the strategy, hedge funds were offering us credit at 15%. When RDLC created the first fund, the fund was set to pay investors 12% net, but supply and demand met at 13.5% in order to attract investor capital. In the current days of zero interest rates, we have decided to maintain our promise to investors rather than lower the return to them.

- Unlike other hedge funds, we charge no fees. We absorb all the costs for; origination, underwriting, fund expenses, payroll, marketing, travel, fund administration, fund audits, infrastructure, and other fund related costs. In addition, the investment manager is in a first loss position to cushion to the investor's 13.5% return.

How are the valuations derived? Who are the service providers?

- RDLC utilizes the services of an independent, third party valuation firm, Pluris Valuation Advisors, LLC, to value the portfolio on a monthly basis.
- Woodfield Fund Administration, LLC, a third party administrator is the Fund's Administrator and issues the official fund NAV.
- Marcum, LLP is the Fund's auditor and issues annual audited financial statements.
- The Firm does not handle any cash as all cash transactions are handled by BMO Harris Bank and require the Administrator's consent.

For additional information please contact:

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Important Disclosures:

RD Legal Capital, LLC is an investment adviser registered with the U.S. Securities and Exchange Commission. You should not assume that any discussion or information contained in this document serves as the receipt of, or as a substitute for, personalized investment advice from RD Legal Capital, LLC. It is published solely for informational purposes and is not to be construed as a solicitation nor does it constitute advice, investment or otherwise. To the extent that a reader has questions regarding the applicability of any specific issue discussed above to their individual situation, they are encouraged to consult with the professional adviser of their choosing. A copy of our written disclosure statement regarding our advisory services and fees is available upon request. Our comments are an expression of opinion. While we believe our statements to be true, they always depend on the reliability of our own credible sources. Past performance is no guarantee of future returns.

Div. Ex. #45

MEMORANDUM OF TERMS FOR PRIVATE PLACEMENT OF
RD LEGAL SPECIAL OPPORTUNITIES FUND L.P. and RD LEGAL SPECIAL OPPORTUNITIES FUND L.P. LTD.

This term sheet is a non-binding document prepared for discussion purposes only, and the proposed investment is specifically subject to legal due diligence, and other conditions precedent contained herein, all satisfactory to the Investors in their sole discretion.

Manager:	RD Legal Capital, LLC
Structure:	Special Purpose Vehicle ("SPV")
Deal size:	$75 to $100 million
Duration:	2-3 years
Fees:	0% management fee, 30% performance fee
Closing dates:	30 Sept 2013; 30 Oct 2013

RD Legal Capital, LLC is seeking investors to participate in a special business opportunity - financing litigation receivables of a judgment against Iran in the 1983 Marine Corps barracks bombing in Beirut. These assets are presently "blocked" (attached) by executive order and resident in the United States in a Qualified Settlement Trust account at UBS. The receivables to be purchased have a first priority lien on the subject assets.

RD Legal Capital, LLC Background

- RD Legal Capital, LLC ("RDLC") was formed in 2007 and has been registered as an investment adviser with the U.S. Securities and Exchange Commission since 2009.
- RDLC will serve as the investment manager of each SPV.

RD Legal Funding, LLC Background

- RD Legal Funding, LLC ("RDLF") was formed in 1998.
- RDLF originates and purchases receivables from contingency fee law firms and occasionally, directly from plaintiffs. The target law firm or plaintiff is typically involved in a mass tort, class action, personal injury or securities type litigation.
- RDLF typically funds the law firm or the plaintiff after a settlement agreement has been agreed to and fully executed by both the plaintiff and the defendant.
- RDLF has funded and successfully collected $230M spread over 1,500 positions in this space since inception.

Opportunity Background

- RDLF has had a long-standing relationship with the law firms that represent the victims of the 1983 Marine Corps barracks bombing in Beirut, an act which was ultimately tied to Iran. A lawsuit was filed against Iran on behalf of the victims and their families that resulted in a judgment in the amount of $2.6 billion.

- The United States Treasury Department identified approximately $2 billion of Iranian money illegally domiciled in the United States at Citibank in New York. In February of 2012, President Obama signed Executive Order 13599, blocking the restrained assets.
- The collection of the judgment is now in its final phase as the victims are pressing forward to compel the turnover of the blocked assets pursuant to the terms of the Executive Blocking Order, the United States statutory provision entitled US TERRORISM RISK INSURANCE ACT 2002 ("TRIA") and legislation signed by President Obama in August of 2012 entitled, "THE IRAN THREAT REDUCTION and SYRIA HUMAN RIGHTS ACT of 2012." Section 502 of this new legislation specifically earmarks the blocked assets for distribution to the victims of the 1983 Marine Corps barracks bombing.
- On July 9, 2013 the Federal Court, Southern District of NY, issued an "ORDER ENTERING PARTIAL FINAL JUDGEMENT PURSUANT TO FED. R. CIV P. 54(b), DIRECTING TURNOVER OF THE BLOCKED ASSETS, DISMISSAL OF CITIBANK WITH PREDJUDICE AND DISCHARGING CITIBANK FROM LIABILITY." Furthermore, this same order provided the transfer of the Blocked assets to a Qualified Settlement Trust at UBS Wealth Management (Americas) Inc.
- RDLF is currently in a position to purchase a portion of these receivables and accelerate the fee payment to both the attorneys and some of the plaintiffs.

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.
- 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 diminimus. (details provided upon request.)

Fund Structure

- The fund will be structured as separate onshore and offshore Special Purpose Vehicles.
- Administrator: Woodfield Fund Administration, LLC
- Auditor: Marcum LLP

Fees and Expenses

- 0% management fee, 30% performance fee.
- RDLC, as fund manager, will defer re-payment of the expenses for audit and administration until settlement is received.

Reporting

- Investors will receive a written update on a quarterly basis outlining the progress of the turnover of the funds.
- Quarterly valuation estimates.

Confidentiality

- The Investor will keep confidential the existence and terms of this Summary Term Sheet.
- Except for the confidentiality provision described above, this Term Sheet will not give rise to a binding agreement, and no such binding agreement will exist with respect to such provisions until definitive agreements have been executed and delivered.

For further information please contact: RD Legal Group, LLC
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kmarkovic@rdlegalgroup.com

* * *

Div. Ex. #66

[redacted]

CONFIDENTIAL PRIVATE OFFERING MEMORANDUM

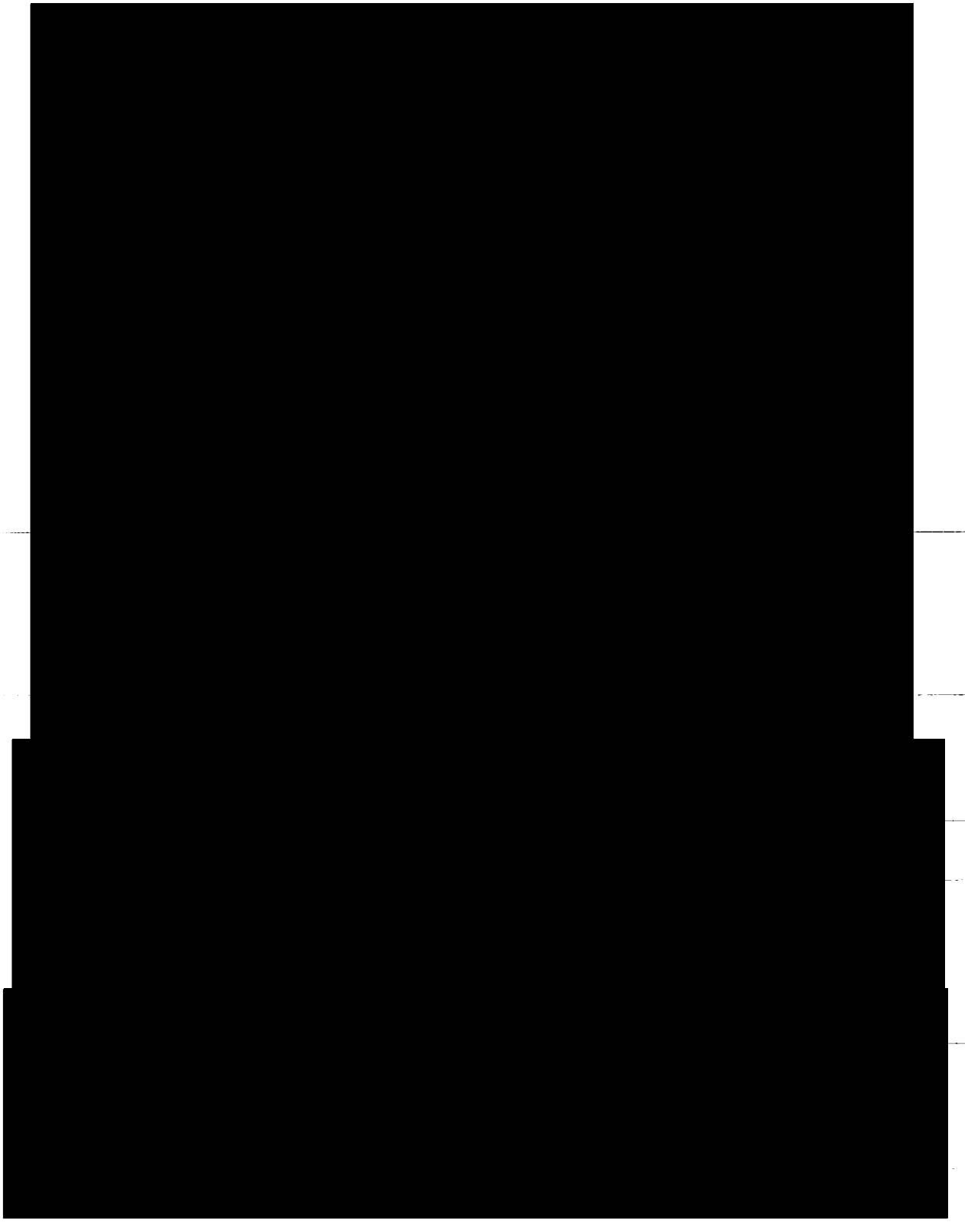
LIMITED PARTNERSHIP INTERESTS

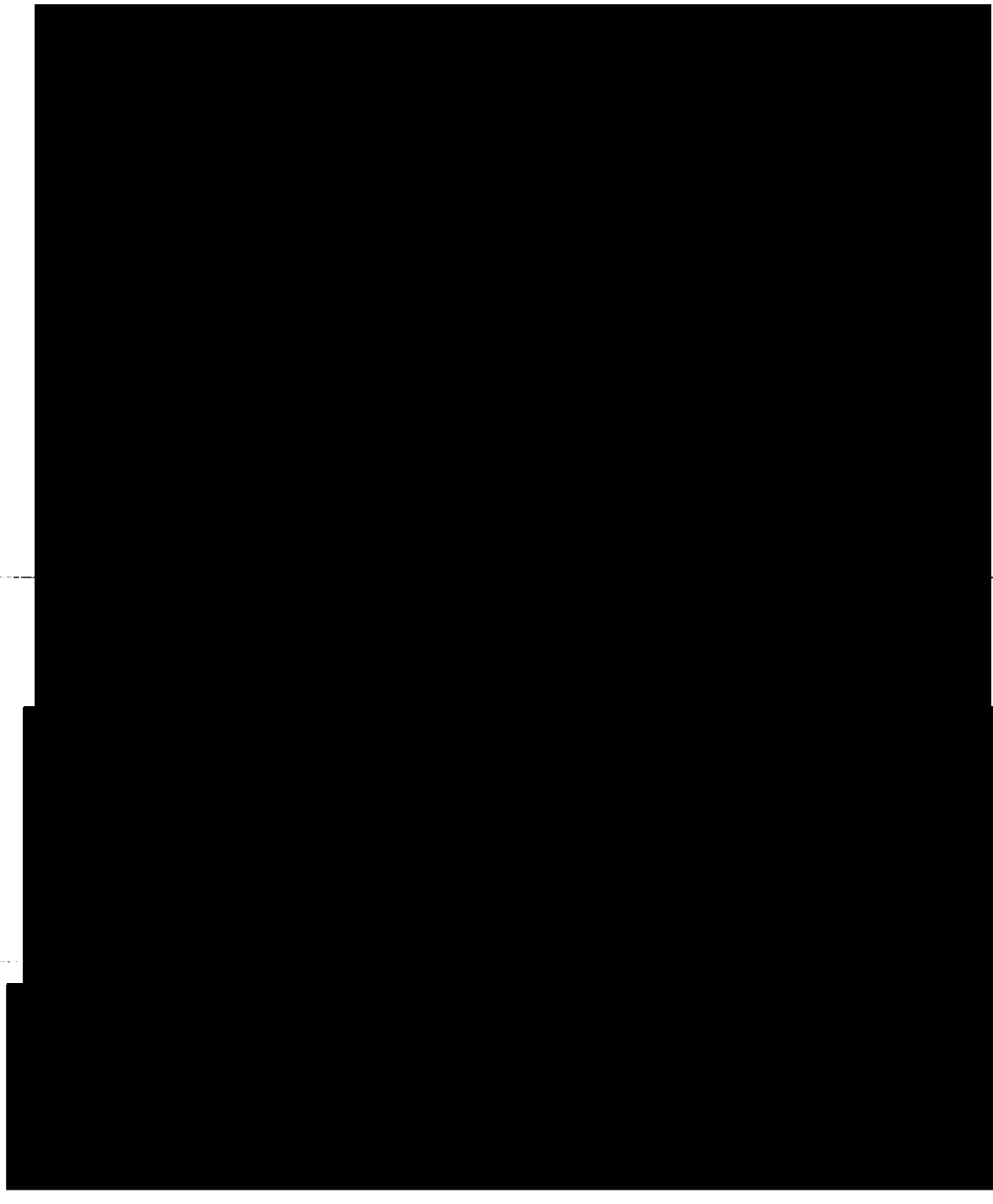
OF

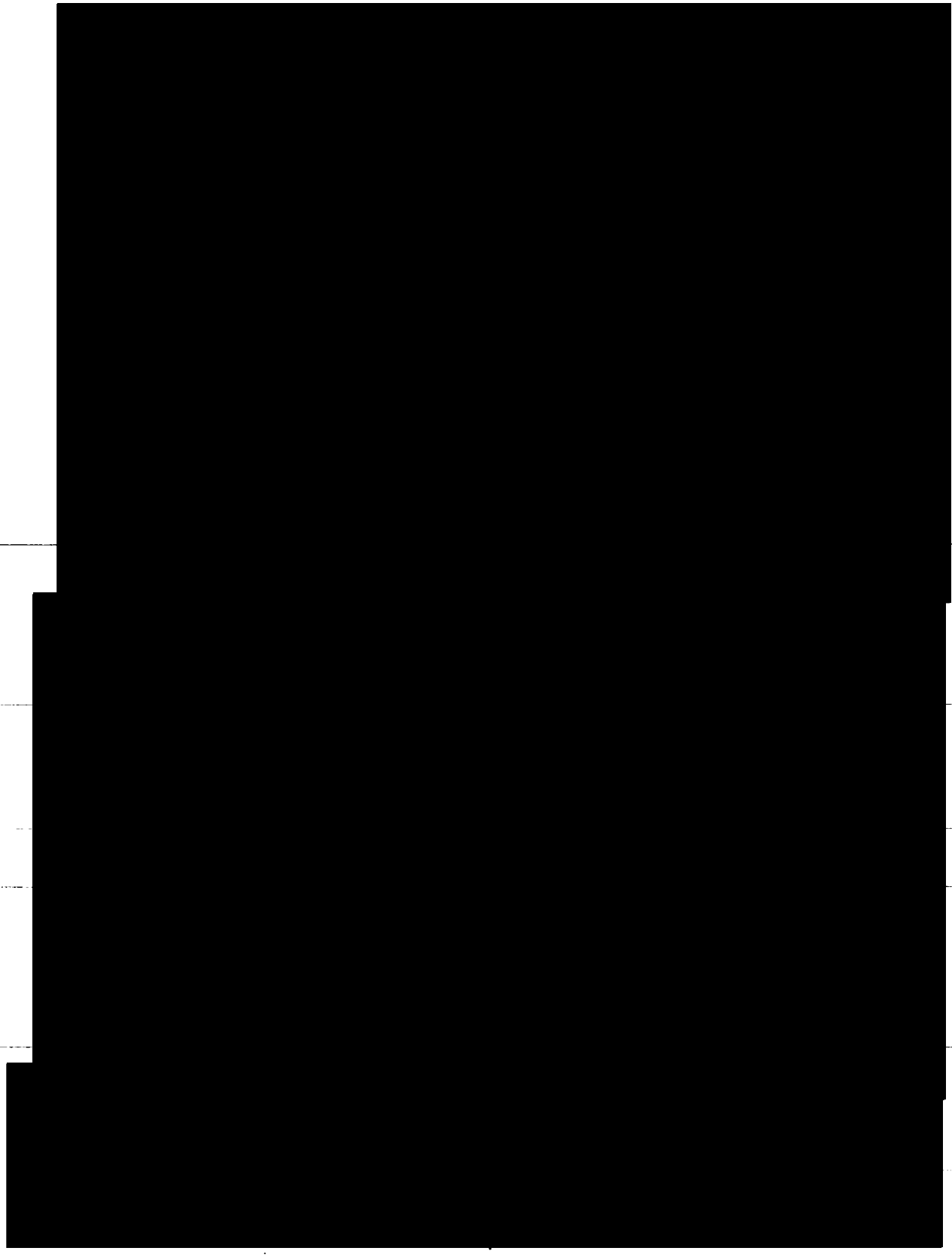
RD LEGAL FUNDING PARTNERS, LP

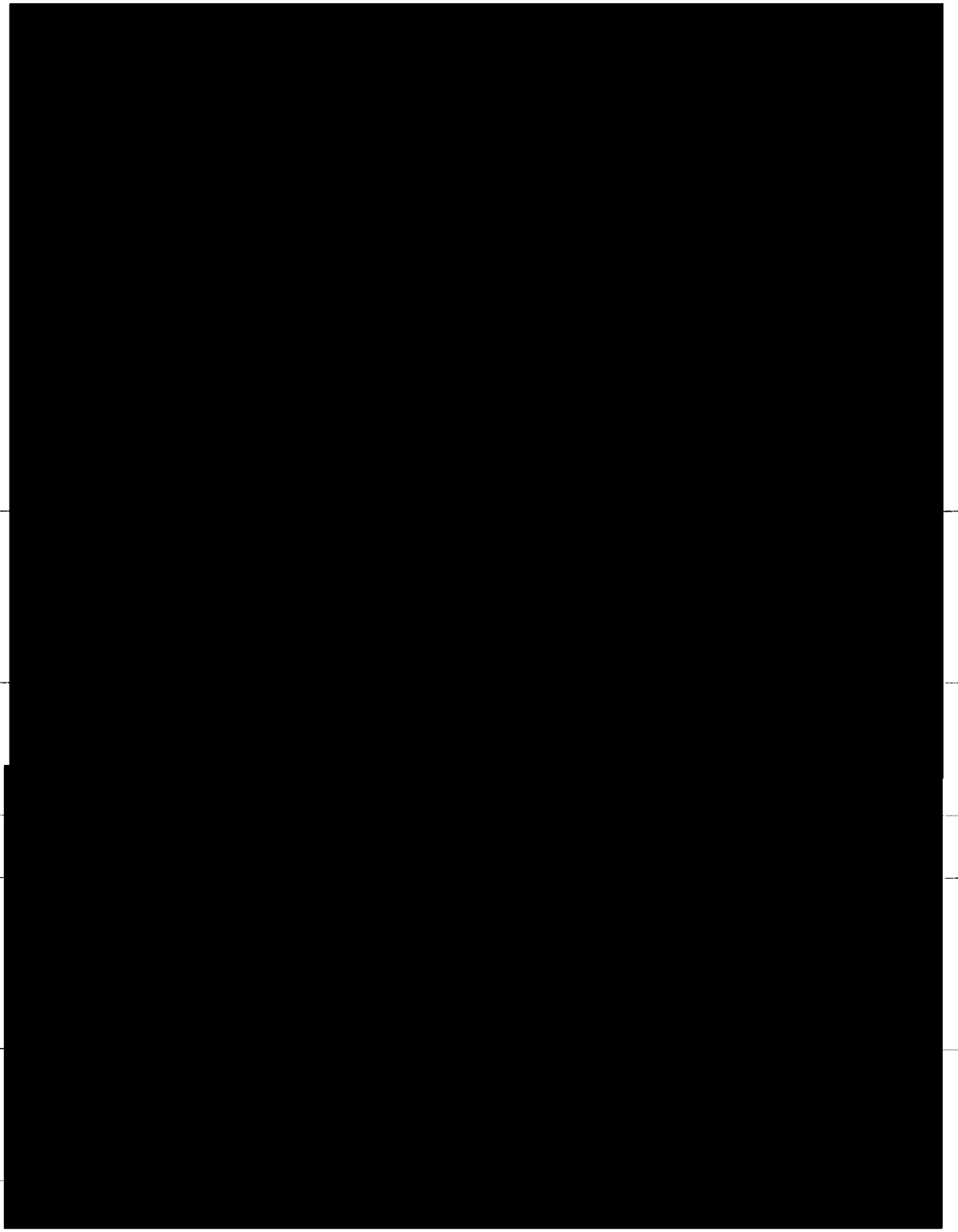
JUNE 2013

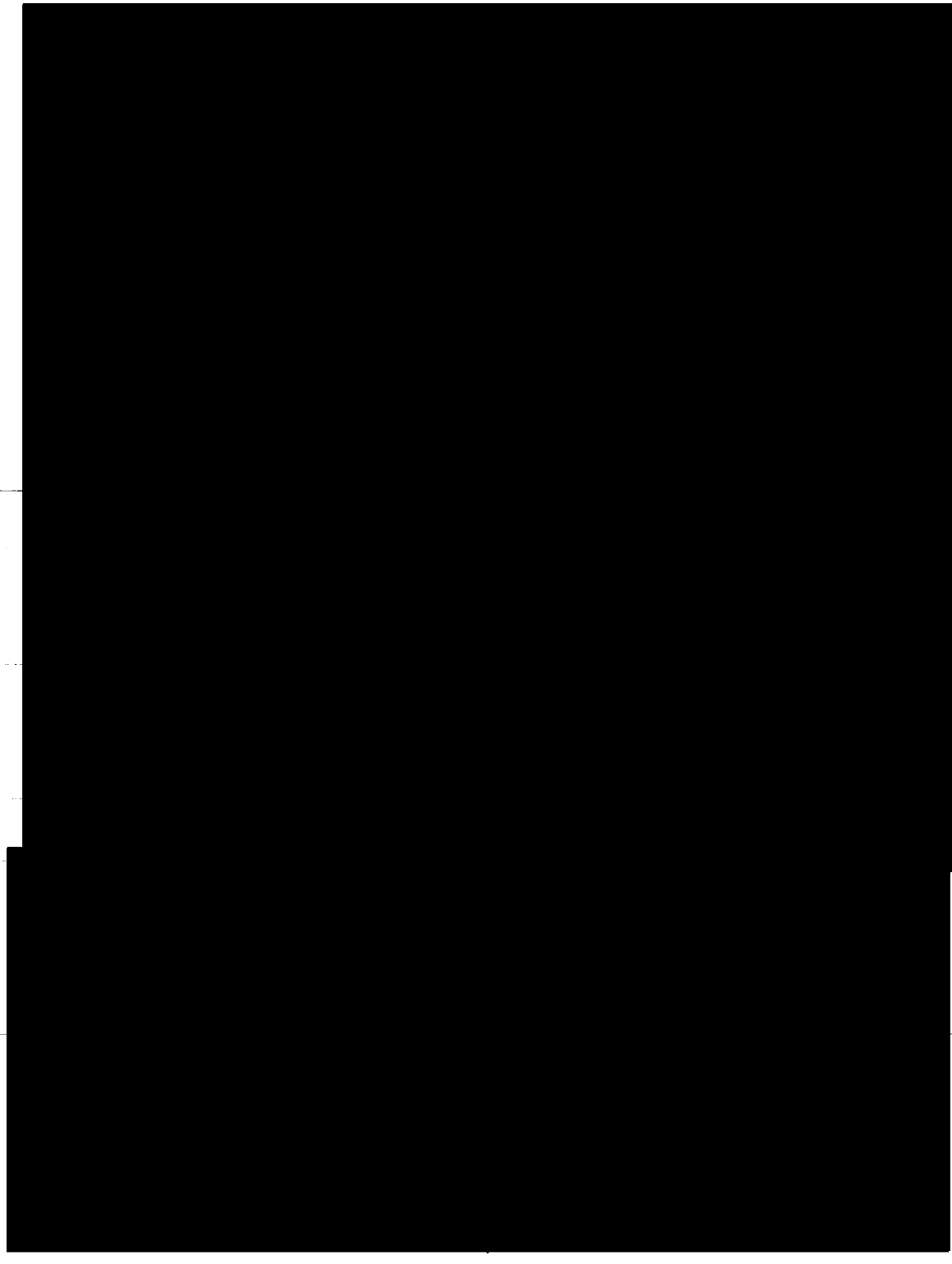
[redacted]

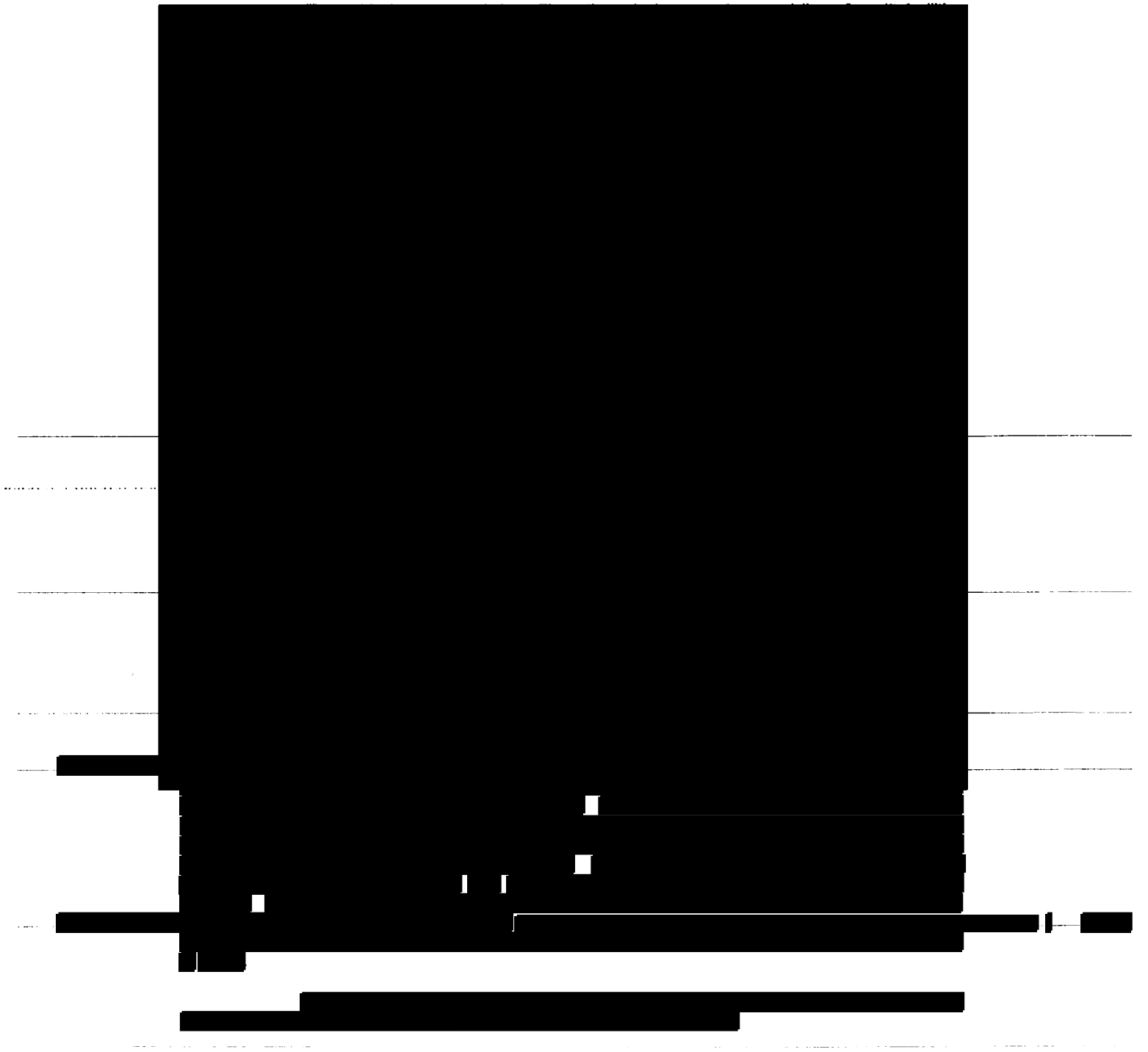


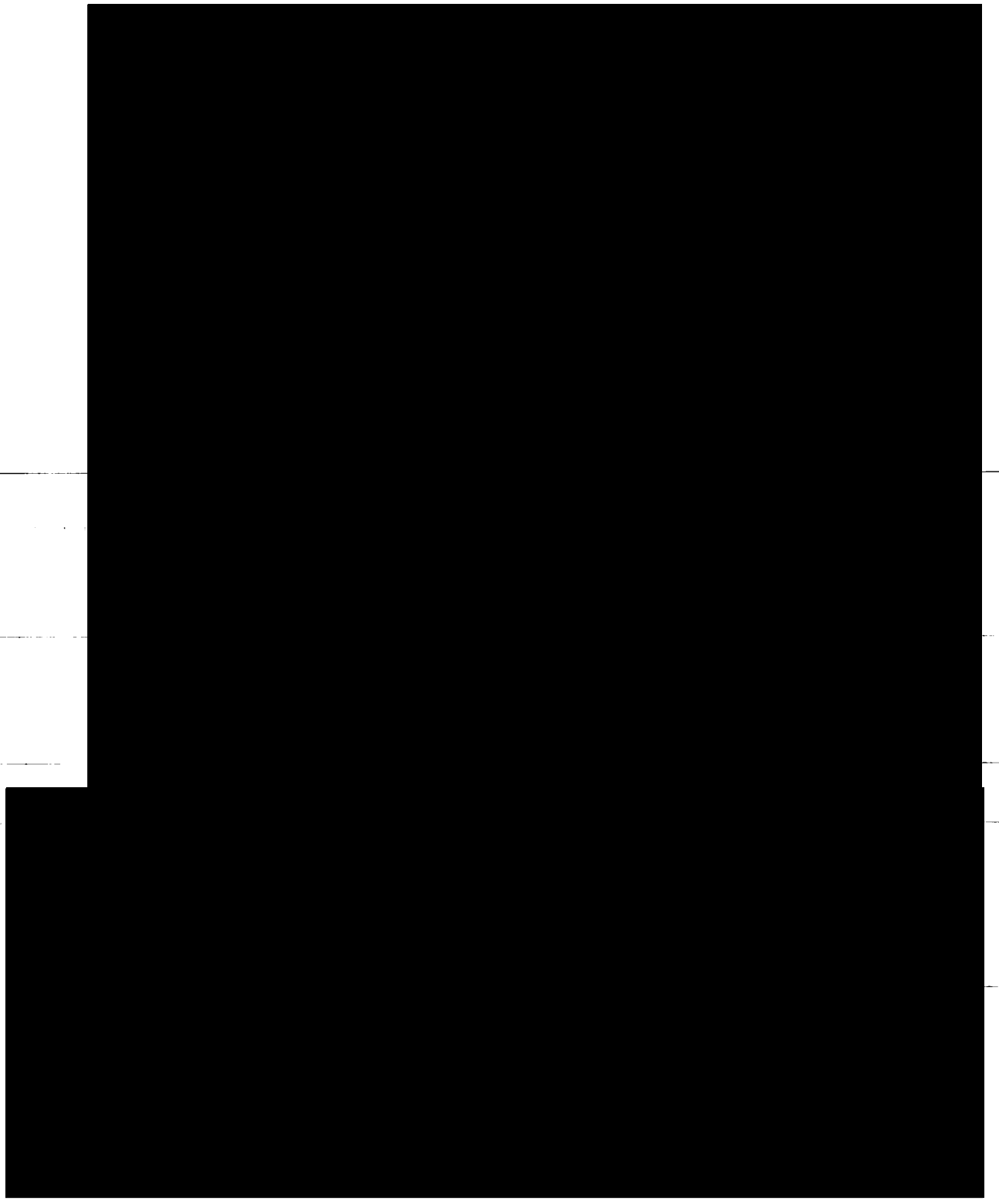


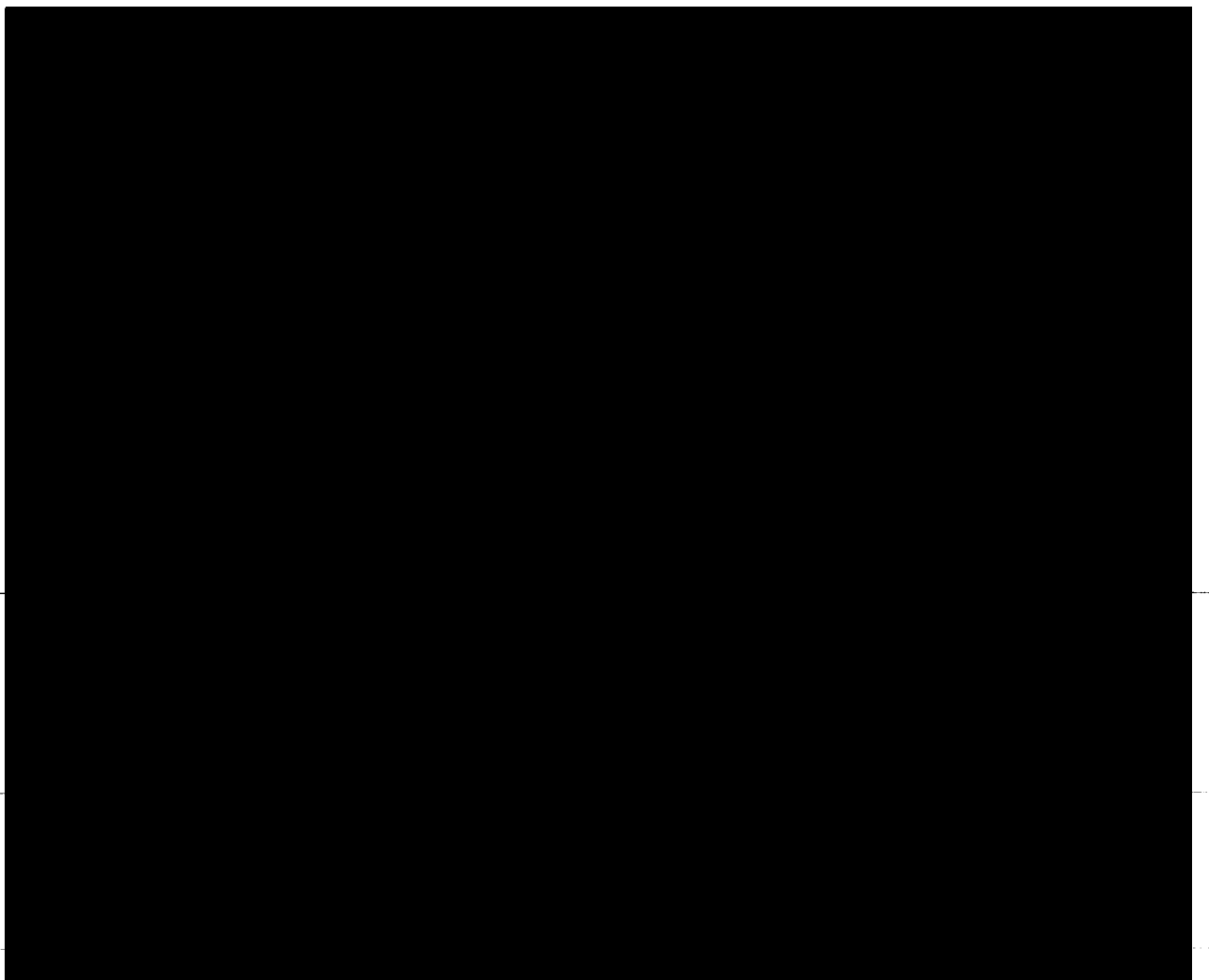


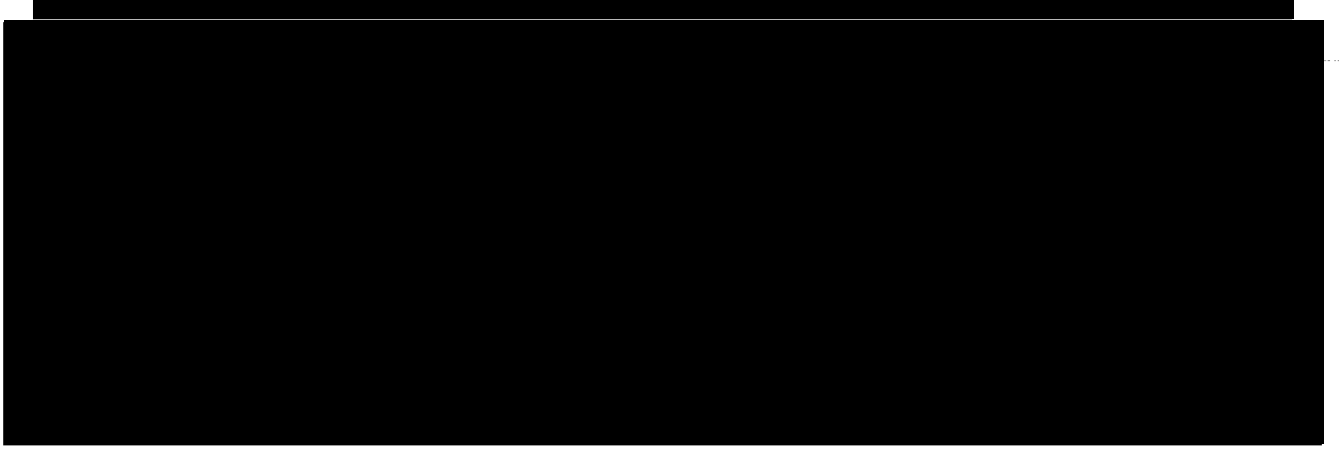


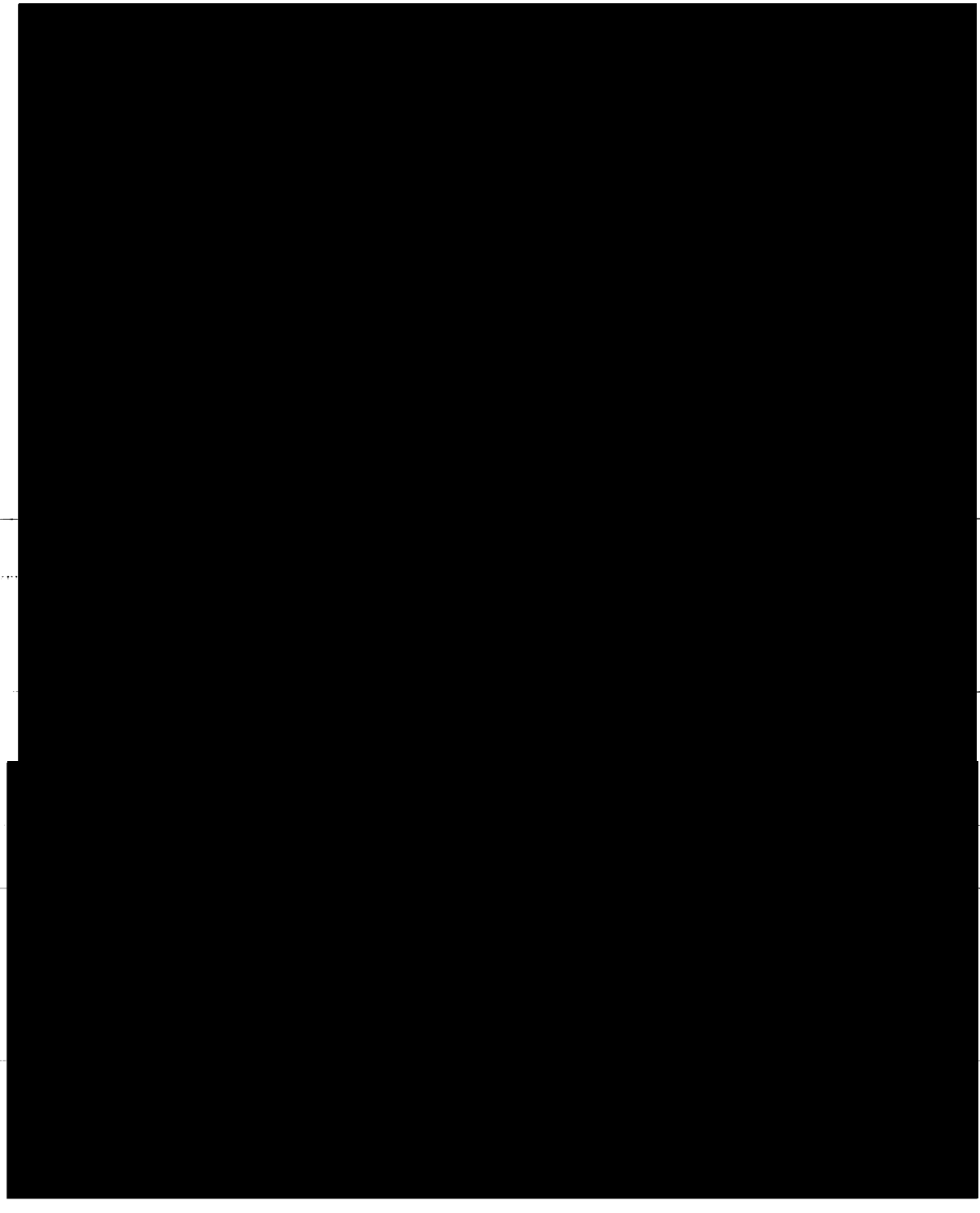


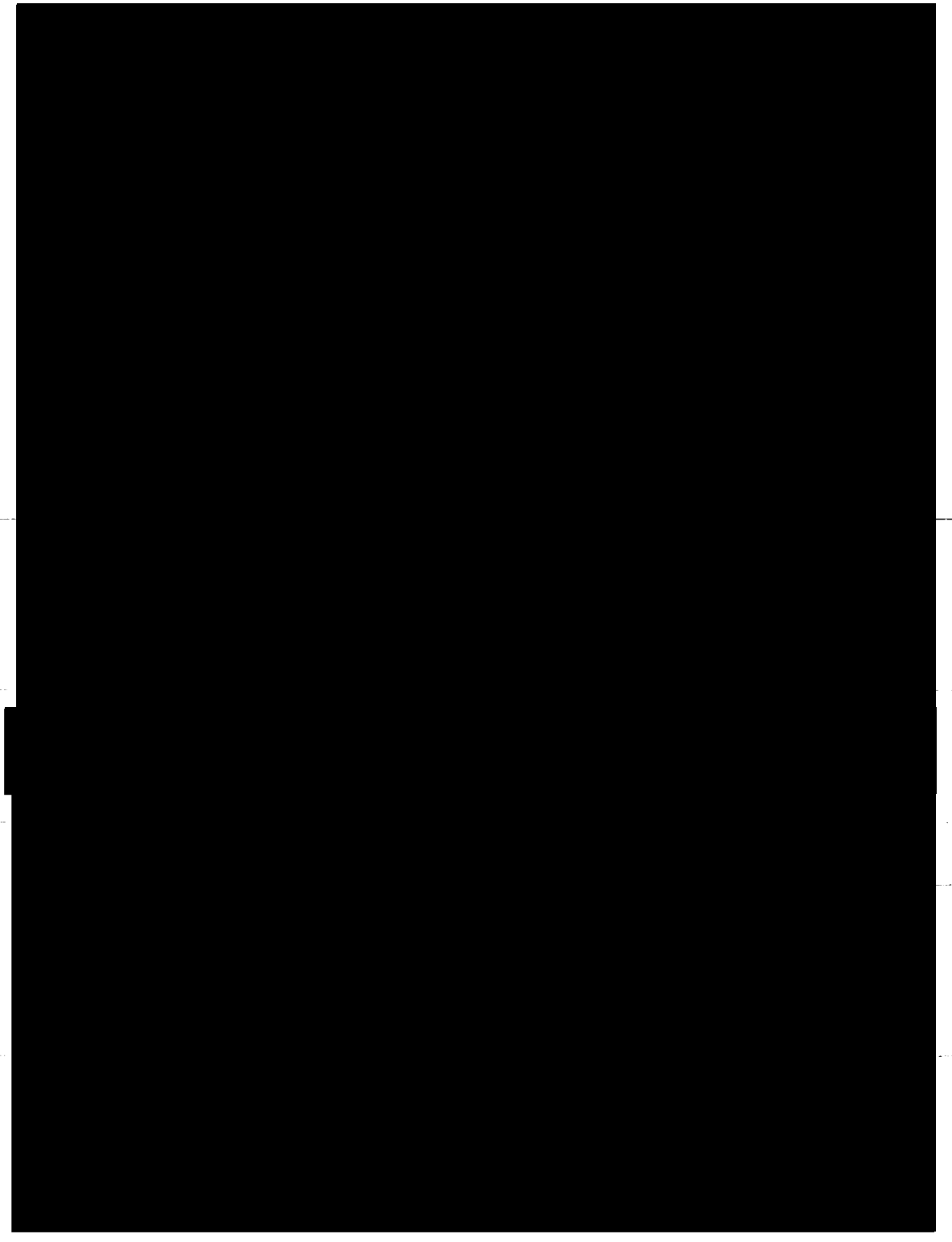


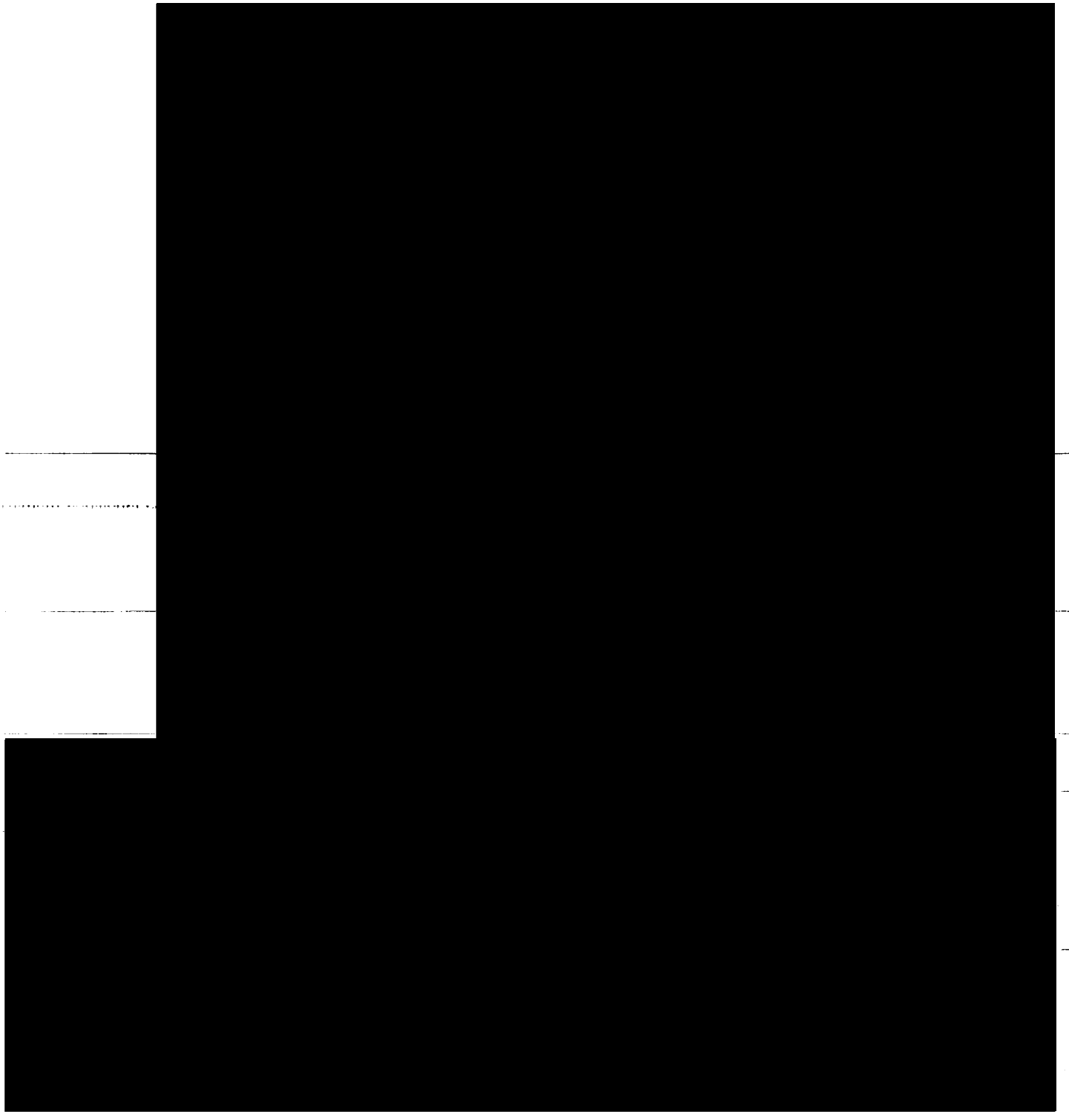


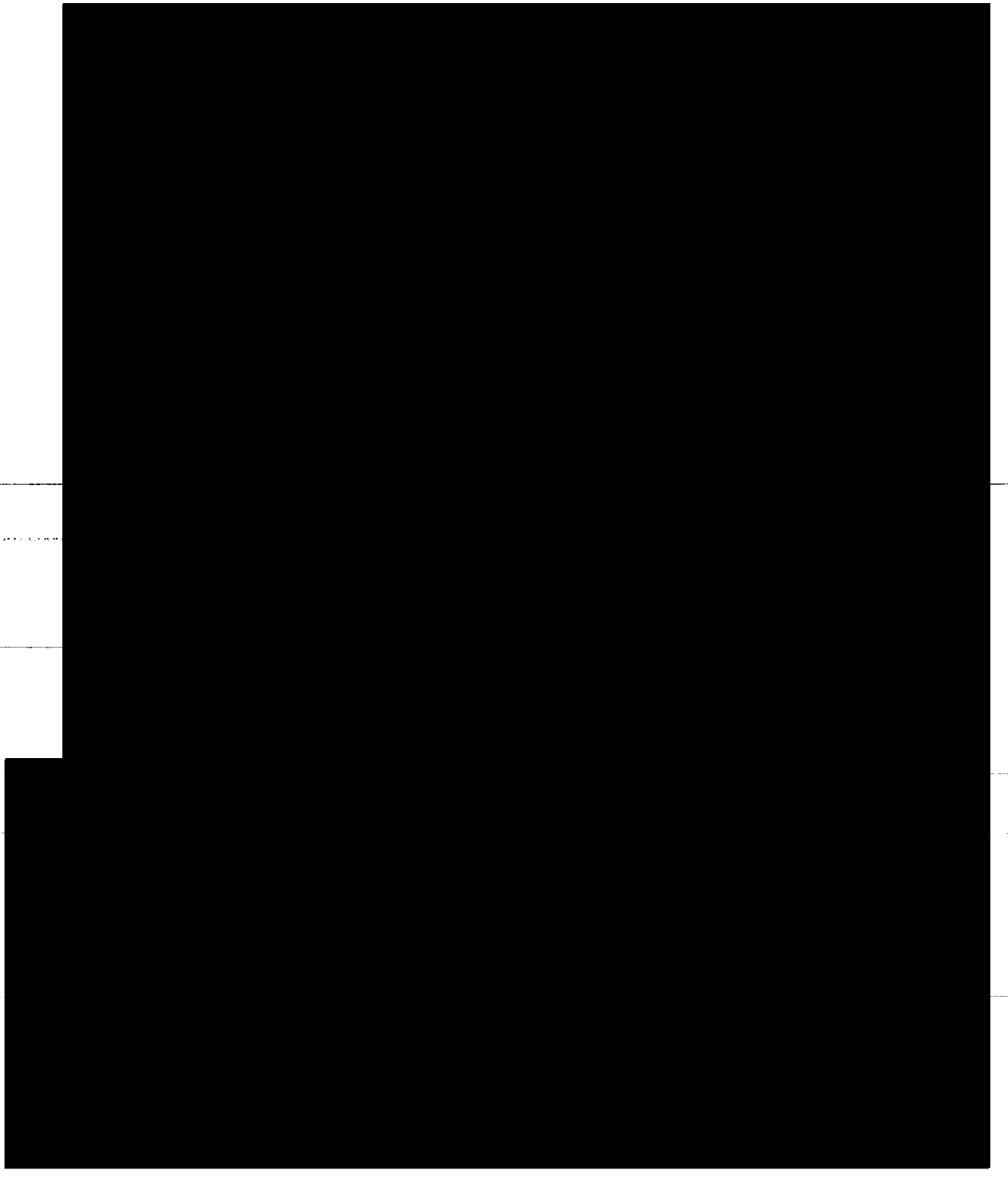


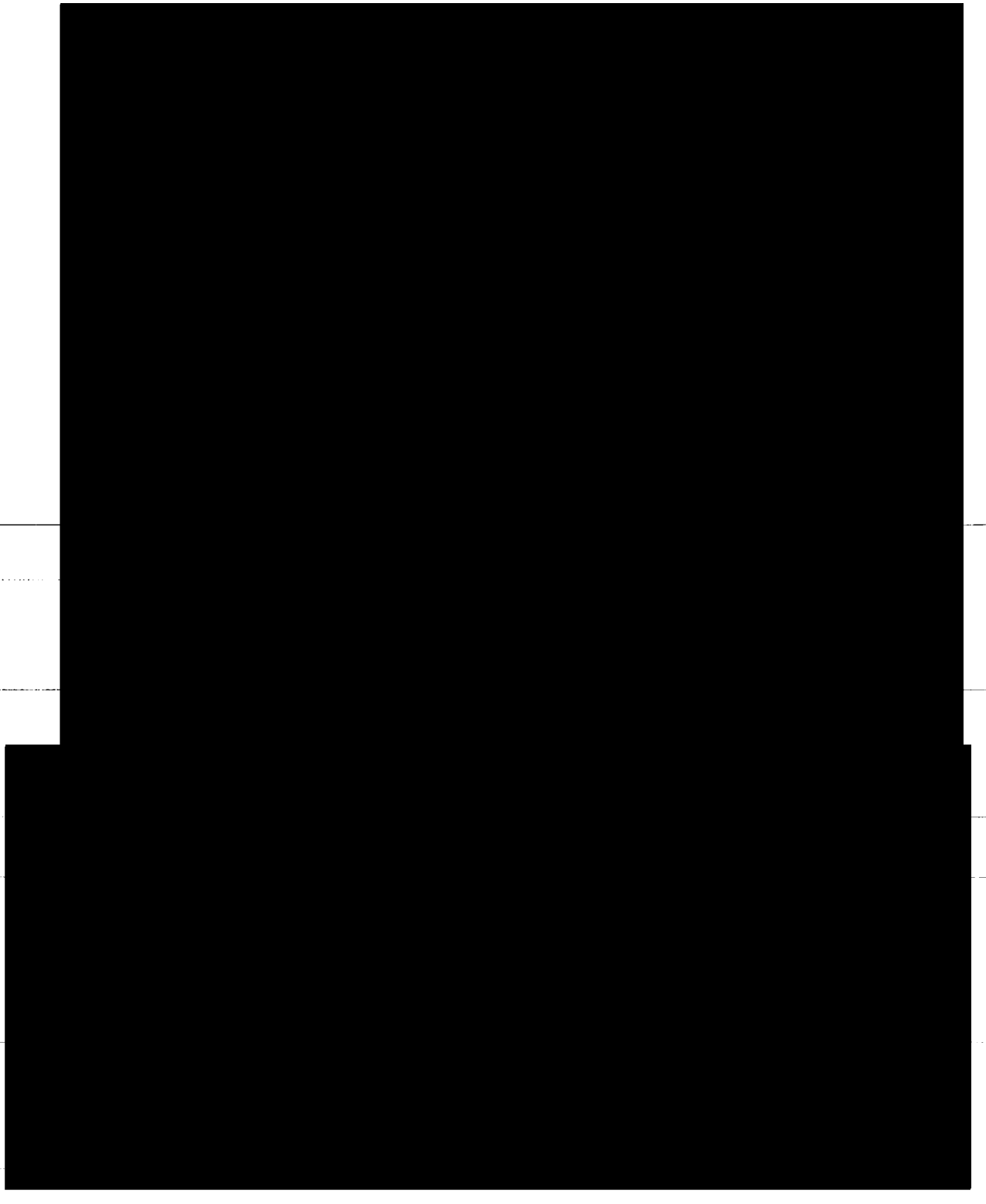










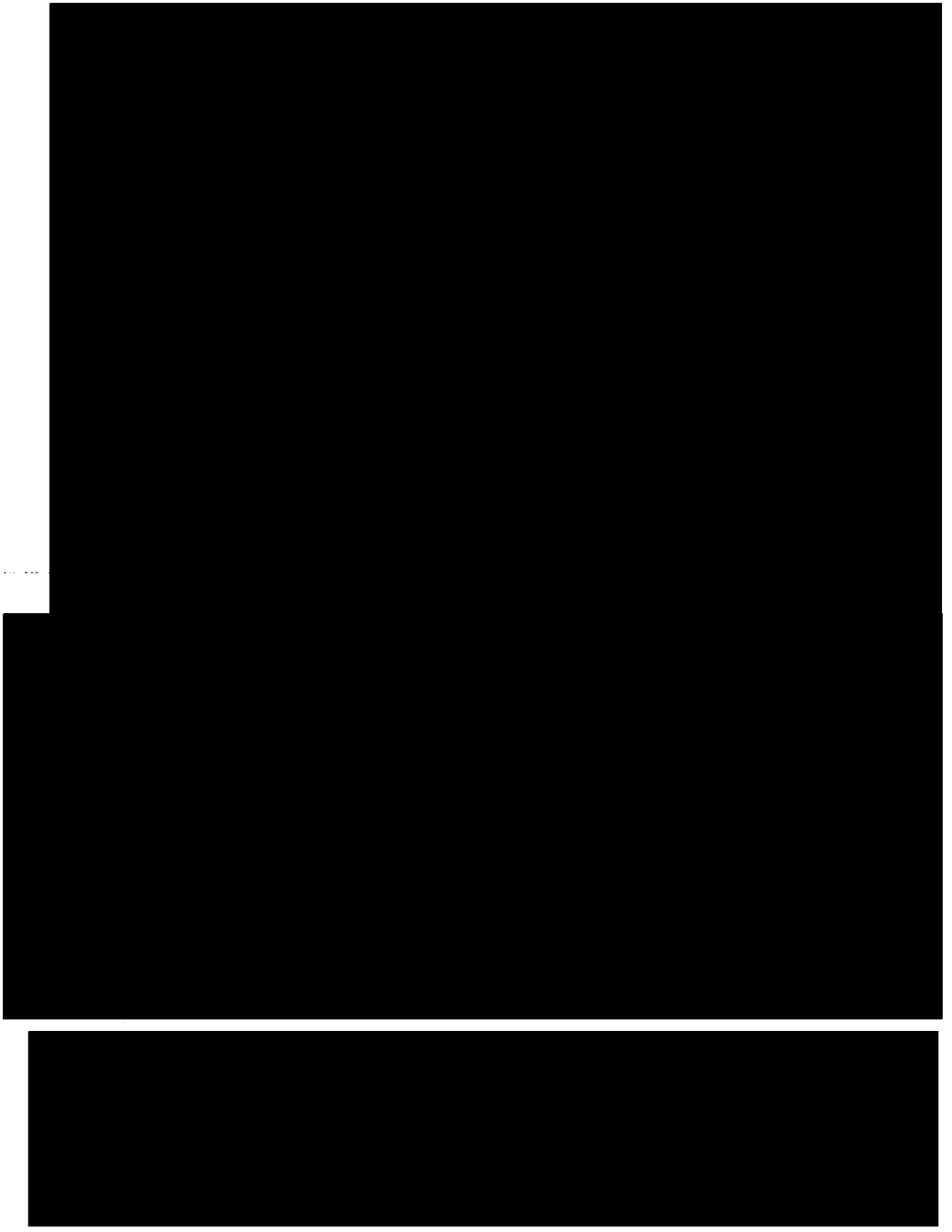


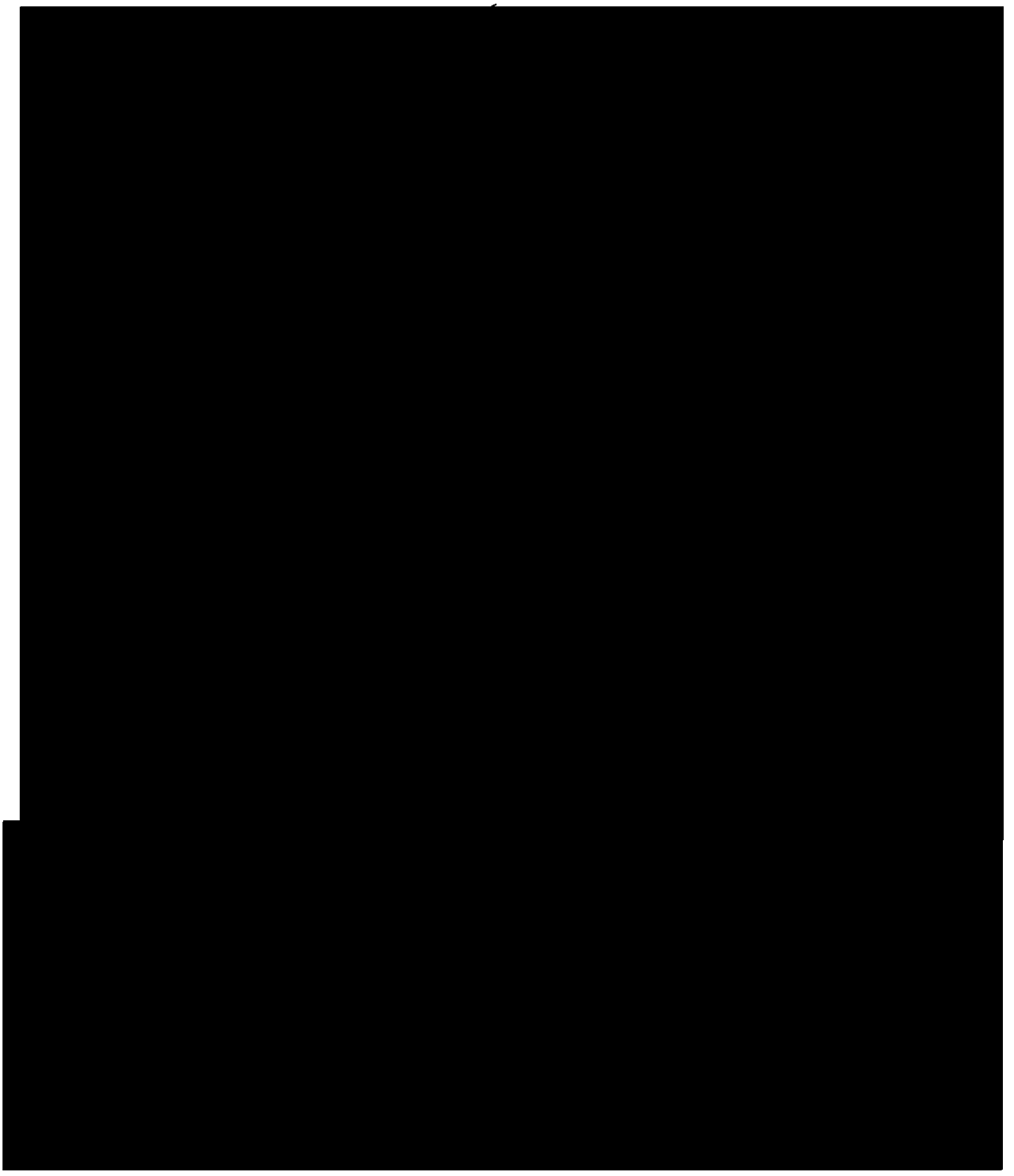
Div. Ex. #179

UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF RD LEGAL CAPITAL, LLC	:	No. NY-9278

CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED BY KATARINA MARKOVIC





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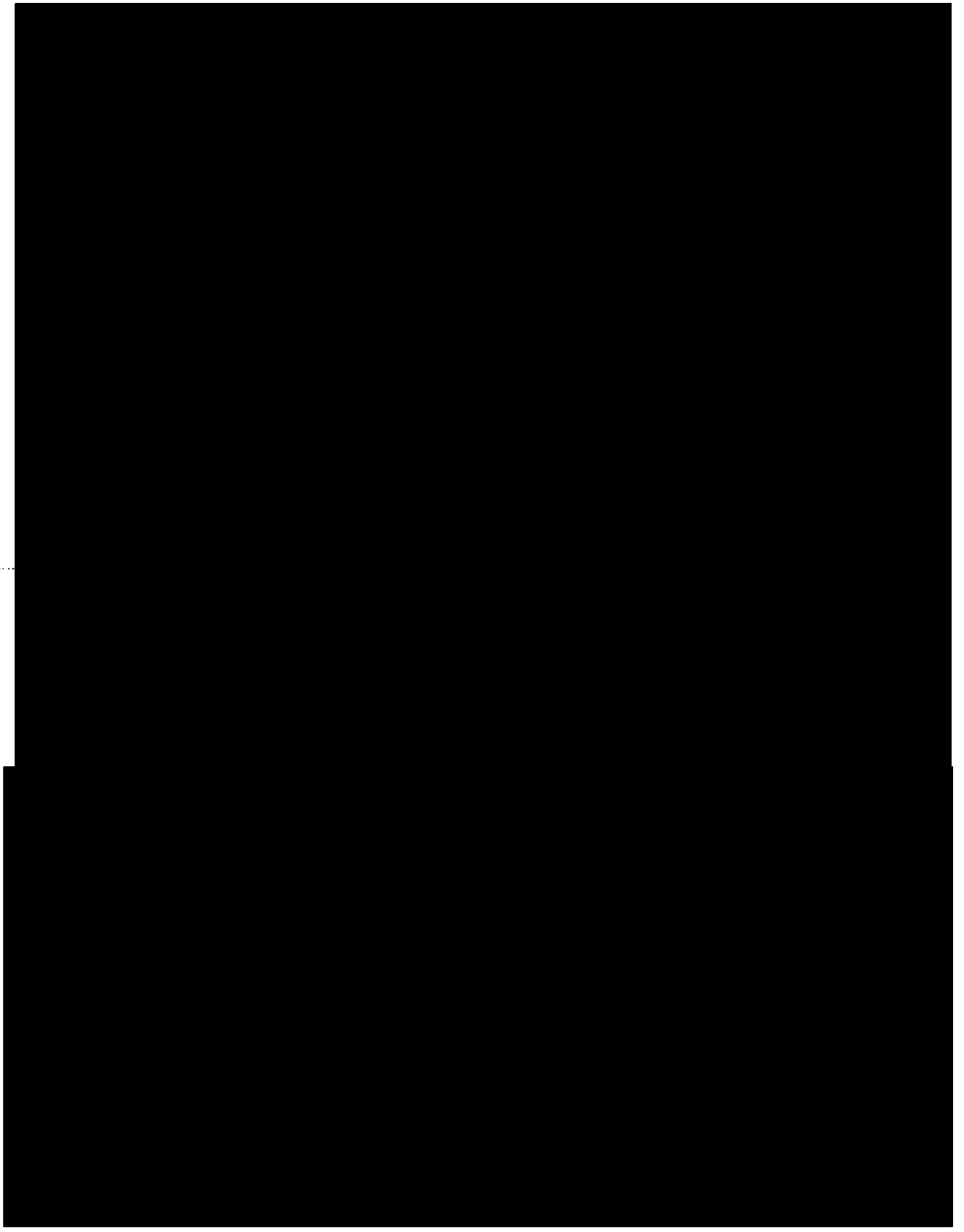

The offering documents also disclosed the existence of asset concentration risks, namely, that the assets "would be *exposed entirely* to the risks" associated with investing solely in lawsuit

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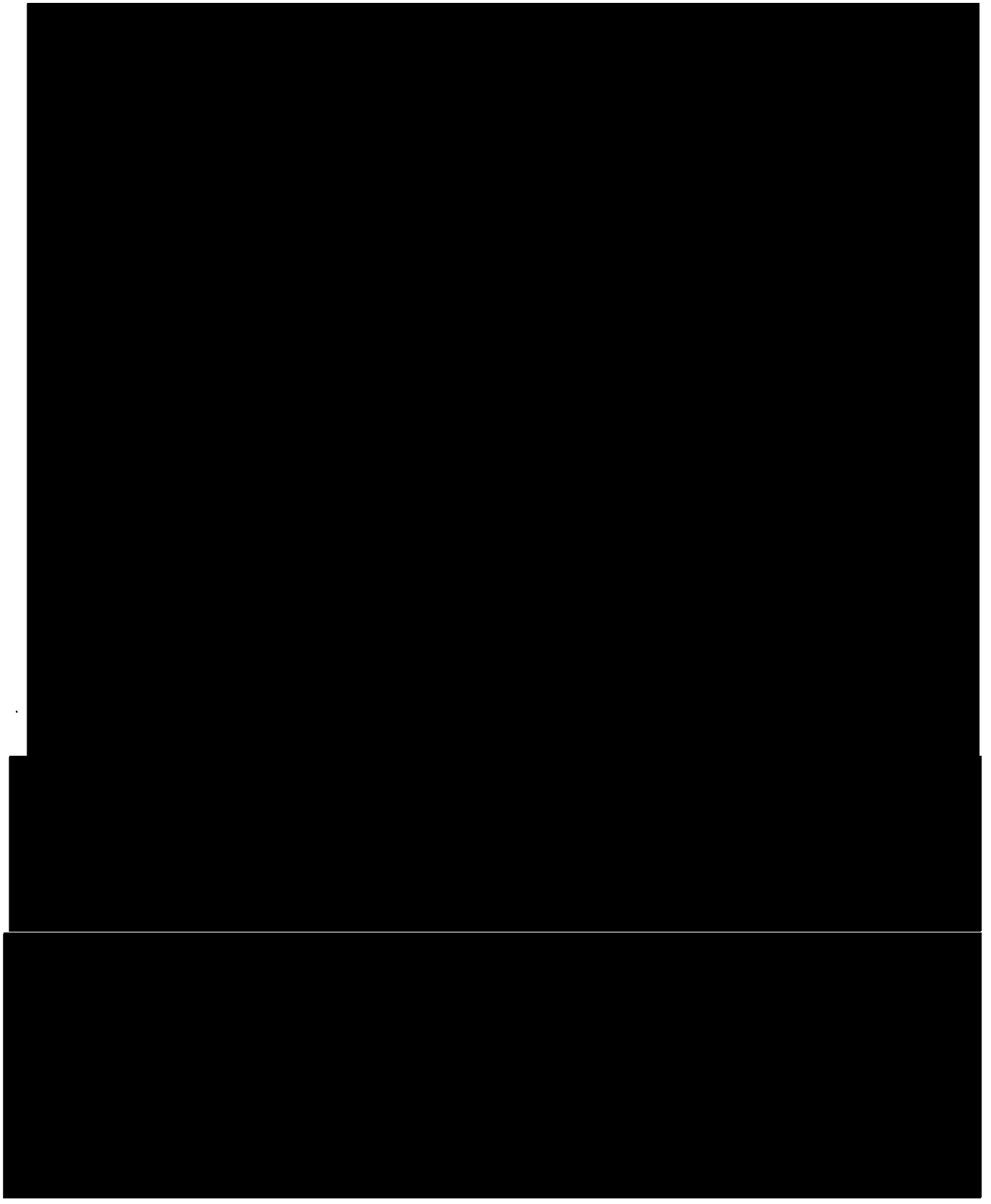
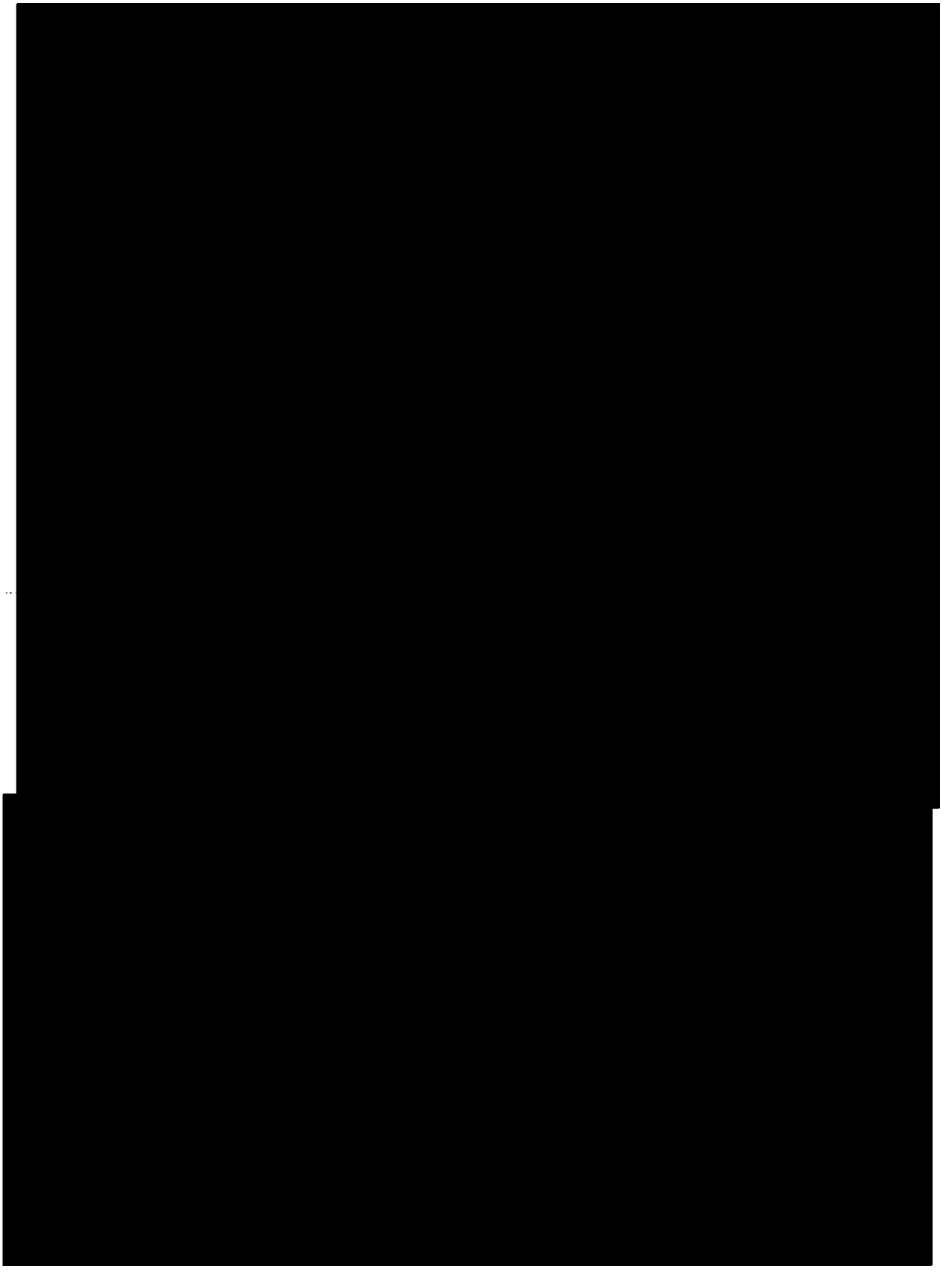
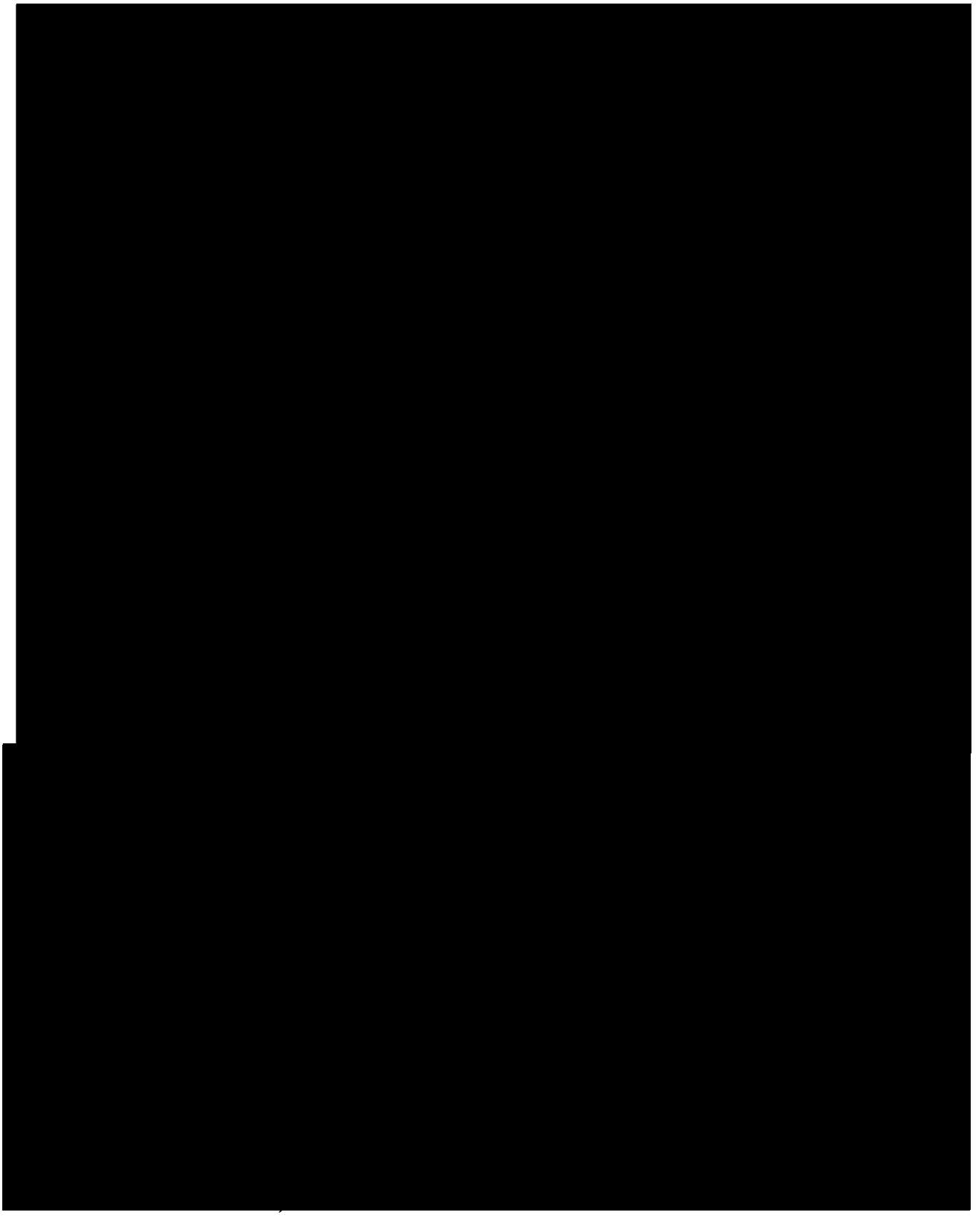
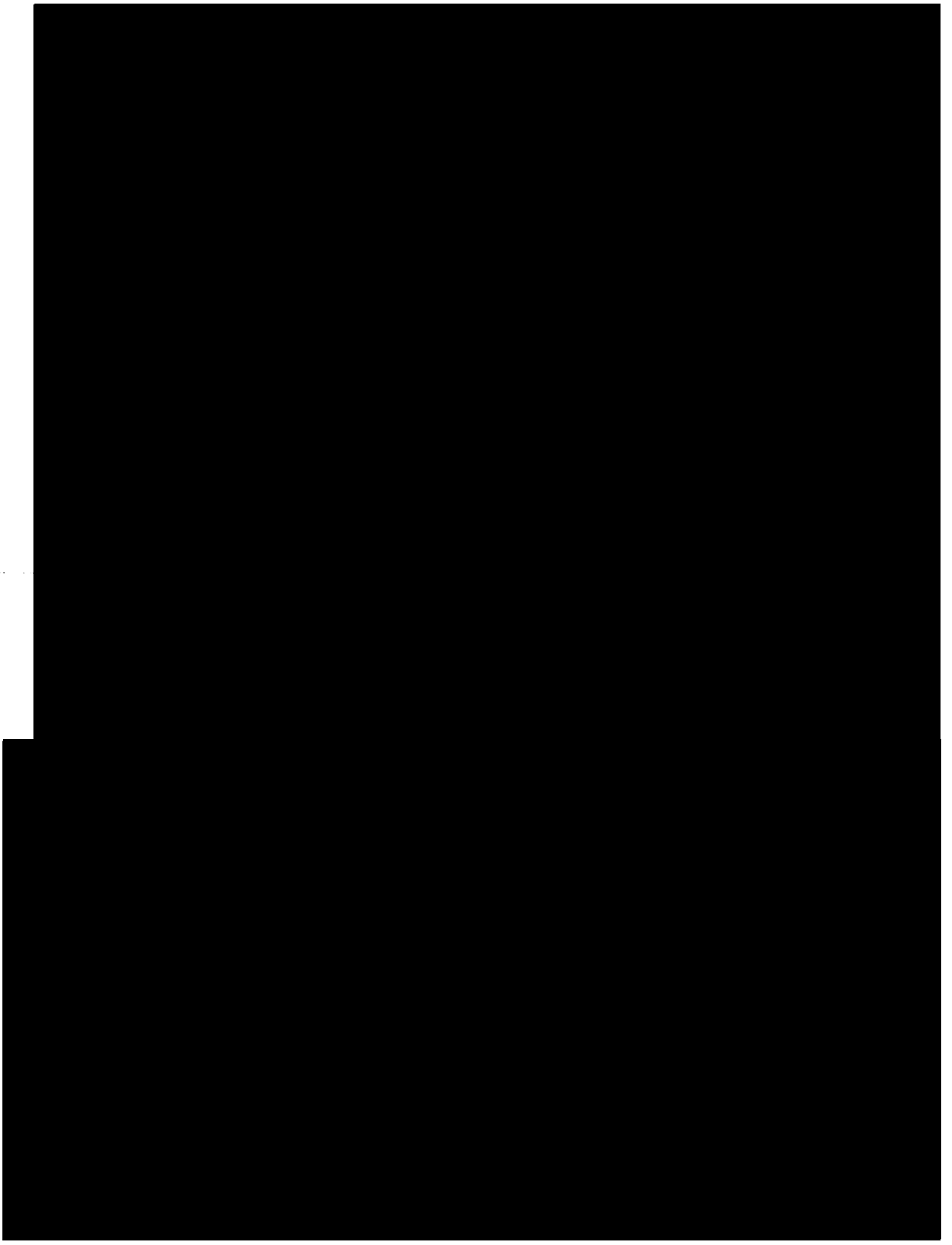
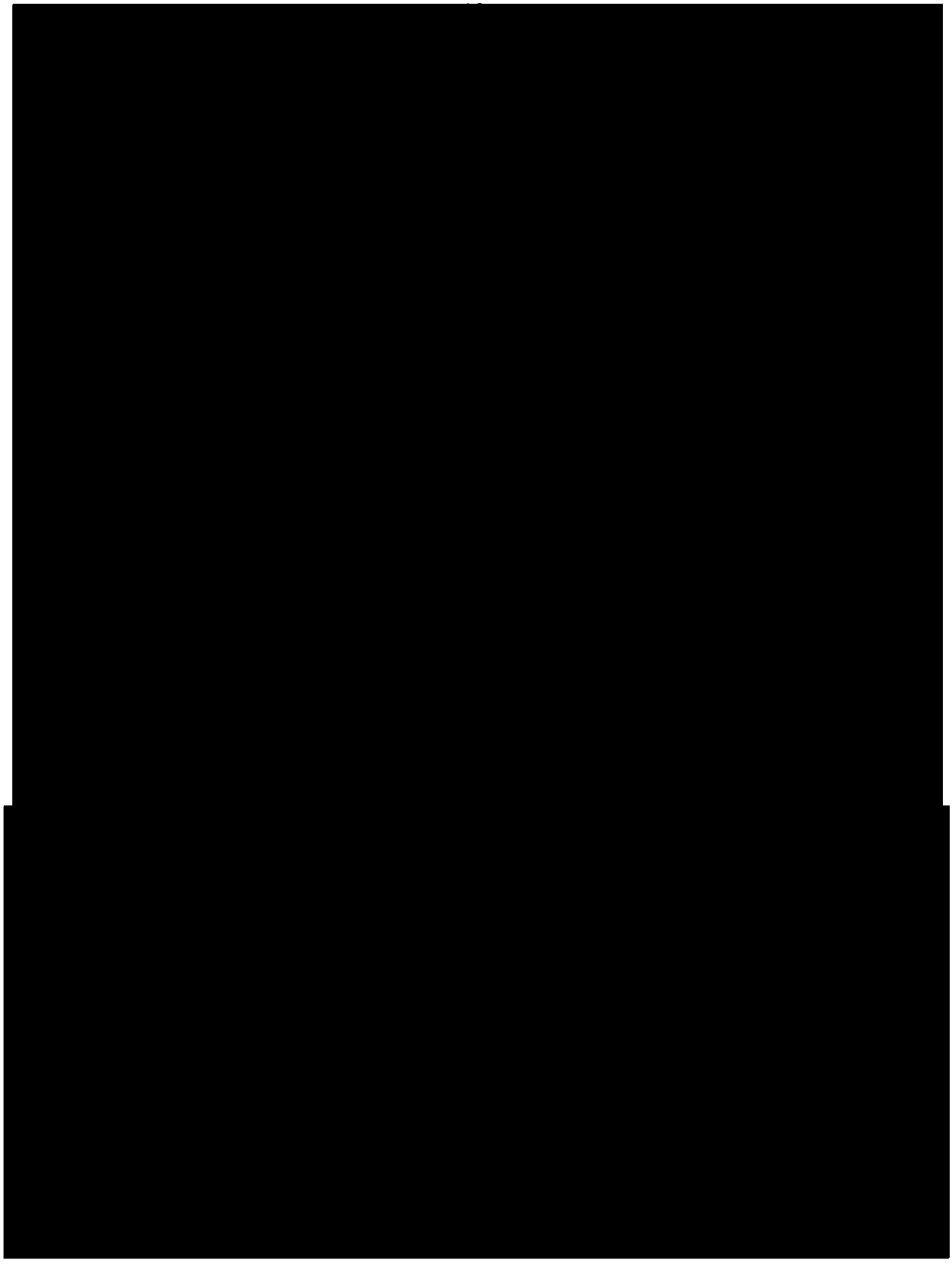




CONFIDENTIAL TREATMENT UNDER FOIA REQUESTED BY KATARINA MARKOVIC







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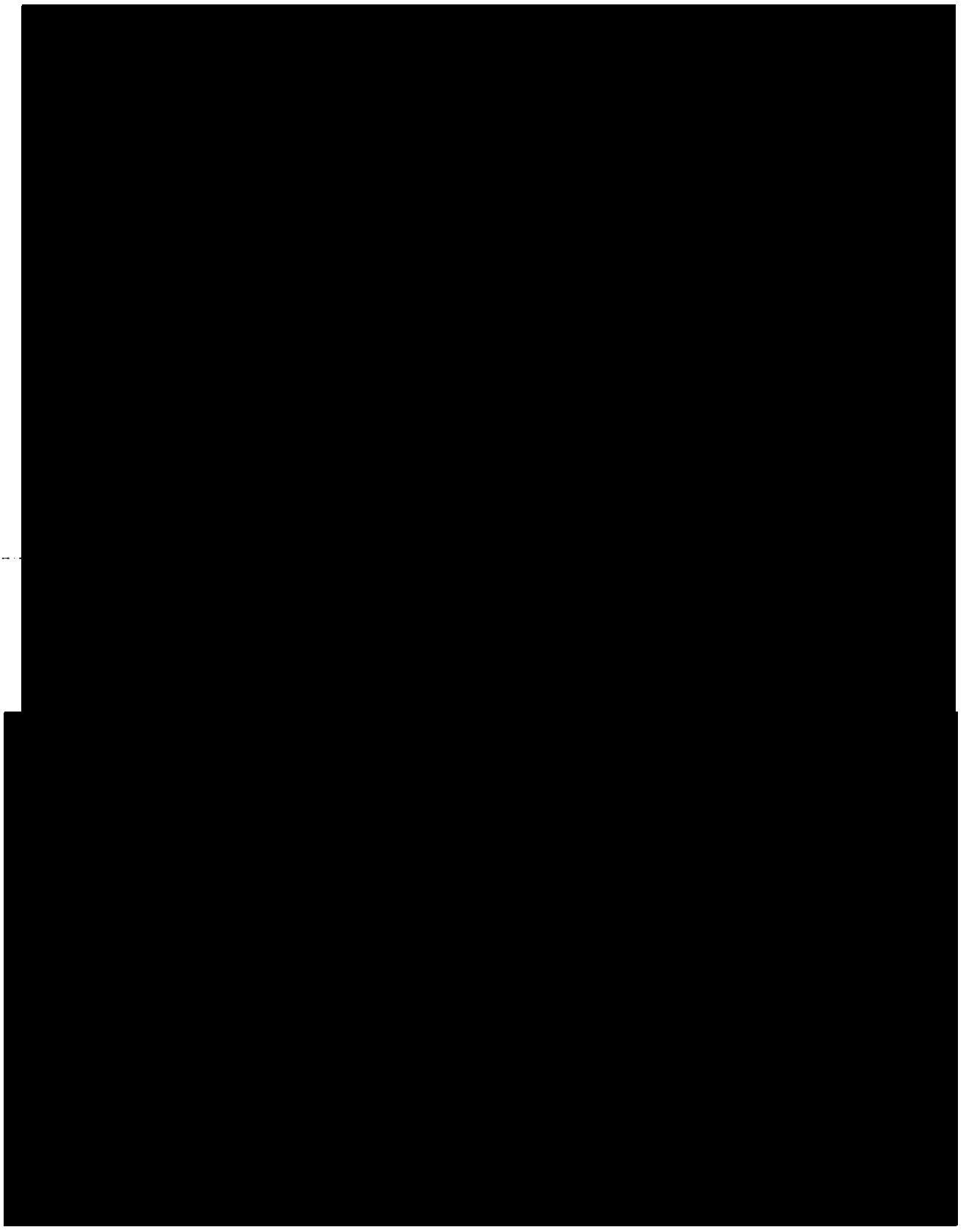

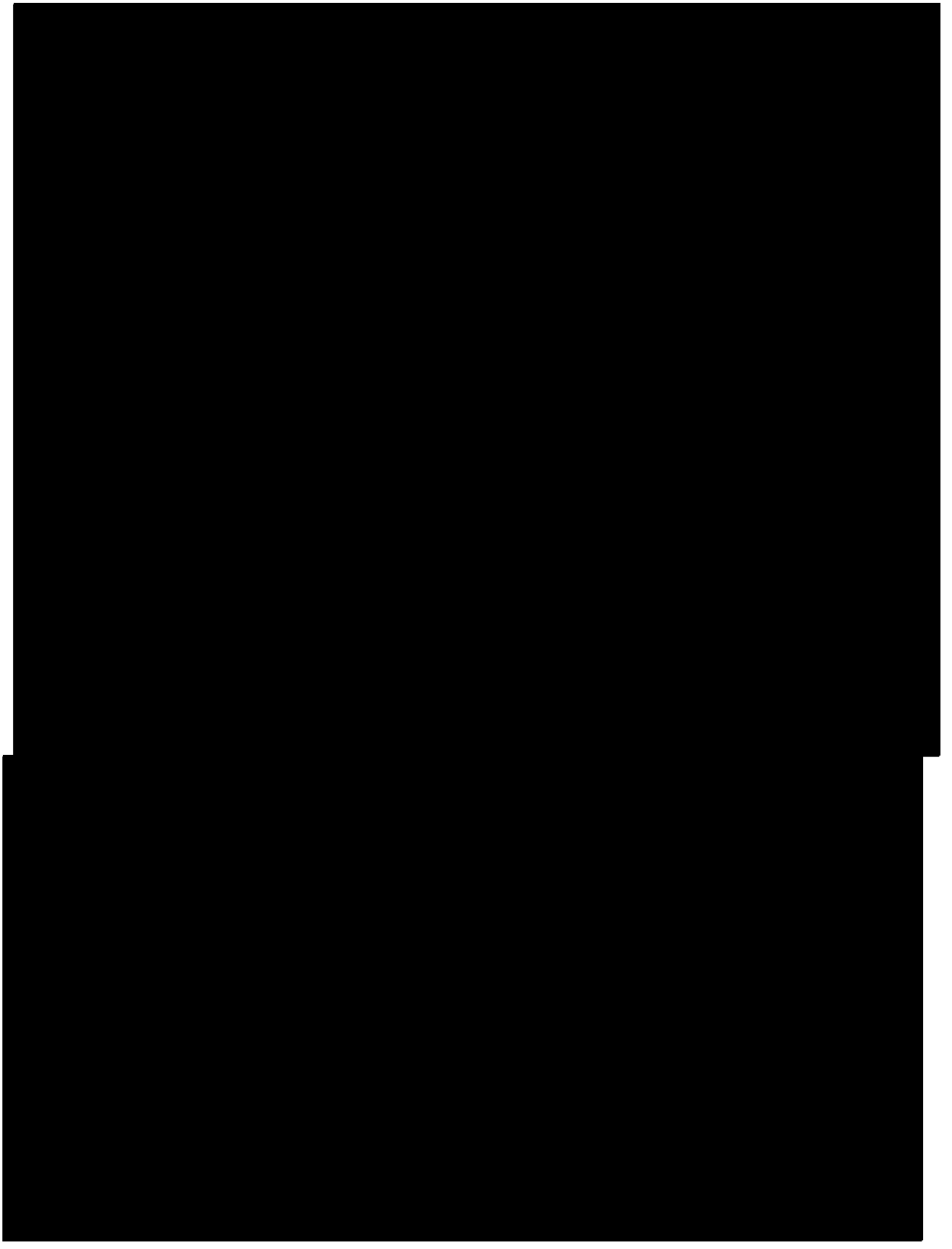

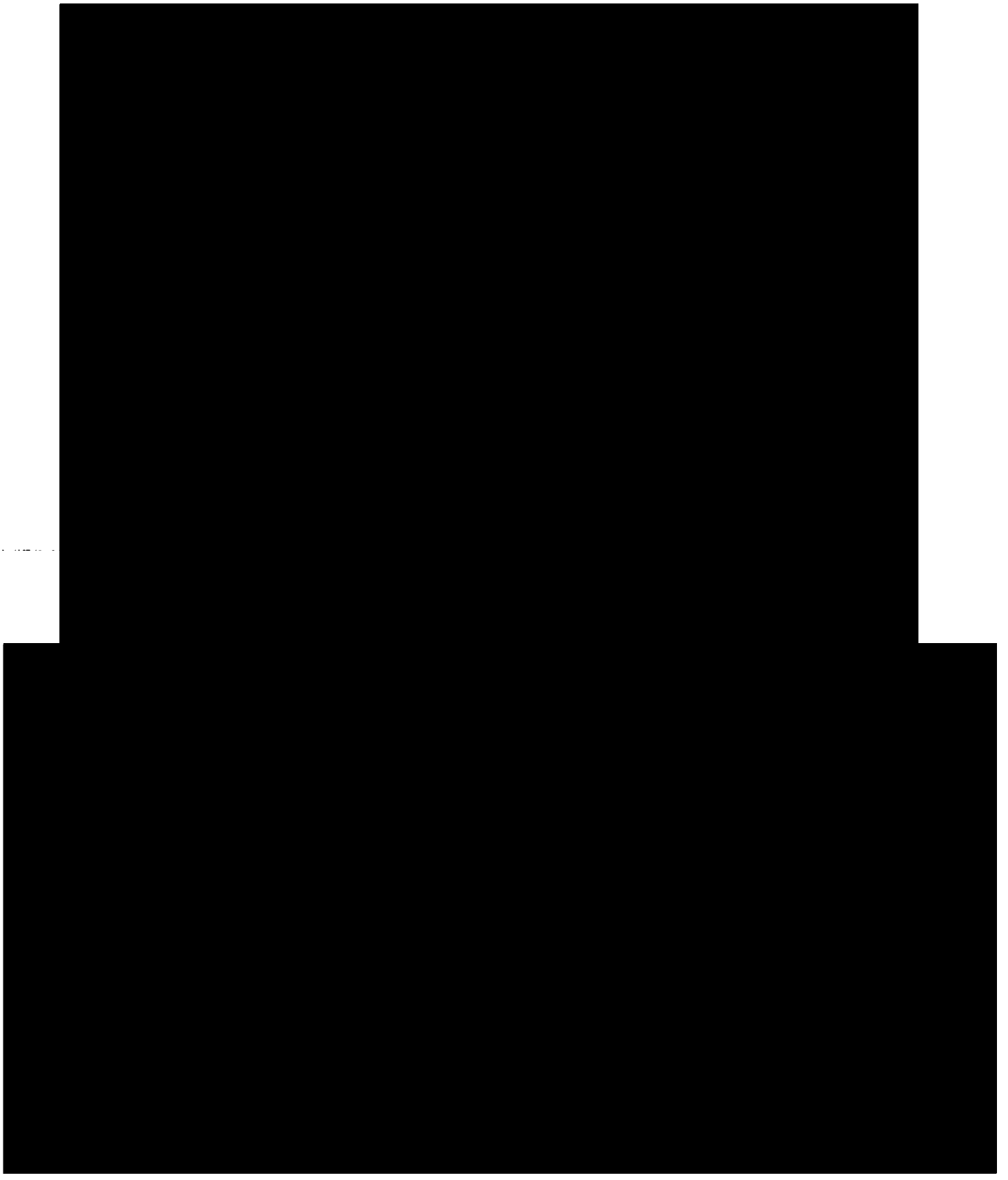

Div. Ex. #210

(Excerpts)

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. NY-09278-A
RD LEGAL CAPITAL, LLC)

WITNESS: Katarina Markovic
PAGES: 1 through 323
PLACE: Securities and Exchange Commission
200 Vesey Street, Suite 400
New York, New York 10281
DATE: Thursday, April 21, 2016

The above-entitled matter came on for hearing, pursuant to notice, at 9:53 a.m.

Diversified Reporting Services, Inc.
(202) 467-9200

APPEARANCES:

On behalf of the Securities and Exchange Commission:
JORGE G. TENREIRO, ESQ.
VICTOR SUTHAMMANONT, ESQ.
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Securities and Exchange Commission
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New York, New York 10281

On behalf of the Witness:
BRADLEY J. BONDI, ESQ.
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SARA E. ORTIZ, ESQ.
Cahill Gordon & Reindel LLP
80 Pine Street
New York, New York 10005

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PROCEEDINGS

THE VIDEOGRAPHER: This begins video number one of the formal investigative testimony of Katarina Markovic, taken at 9:53 a.m. on April 21, 2016, in the matter of RD Legal Capital LLC, File Number NY-9278.

MR. TENREIRO: Would you please raise your right hand?

MR. MARKOVIC: Yes.

Whereupon,

KATARINA MARKOVIC

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. TENREIRO:

Q Please state and spell your name for the record. You can lower your hand.

A (Witness complies.) K-A-T-A-R-I-N-A, last name Markovic, M-A-R-K-O-V-I-C.

Q Thank you. Are you represented by counsel, Ms. Markovic?

A Yes, I am.

MR. TENREIRO: Could counsel please identify themselves?

MR. BONDI: Yes. Brad Bondi, Kerry Burns, and Sara Ortiz; from Cahill, Gordon & Reindel; for the

witness, Ms. Markovic.

MR. TENREIRO: Thank you.

Q Ms. Markovic, my name is Jorge Tenreiro, this is Victor Suthammanont and Michael Birnbaum; we are officers of the Commission for purposes of this proceeding (indicating). I'm going to ask most of the questions today, but they might ask some questions at times as well.

As you know, this is an investigation by the United States Securities and Exchange Commission in the matter of RD Legal Capital LLC, NY-9278, to determine whether there have been violations of certain provisions of the federal securities laws; however, the facts developed in this investigation might constitute violations of other federal or state civil or criminal laws.

Ms. Markovic, prior to opening the record, you were provided with a formal order of investigation in the supplemental formal order. They will be available for you throughout this proceeding. Have you had an opportunity to take a look at these?

A I have.

Q Okay. Do you have any questions for us about them?

A No. Thank you very much.

Q And prior to the opening of the record, you were provided with a copy of Commission Supplemental Information Form 1662. A copy of that notice has been marked as -- previously marked as Exhibit 1. Have you had an opportunity at some point to -- to look at that?

A I have.

Q Any questions about that?

A No.

Q Okay. So as you can tell, everything that we're saying today is on the record, the re-- the court reporter and the videographer only go off the record at my request. If you need a break, you let -- let us know and when there's no question pending, we'll take a break. They're recording everything that you say and the court reporter needs you to have always verbal answers to my questions, and it's also important that we let each other finish questions and answers. If you don't understand a question, let me know, I'll attempt to rephrase it.

So those are kind of the rules of the road. Is that clear?

A Yes, thank you.

Q Okay. Do you have any medical or other condition that might impair your ability to give truthful testimony today?

A No.

Q Is there any reason that you cannot give truthful testimony today?

A No.

Q Okay.

MR. TENREIRO: I'm going to ask the court reporter to mark a document as Exhibit 105.

(SEC Exhibit No. 105 was marked for identification.)

Q Okay, Ms. Markovic, I'm handing you what I asked the court reporter to mark as Exhibit 105, take a moment to look at it (handing).

A (Witness complies.)

Q Have you seen -- Ms. Markovic, have you seen portions of this document before?

A I have.

Q Okay. And is this a subpoena -- a copy of the subpoena pursuant to which you are appearing today?

A Yes.

Q Okay. You understand that the subpoena required you to produce documents as well --

A Yes.

Q -- in response? Can you please describe the steps that you took to comply with the document request --

MR. BONDI: Object --

Q Okay. What did -- what did -- what did he offer you precisely, just a -- was -- it was just the investment management role?
A Yes, correct.
Q Do you have any -- do you receive any bonuses?
A Bone of contention. I was supposed to, but I've never received one.
Q Okay. What do you mean, bone of contention?
A Well, it was in my offer letter that I would -- I would have a discretionary bonus, as per usual in this industry in my role.
Q What would the bonus be based on as far as you understood it?
A It was never defined, it was discretionary, so I don't know.
Q Which entity did you, you know, start working for?
A RD Legal Capital.
Q Okay. You understand that there are several entities with the name RD Legal?
A Yes, yes, I do.
Q Okay. Was there any particular reason why you were hired by that entity as opposed to any others that you may know of?
A RD Legal Capital is the investment manager of

the funds.
Q Okay.
A Yes.
Q What does that mean?
A I'm sorry, I don't understand.
Q Yeah, what does it -- what does it mean that RD Legal Capital is the investment manager of the funds?
A Oh, okay. So RD Legal Capital, and the employees that work for it are the investment professionals that -- that have functions that concern the -- the funds, the -- at the time, the two flagship funds, domestic and offshore.
MR. TENREIRO: Okay, so let's --
I'm going to ask the court reporter to mark Exhibit 106.
(SEC Exhibit No. 106 was marked for identification.)
MR. TENREIRO: Oh, I'm sorry --
THE WITNESS: Are you taking this back (indicating)?
MR. TENREIRO: Yes. You should maybe stack them --
THE WITNESS: Okay.
MR. TENREIRO: -- because we may look at them a bit later.

THE WITNESS: Sure.
MR. TENREIRO: Probably not that one, but --
THE WITNESS: Sure.
Q Have you had a chance to look at that document, ma'am?
A Yes.
Q Okay. Have you seen it before?
A I vaguely recall it, yes.
Q Is that your signature on the second page?
A Yes, it is.
Q Okay. Is this -- what is this document?
A It's -- it looks to me like a confidentiality agreement.
Q Okay. And is it your handwriting that wrote "Capital" on the front page?
A That looks like my handwriting.
Q Okay. Is there any -- is there any reason why you might have been employed by RD Legal Funding?
A My understanding was, prior to when I joined, that all of it was RD Legal Funding, and I'm not sure when or why it was separated out and I do think it has something to do with when he registered with the SEC, the first go-round and I think they registered the investment manager, which is Capital, and I think these are form documents that they had had for new employees and I

noticed that it was -- that I wasn't working for Funding, but -- oh, sorry -- but for Capital.
Q Understood. Did you communicate with any prospective or existing investors in the RD Legal funds before September of 2012?
A Not that I remember.
Q Okay. And if I refer to the flagship funds, do you -- do you know what I'm talking about?
A Yes, yes.
Q Is that the RD Legal Funding partners and RD Legal Funding offshore partners?
A Yes.
Q Sorry, Funding offshore --
A Fund.
Q -- fund. Yeah, okay. Can you please explain in your words the business of RD Legal Capital?
A Certainly. RD Legal Capital is the investment manager of the flagship funds, its business is to, more or less, provide capital to U.S.-based contingency fee attorneys and plaintiffs and, as I said earlier, it creates -- it's able to create these receivables and purchases those assets into the fund, providing investors with a preferred target return. Do you want me -- how much --
Q That's fine.

A Okay.
Q Let's take it -- let's take it step by step.
A Sure.
Q In September 2012 when you began your employment with RD Legal Capital, was that your understanding of what the business was at that time?
A Yes.
MR. BONDI: Object to form.
Q Did the -- did RD Capital originate receivables from plaintiffs at that time?
A You know, I'm not sure, I'm not sure if I remember that -- the time frame.
Q When you -- I think you mentioned a minute ago that part of your role was marketing and investor relations. Can you go into a little more detail, please, as to what that entailed?
A My role, specifically in my group, is we provide a very high-level introduction to the strategy in the firm, so when we meet with investors, it's generally an abbreviated meeting. A lot of the conferences that I attend are set up such that they provide you with a limited fifteen minutes or half hour to -- to give your -- your quick pitch and in hopes that there's enough interest gamered that you can come back to the office then and -- and have a more deep discussion with the

manager.
Q How did you -- so if, say, you were at a conference and you had a fifteen- or a thirty-minute pitch, how did you come up with what you were going to say at these pitches?
MR. BONDI: Object to the form.
Timing?
Q If you understand my question.
A If we're talking about early September, one of the ways that I learn best is by watching and listening, so my, suggestion was to Amy Hirsch and Roni Dersovitz that I sit in a number of client meetings to hear their pitch and then I could gather that. In addition to that --
Q I'm sorry to interrupt you. When you say their pitch, you mean Mr. Dersovitz and Amy Hirsch's?
A Yes.
Q Sorry. In addition to that?
A No worries. In addition to that, Amy had prepared an FAQ, which basically hit, I guess, a lot of the Frequently Asked Questions that had come up over time when they were talking with the investors, so I drew from that, as well as the presentation material that was vetted and approved by Roni and I think a number -- number of the heads of departments, including Compliance.

Q When you say the presentation materials, are you referring to a PowerPoint presentation?
A Yes.
Q Is that the one that you helped them put together? You mentioned PowerPoint earlier.
A The one that I just did the graphics for, yeah.
Q Understood, understood. And you're saying the content of -- you did the graphics, but the content of it, where did that come from?
A I believe it came from Amy and Roni, it was in existence when I was introduced to the firm.
Q Did that -- just speaking specifically about the PowerPoint presentation, did that get updated at various times while you were at the firm?
A Yes.
Q And who was in charge of that?
A Well, I spearhead all of that, so on a monthly basis, if I'm sure you're familiar with it, the presentation, it has a table of growth -- gross monthly performance, which needs to be updated on a monthly basis; on a quarterly basis, we look at it and see if there's any way to improve the way that we communicate with investors. So shall I get into my process?
Q Please.
A Okay. Typically what I do is my group will --

will go take the first pass, and that goes for pretty much any document that comes in or question -- list of questions from investors; we'll reach to source documents, we'll reach out to the various heads of departments to make sure that we, get the right information; we'll mark up an update, and then we'll send it to the next head of whichever department it is that that relevant change is being made. Ultimately then, it goes through Compliance, sometimes outside counsel, sometimes in-house counsel, and then Roni has the final sign-off, he -- he has to approve all materials.
Q And if -- so I was asking about the marketing PowerPoint, but it sounds like that process applies to, for example, the FAQ document; is that right?
A Right. That I don't know that has -- I can't remember if that was updated; I think that, if anything, it's very little that has been changed, I'd have to look.
Q I think you said earlier that you believe that Ms. Hirsch had prepared the FAQ?
A Yes, yes, that was her work.
Q What is -- how do you know that?
A I was there when she put it together, she was working on it, I want to say some -- probably September, October.
Q Of 2012?

A Mm-hmm.
Q And when you say – I'm sorry?
A Maybe earlier, I'm not – I'm not clear on the date.
Q Sure, sure. But when you say you were there, what do you mean by you were there?
A I had already started my employment.
Q Okay. And she was working at RD Legal Capital –
A She –
Q – in some capacity?
A She's a consultant, yes, yes.
Q Okay. So she put the FAQ together when you were there?
A Yes.
Q And then did Roni approve that?
A I would – I would imagine he did, yeah.
Q But based on what, why would you imagine that?
A That's normally how everything went, I mean, ultimately, Roni has to sign off on any documents that go out.
Q What about if an investor has a question about something, you know, about the strategy, would they ask – was there an occasion – has there been an occasion where they might ask – send an email to you

asking you to answer that question?
A The strategy specifically?
Q Yes.
A Yes, I can – I can speak to high-level, overall, what the strategy is.
Q And are you allowed to – you know, under the duties and responsibilities that you have, are you allowed to respond to the investor in those circumstances?
MR. BONDI: You mean, again, by email or just in general?
Q Are you allowed –
MR. BONDI: Object to form.
Q Are you allowed to respond to investors?
A I am and I – typically, the way it goes, it depends on what the question is; if it's a simple question where I can derive the answer from source documents, then I don't have to look for approval; but for instance, if it is – if we're going through, I would say, sort of deeper diligence with a particular prospective investor and they either call me or send me an email and a list of questions, again, the same process goes; it goes to my group first, we go to the source documents, we populate where we can. Beyond that, if it's something – if it's relating to numbers at all, it goes

to the accounting group, they'll add their touches to it; if it's got to do with underwriting, I'll send it to that group; and then ultimately, the last two hands that touch it are, Compliance or some counsel and then Roni, I suppose he's counsel, too.
Q What about investor updates that – you know, e-mails that might not be in response to a question, do you draft any such updates?
A Most of the time with Roni, sometimes I'll tell – you know, if it seems like something that should be a general update for all investors, I'll go to him and say, you know, maybe it's – maybe it would be a good idea to update on whatever the particular issue is, and then either, you know, I'll draft something using, again, source documents, send it to him, he'll make his changes, we'll agree on what makes sense to send out, and then it'll get sent out.
Q Was that the process for the email you sent yesterday about the Supreme Court, for example?
A Yes, I spoke with him in the morning.
Q Okay.
A Wow, you already saw that.
Q So going back to – going back to the situation where you might be at a conference and you're giving some sort of you – you know, you're there to speak to

investors, is that right, if you're at an investor conference?
A Yes.
Q Okay. And the purpose of that, I think you said, was high-level introduction –
A Yes.
Q – to the strategy; is that right?
A Yes.
Q The ultimate goal would be to get them, perhaps, to invest if they like the strategy at some point down the line?
A Well, the primary goal is to get them interested enough in the strategy to want to come to, at that time, Crestkill, and now we have an office in New York, so they want to learn more, and that's really what it is; I'm just creating the -- the interest.
Q The interest in the – in the strategy?
A Correct.
Q Okay. And if they are interested enough to go to Crestkill or New York, then perhaps they ask more questions?
A Oh, of course, yes.
Q And when investors – has – have there been occasions when investors come back after you met them at a conference?

Q Okay. And then were you present at intro– at meetings with investors where Mr. Dersovitz explained that to them, not in response to a question by them, I'll get to that, but just would he explain maybe when he had two hours or more time, would he explain to them, well, you know, there's workout situations in the fund as well?
A I remember him saying, it's not perfect, it's like any other business, we do have assets that don't work out. Did he specifically go into Osborne and Cohen? I'm not sure, but he – he does say that, you know, it's not – it's like any other business, not every investment works.
Q And you're saying that at – do you recall an investor asking a question about Osborne and Cohen?
A Those that get into much deeper due diligence work will have read the AUP. Investors always have the opportunity to go – once they signed an NDA, could go onto the website that was up during that period of time, which had every AUP, every audited financial statement, every document that was associated with either of the funds, at any given time.
Q Speaking about the – did you have – for example, in your introductory pitch, did you have like a marketing deck?
A Yes.

Q That – you know, printed things?
A Not usually, not usually.
Q So what did you mean by when you said yes?
A We provided that, it depends on the forum. If we were going to an investor's office, then yes, I would typically make sure that we had printed documentation and marketing materials to take with us; in the conference situation, it was generally, I would go with a one-page overview and I put the marketing materials and the FAQ, sometimes a portfolio – the quarterly updates, on a thumb drive that I would give investors to take with them.
Q The quarterly portfolio statistics, who prepared that?
A Oh, that's the accounting group.
Q Okay. So what else was in the marketing deck; I think I heard you say the FAQ, sometimes the portfolio – the quarterly portfolio statistics –
A Yeah.
Q – the marketing presentation, that's that PDF we talked about?
A Yes.
Q Is there anything else that's in the marketing deck?
A In the marketing deck?

Q Yes.
A It depends on who we were going to see and what interest they have.
Q I'm talking about now the introductory meeting –
A Oh, the introductory meeting? No, it's generally just the flagship presentation and the FAQ.
Q Okay. And what about at subsequent meetings, you're saying you might bring more documents, is that what you're saying?
A Not subsequent meetings.
Q So at what point would investors be given anything other than these basic marketing materials that we just talked about?
MR. BONDI: Object to the form.
A If investors requested to do their diligence, to – to proceed and want to move toward an investment, then typically, they come to the office, and they would typically come to the Crestkill office, and more often than not, the consultant or the investor themselves sends me a laundry list of questions and we try to make sure that the relevant people are there to answer those questions for them and provide them with whatever the documentation is that they request.
Q So the AUPs, those are not part of the basic

marketing materials that you send to –
A No, of course not.
Q What about the financials?
A If requested and they signed an NDA, they were allowed to get the financials.
Q Financials were not part of the basic marketing deck?
A No, no, no, that – that's not industry practice, just so we're clear. In fact, most hedge fund managers, my understanding, don't provide audited financials ever, it's only by request. Roni has them sent out by Woodfield as soon as they're prepared, to every investor, which is highly unusual. He's -- he's -- one of the reasons that it made it, comfortable for me to work there is that whatever question an investor would ask, Roni was willing to sit down, take the time, or point me in the direction of who's got the answer, so at no time did he ever not want to give somebody information.
Q What about the AUPs, how would investors know to ask about the AUPs?
A Well, the investors get those on a quarterly basis.
Q What about prospective investors?
A If they were -- certainly during the time that

the website was up, if they wanted to go into diligence, one of the things that were on -- that was on offer was, sign an NDA, we'll give you log-on for a short period of time to access the information on the website, and we oft-- often gave prospective investors the ability to go onto Lotus Notes, so they would get their own secure access to our Lotus Notes server and they could, look at a document library that was prepared for them to be able to see all of the various documents in the process of originating and underwriting.

Q Did -- did RD Legal Capital have a due diligence questionnaire?

A We did. Most people don't use our -- it seems to have changed. When I first started in the industry, everybody kept a -- like an AMA due diligence questionnaire, and now, it seems like people send you their own version of that document and they want to talk about their own questions because the diligence process -- my experience anyway, people could have different experiences -- you know, you try to standardize, but, you know, it doesn't -- doesn't always work.

Q So --

A Everyone wants to have their -- they want to get to the -- an understanding their own way.

Q But did RD Legal Capital have a due diligence questionnaire?

A Yes, yes, I agreed that, yes.

Q Oh, okay. Who prepared it?

A I think, originally, it must have been an Amy/Roni effort.

Q And what about not originally, after?

A I'm sorry?

Q You said originally, it was prepared by them. Then, what happened?

A It would be updated periodically.

Q By whom?

A My group and then, again, same process; it goes through my group first, we use the source documents; then, it goes to the heads of departments; then, ultimately, Roni has the final say. And typically, at that stage, even with any of the presentations, questions, any of the marketing materials, more often than not we would convene in one of the conference rooms, pull it up on the screen and then go through it together; sometimes with only Roni, sometimes with Roni and Compliance, sometimes everyone would be involved, it's just what was efficient and who had the time.

Q So let me get a little bit more understanding of that. I think you -- you -- you're saying that the

process for these materials was similar across them; is that right?

A Yes.

Q So for example, if there was something in, let's just say, the marketing presentation that was maybe somehow financially-related, ultimately, Mr. Zatta's group would have --

A Oh, absolutely.

Q -- approval of that, correct --

A Absolutely.

Q -- as an example? If something talked about the underwriting, for example, then that group would have some sort of say; is that correct?

A That's correct.

Q So what were the parts that your group had the, you know, supervision of, that you didn't have to go to other groups, other than perhaps Mr. Dersovitz, himself?

MR. BONDI: Object to the form.

A Nothing, everything was always finalized and signed off on by Roni ultimately.

Q No, sorry, so I understand that everything was signed off by him, but I'm trying to get a sense as to what parts of it were the responsibility of your group before he got to sign off.

A Oh, very simple things; as I mentioned before,

updating the gross performance, those are numbers that we get from the accounting group, my assistant puts it into the PowerPoint; I mean, it's not --

Q What about the description of the strategy itself, who was in charge of that, what group or -- understanding that Mr. Dersovitz had --

A That was in existence, that has been in existence long before I even got there. I don't know who drafted or created that original version, I don't know how much of it has really changed over time really, yeah, it's -- I can't take credit for it.

Q What -- what about --

MR. BIRNBAUM: Just a couple of clarifying questions.

THE WITNESS: Yes.

MR. BIRNBAUM: When you said something about "it" changing over time, are you talking about the strategy changing over time or documents describing the strategy? So I'll ask it this way; did you understand the strategy for the flagship funds to change over time since you arrived at RD?

THE WITNESS: No, the strategy remained the same.

MR. BIRNBAUM: And then earlier, I believe you spoke about some clients wanting, let's say, a more

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tailored due diligence questionnaire as opposed to one that – that RD generated. Is – is that fair?
THE WITNESS: Most --
MR. BONDI: Object to the form.
THE WITNESS: Yeah, most investors want – they usually have their schedule that they go by, it rarely is something that we provide.
MR. BIRNBAUM: There was something that RD did create as a basic due diligence Q&A.
Is that fair?
THE WITNESS: Yes.
MR. BIRNBAUM: And is that something that – how did RD use that, if at all?
THE WITNESS: Very rarely, on the rare occasion someone would ask if we had a due diligence document, we would send it out, but as I said, you know, most people went through their own.
MR. BIRNBAUM: Would RD send that out by email or on a thumb drive or by regular mail or something else?
THE WITNESS: I would – I think it was mainly email, maybe it made it on a thumb drive once or twice, I'm not – I can't – I can't remember.
MR. BIRNBAUM: Okay. Fair to say –
THE WITNESS: Yeah, electronically.
MR. BIRNBAUM: – you used the due diligence

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questionnaire with some, but not all, investors.
Is that fair?
THE WITNESS: Yeah, those who requested it.
Q How would they know to request a due diligence questionnaire?
A That's a general – I think most investors – AMA's been around forever, most investors have some version of – they use some version of a diligence document just as a – an outline really.
Q Did you ever send it to any investors?
A I'm sure I have.
Q What about the – okay. I'm going to take – I'm going to go back to your – the beginning of your employment at RD Legal Capital and I'm just trying to get a sense as to whether there were other sources of your learning, I think you said you attended pitches that Mr. Dersovitz and Amy Hirsch might have given as one way to familiarize yourself; is that right?
A Yes.
Q You reviewed marketing materials and I think you also said you spoke to heads of other departments?
A Correct.
Q Was there anything else that you did to kind of learn the business, did you do your own research or anything like that that we haven't covered?

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A No. I don't know that there would be any research to do on legal receivables.
Q Did you talk to any, for example, existing investors at that time about what their experience might have been?
A No, I don't believe so.
Q Is there anything -- is there anything else you might have done to kind of learn the business or familiarize yourself?
A I – I can't think of anything unusual that I would have done outside of normal course, no.
Q Right. In terms of going back to this -- excuse me, going back to this presentation that you heard them give, did they say anything about concentrations in the fund?
A Wow, in September, it's hard to remember that far back.
Q Let's say the first four months, you know.
A Yeah, it's hard for me to remember that far back specifically because, again, it was a new strategy to me too, so everything was new, and, admittedly, it took me a while to kind of really understand and I'm -- you know, I'm sure I still learn every day, it's not -- it's not like something that -- you know, stocks and bonds are pretty easy; it's finite, there's a market,

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there's – this is a little bit different. So I don't – it's hard for me to remember what I learned then and what I learned later and when exactly I came to understand certain things, so I'm not trying to avoid you, I just -- it's hard for me to remember.
Q That's fair, okay. What – what did you say, if anything, about concentrations or diversification as part of your pitch to investors?
A Well, I've always sort of parroted Roni, which is, you know, it's – the – the fund will have concentrations from time to time. You know, I -- I have always said that it's an opportunistic strategy, and by that, I mean, you know, these are time-sensitive matters, so if – if an attorney or – or the case is at a point where the various players need capital at that moment, if we don't provide it to them, somebody else might, so if there's capital available and it meets – Roni has always said if it meets the underwriting criteria and it's considered money good, then concentration really isn't that big of an issue because, ultimately, there's a clear path to the collection. The issues are timing, when is that going to happen, and the second – the second risk, so to speak, in the strategy is the control of cash that he really sort of focuses on.
MR. BIRNBAUM: Can you just clarify? I think

A I don't recall if they have. No, I don't think so.
Q At pitches that you might have been present for that Mr. Dersovitz was giving, or -- let's -- I think you have a problem with me using the word "pitches," so I'm going to try to use --
A I'm confused.
Q -- conversations with invest -- with prospective investors.
A Okay.
Q Let's talk about conversations with prospective investors --
A Okay.
Q -- that you might have been a witness to --
A Uh-huh.
Q -- that Mr. Dersovitz was having, did he talk about these risks, in the context of the main funds?
A Duration, certainly.
Q Uh-huh.
A United States normalizing relations with Iraq? I don't -- I don't remember. And additional claimants? I don't -- I don't remember.
Q Okay. Let's look -- okay. This is former Exhibit 58, ma'am (handing).
A Okay. Oh, wow, this -- like this is hard to

read (indicating).
Q All right. We'll try not to quiz you about the contents of it.
A Okay.
MR. BONDI: I can't read this.
Mr. Tenreiro, do we -- do you have a cleaner or better copy, or a color copy perhaps? I think this is a color document.
MR. TENREIRO: That's all we have.
Q You're having trouble reading some parts of this document?
A These blocks at the bottom (indicating).
Q The bottom part?
A Yes.
Q Do you see that it says "Key factors"?
A Yes.
Q Okay. Do you -- do you recognize this document, understanding that you're having trouble reading the bottom part?
A I do.
Q What is this document?
A This is a summary of the Manne barracks bombing case that was derived from a Reed Smith memo.
Q So I think earlier we were talking about there was a summary of the Iran case, and there was a term

sheet for the Iran case, is this the summary that you were referring to --
A This is the summary.
Q -- or one version of it?
A This is the summary, yes.
Q This is the summary, okay. And you say it was derived from a Reed Smith memo, how do you know that?
A Because that's what was given to me to put in the graphic form.
Q So you -- is it fair to say that you prepared this document?
A Not the substance, I put the pretty boxes on it.
Q And the words here, you took from somewhere else?
A Yes.
Q Okay. And it -- was that the Reed Smith memo?
A Yes.
Q Anything else that you might have used?
A That's it. I'm sorry, it's an attorney work product that this, I think -- I don't know, I can't read this, but --
Q Well, you -- let's -- let's take a step back. Did you prepare this document -- do you see the date as August 2012. correct?

A Yes.
Q Is that more or less, around the time when you prepared it?
A Yes.
Q Okay. Did -- were you -- were you represented at that point by Mr. Bondi?
A No.
Q Okay. So did you -- any other information that you used to prepare this document?
MR. BONDI: Objection. Just for the record, I think what she's referring to is Reed Smith's a law firm that, at the time as I understand, was representing RD, and -- and so any conversations that she would have had with lawyers from Reed Smith as counsel to RD, she was an employee of RD, would be covered by the attorney-client privilege.
MR. TENREIRO: Other -- it's -- well, okay. I'm not asking about conversations with Reed Smith. She already testified that she used the memo, she put it here and she gave it to investors.
MR. BONDI: That's -- that's correct, but that's different from conversations that she would have had with Reed Smith, above and beyond the memo itself.
Q Other than conversations with Reed Smith, did you use anything -- did you -- what else did you use to

prepare this?
A I -- I don't know if it was in e-mail form, or I received it by e-mail. I don't know if it was a Word document or in an e-mail, it was information from Reed Smith to include in this document.
Q Okay.
A I didn't write it, is what I'm trying to say.
Q And I'm trying to understand that -- the -- the --
A Yeah.
Q The words that you used to write it --
A Uh-huh.
Q Were -- were --
A Were not mine. I'm sorry, I should be clear.
Q Correct. So whose were they? So you've said Reed Smith, anybody else?
A I -- I actually don't know, I don't remember.
Q Okay. Did Mr. Dersovitz review this document?
A Of course, yeah.
Q Was this document at any time, as far as you know, given out to investors?
A Yes.
Q Did Mr. Dersovitz give his approval for -- for this document, you know, for the contents of this document, as far as you know?

A I thought I just answered that, yes.
Q Well, I asked you reviewed, now I'm asking did he approve it.
A Yes, nothing goes out without Roni's approval.
Q Okay.
A I mean, nothing.
Q Okay. Do you see towards the top it says, "350 million to be advanced at approximately twenty compounded monthly"?
A Yes.
Q Do you have an -- did you have an understanding as to what that meant, "350 million to be advanced"?
A Certainly not in August of 2012, no.
Q What about in 2013, when the flag -- the Special Opportunities Fund was being, you know, conceived or prepared?
A Yes.
Q What -- what did that mean to you, "350 million to be advanced"?
A That was, as I mentioned earlier, the -- what he believed the excess opportunity was to deploy capital to these assets that stem from the Peterson case.
Q So was it -- so the excess opportunity to deploy capital, does that mean that -- that he was trying to raise $350 million so that he could deploy it?

A Yes.
Q Okay. Did that number -- did there come a time when that number changed?
A Yes.
Q When was that?
A Let me understand. So the -- the number changing is a function of demand, so we're clear, right? There was a turnover order that was granted. I don't know when, we'd have to look at the court documents, but at that moment, obviously demand dries up because plaintiffs think that they will be paid imminently. So yes, the number changed.
Q And it -- it went down, is what you mean?
A Yes.
Q Okay. All right. Did -- what was the purpose of preparing the summary of the Iran case, as far as you know?
A I assumed that he was using it to market.
Q To market what?
A I don't know, in this -- let me -- let me have a look, I don't -- I don't remember. This was for the special opportunities -- a vehicle that would eventually become the Special Opportunities Fund.
Q How do you know that?
A The first line in the dark box at the top (indicating).
Q On the first page?
A Yes. "Investment in a vehicle providing financing for the litigation receivables of a judgment against Iran" da-da-da.
Q Okay. Earlier this morning, I think we talked about, for example, if you knew that an investor was interested in the special opportunity -- or in the Iran case say, in the Special Opportunities Vehicle --
A Uh-huh.
Q -- you might send them Iran information, correct?
A After signing --
Q Sure. After signing the -- the NDA.
A Yeah.
Q So was this one of the things you might send an investor if, you know, you were told "hey, Ms. Markovic, this guy might invest with us, he signed an NDA, he is interested in Iran." Is this something you might send him?
A Yes.
Q Okay. And was that at Mr. Dersovitz's direction?
A Yes.
Q Okay. And the -- we'll get -- we'll get to the

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offering memo, was the offering memo one -- one of those other documents you might send to an investor that you knew was interested in Iran, who has signed a non-disclosure agreement?
A Not in the first -- oh, let me think about that. After an NDA was signed, presuming they've already had conversations with Roni, Roni directed me to send this. I don't remember in every instance, but yeah, normally you would send the offering documents.
Q Right. So I'm trying to get a sense as to what the offering documents would be, you know, if you had a -- or maybe not offering documents, if you had like a marketing deck for the Special Opportunities Vehicle --
A Uh-huh.
Q -- what would that consist of, would it be this summary?
MR. BONDI: Object to the form, foundation.
A (No verbal response.)
Q Or a version of this summary?
MR. BONDI: Same objections.
A This summary was used in many different ways. To investors that specifically were interested in the special opportunities, and to investors who were invested in the -- the flagship funds.
Q Let -- let me -- I'll get to those -- that

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distinction, it's not a very complicated -- I'm not trying to be --
A Okay. I obviously don't --
Q -- very complicated here.
A -- understand what you're asking, my apologies.
Q Earlier this morning we talked about --
A Uh-huh.
Q -- what I think we described was the main marketing deck that you had --
A Yes.
Q -- and I think we talked about the FAQs and the presentation, were the two things that stick in your mind?
A Yes.
Q Okay. If you -- if -- if there was a -- if we could describe something as the main marketing deck for the Special Opportunities Vehicle, to the extent that even existed, what would that have consisted of?
MR. BONDI: Object to -- object to the form.
A I -- I don't recall specifically, and I remember sending out this -- sometimes the offering documents, maybe including the term sheet, I don't remember.
Q Was there anything else that related to the Special Opportunities Vehicle, any other documents that

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you might have sent out to investors, other than those that you just mentioned?
A I'm trying to remember. There were a lot of court documents associated with the case, and I couldn't send those out without having Roni approve it, because some are either just court documents, others were a work product that was produced by Reed Smith for him and other law firms. There were -- there was a lot of documentation about the case itself.
Q Okay. And some of that documentation might have gone out to investors as well --
A It may have, yes.
Q -- is what you're saying?
A Yes.
Q Okay. Going back to this one, the one that's marked as -- that was formally marked -- previously marked as 58. You mentioned a minute ago, this was sent out to prospective investors that were interested in the Special Opportunities Vehicle, as well as to existing investors?
A Well, in August I don't know who received it.
Q You -- you mentioned a minute ago that this -- a document of this sort was given to -- to who -- to whom was it given?
A It was given to prospective and existing

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investors.
Q Okay. And for what purpose?
A To ex -- I would imagine to explain these -- the summary of the -- the case, and announce that a Special Purpose Vehicle was in the works.
Q When you -- in -- in giving your -- to the extent that you might have gone say, to a conference with your marketing materials, was this part of what you included?
A Sometimes.
Q Okay. And why sometimes -- so not every time?
A No.
Q Okay. Why -- how would you determine, or why yes, or why no?
A Early in my tenure, Roni wanted me to mention it to gauge interest.
Q Uh-huh.
A Later on, we were trying to raise money for it, and as I mentioned earlier, when the turnover was granted demand dried up, so I stopped talking. There was nothing to buy.
Q And -- okay. So is it fair to say that -- is it fair to say that -- okay. I'm just trying to understand why you wouldn't always bring it. Is it because the -- the demand dried up, was there any other

Div. Ex. #214

(Excerpts)

In The Matter Of:

In the Matter of:

RD Legal Capital, LLC and Roni Dersovitz

Roni Dersovitz

Vol. 1

January 19, 2017

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UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
ADMINISTRATIVE PROCEEDING

- - - - - - - - - - - - - - -

IN THE MATTER OF:)
RD LEGAL CAPITAL, LLC and) FILE NO.
RONI DERSOVITZ,) 3-17342
Respondents.)

- - - - - - - - - - - - - - -

VIDEOTAPED DEPOSITION OF RONI DERSOVITZ
THURSDAY, JANUARY 19, 2017
PAGES 1 - 259; VOLUME 1

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Videotaped Deposition of RONI DERSOVITZ, VOLUME 1, taken on behalf of Respondents, at One Battery Park Plaza, New York, New York, commencing at 10:10 A.M., THURSDAY, JANUARY 19, 2017, before Kristi Cruz, Shorthand Reporter, pursuant to Notice of Videotaped Deposition.

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A. No, they offered no advice within that time period.
MR. WILLINGHAM: For the record, Mr. Birnbaum, I've been listening to these questions and I just want to make clear, your time frame also incorporates a period of the time prior to the initiation of the OIP where myself, Mr. Roth, and our law firm advised Mr. Dersovitz personally with regard to the issues that were present, for example, in the Wells submission. I think the time period in his answer should be taken as not seeking advice with regard to that once we were defending the SEC investigation.
MR. BIRNBAUM: Okay. I'm happy to clarify, and that is, if the advice was retroactively how would you respond in a lawsuit, I understand that distinction. But the extent that Mr. Dersovitz was continuing to use certain marketing materials and relying on anybody for advice regarding the continued use for that, then I want to avoid that distinction.
MR. WILLINGHAM: Understood. And I think his questions were accurate given my qualification -- or his answers, I'm sorry, were accurate given my qualification.
Q. Returning to Exhibit 260, if it's helpful to walk through those specific firms, there's a reference

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to Cooley. Do you see that? Right after Caldwell Leslie.
A. So sorry.
MR. HEALY: (Counsel indicating.)
Q. The question is just do you see Cooley?
A. Yes.
Q. Do you know what that refers to?
A. No.
Q. Is there a law firm you're familiar with that goes by the Cooley name, in whole or in part?
A. Not that comes to mind.
Q. Is it fair to say that you don't have any recollection of any law firm that goes by the Cooley name providing RD Legal with advice regarding marketing materials for the domestic flagship fund?
A. Not immediately familiar with the Cooley. I think that's an accurate statement.
Q. Same for the offshore flagship?
A. I'm not familiar with the name.
Q. How about Otterbourg, Steindler, Houston & Rosen, is that a law firm you're familiar with?
A. Yes, it is.
Q. Did anybody at that law firm provide RD Legal with any legal advice regarding any marketing materials utilized in connection with the domestic flagship fund?

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A. Not to me personally.
Q. Are you aware of any legal advice they provided to anybody at RD Legal on the topics we just described?
A. I'm not aware if their input was requested as part of the process that we engaged.
Q. Did you undertake any investigation as to whether the Otterbourg firm provided any legal advice to RD Legal regarding any marketing materials as part of respondents' efforts to respond to the subpoena that is Exhibit 260?
A. I relied on counsel to do that analysis.
Q. I think I only asked about the domestic flagship there, so I'll ask, regarding Otterbourg Steindler, are you aware of any advice they provided to RD Legal regarding any marketing materials utilized by the offshore flagship?
A. How -- I'm so sorry. How are we defining RD Legal?
Q. Any -- for the purpose of these questions, any entity that goes by the RD Legal name or is affiliated therewith.
A. Talking about the funds or talking about RD Legal Capital? Are we talking about RD Legal Finance? Do you mind if I request that you be more specific?
Q. I specifically am asking about all RD Legal

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entities. Are you aware of Otterbourg, Steinler, Houston & Rosen providing legal advice to any RD entity relating to any marketing materials utilized in connection with the offshore flagship fund?
A. As I said previously, I myself did not request their input or evaluation regarding a marketing presentation. But whether someone else in the process might have reached out to them, I can't comment on.
Q. Can you not comment on because you don't know?
A. Correct.
Q. I believe you referred to HDY, or Henry Davis York, earlier. Did that firm ever provide any legal advice to any RD Legal entity regarding marketing materials utilized for the domestic flagship fund?
A. They -- Henry Davis York, as I refer to them as HDY, provided advice to the collective organization and its employees and the people that were entrusted with the preparation and review and finalization of the marketing materials. They provided input on that topic.
Q. Who at HD -- I'm sorry. Is that true for both the domestic and offshore flagship funds?
A. It would have been, as well as some proposed entities.
Q. Who at HDY provided such advice?
A. It would have been Nikki Bentley. You see,

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there were mult -- so Nikki Bentley would have had several associates involved in the process, and Craig -- I can't remember whether her partner's name was Craig or Greg, and I don't remember his right -- his last name for the moment.

Q. How did you communicate -- well, did you personally communicate with HDY on the subject of marketing materials about which they provided advice?

A. Most calls involving marketing materials -- I take that back. Most calls were participated in by numerous people at RD Legal Capital and its affiliates. It was rarely, if ever, myself alone. As I said, the process was collaborative in nature in virtually every regard.

MR. BIRNBAUM: Can you please read back the question?

(The record was read by the reporter as follows:

"Q. How did you communicate -- well, did you personally communicate with HDY on the subject of marketing materials about which they provided advice?")

MR. HEALY: Read the answer.

(The record was read by the reporter as follows:

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"A. Most calls involving marketing materials -- I take that back. Most calls were participated in by numerous people at RD Legal Capital and its affiliates. It was rarely, if ever, myself alone. As I said, the process was collaborative in nature in virtually every regard.")

BY MR. BIRNBAUM:

Q. Did you ever personally communicate with HDY concerning marketing materials utilized for the domestic or offshore flagship funds?

A. I was on calls, yes, but they were collaborative in nature and other people were on the calls, as well.

Q. Did you ever exchange any e-mails with anybody at HDY on the subject of marketing materials?

A. Absolutely. And on those e-mails, typically other people were included, as well.

Q. And are you aware of e-mails sent by anybody at RD seeking legal advice from HDY on the subject of marketing materials?

A. Yes.

Q. Are you aware of any e-mails in which HDY ever communicated any legal advice on the subject of marketing materials?

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A. Yes.

Q. And is that true for both the domestic and flagship funds?

A. Interestingly, yes.

(Telephone interruption.)

BY MR. BIRNBAUM:

Q. Were any of the marketing materials on which HDY provided any legal advice ever utilized with any potential investors in the domestic flagship fund?

A. In Australia, yes.

Q. Same question for the offshore flagship.

A. Yes.

Q. Calcagni & Kanefsky, are you familiar with that law firm?

A. Yes, I am.

Q. Did they ever provide any legal advice to any RD Legal entity relating to any marketing materials utilized by the domestic flagship fund?

A. Organizationally, they were not brought into the process for that purpose. Other purposes, yes, but not for the development of marketing materials.

Q. Just so I understand what it means not to be involved in the process, does that mean that they didn't, in fact, provide any legal advice to RD Legal regarding marketing materials used by the domestic

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flagship fund?

A. Can you repeat the question?

Q. Sure. Did Calcagni & Kanefsky ever provide any legal advice about which you're aware to anybody at RD Legal, any RD Legal entity, regarding marketing materials utilized by the domestic flagship fund?

A. I'd have to say yes.

Q. What was that legal advice?

A. I think that would be -- I will rely on my counsel to give you the appropriate response, if you don't mind.

MR. HEALY: There may be some confusion because your answers -- it seemed the first time the question was asked, the witness indicated they did not provide advice on marketing materials, and the second time it seemed the answer was different. So maybe there's confusion.

MR. BIRNBAUM: I'm happy to re-ask it. My understanding was they were not invited to some process, but that they did provide some kind of legal advice.

THE WITNESS: Mr. Healy is correct.

Q. So is it the case -- let me just re-ask it because of what Mr. Healy describes as some confusion.

Did Calcagni & Kanefsky ever provide any RD Legal entity with any legal advice relating to any marketing materials utilized in connection with the

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domestic flagship fund?
A. Yes. But just to make your life easier, it would have been web-based.
Q. What does web-based mean?
A. On the web.
Q. What would have been web based?
A. Marketing materials. We're speaking about marketing material.
Q. Okay. So the advice wasn't delivered in some web-based way. You're talking about they advised on marketing materials utilized on the web?
A. Correct.
Q. Okay. And what was their legal advice relating -- let me -- withdrawn.
A. Thank you.
Q. Did they also provide any legal advice regarding marketing materials utilized for the offshore flagship fund?
A. I would have to say indirectly, yes.
Q. And why would you say indirectly?
A. Because the offshore fund participates in assets that are originated by the domestic fund. So that's why I would say indirectly.
Q. And what was the legal advice that Calcagni & Kanefsky provided relating to marketing materials

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utilized in connection with the domestic flagship?
MR. HEALY: Objection. I'm instructing the witness not to answer.
We already specified in a subsequent submission to the Division the extent of any waiver of privilege. We are not waiving any privilege as to the firm of Calcagni & Kanefsky in relation to this proceeding or any affirmative defense the respondents are asserting.
Q. On what materials did Calcagni & Kanefsky provide legal advice? What are these web-based materials you're describing?
MR. WILLINGHAM: If you recall.
A. Involving -- they would have commented on Zadro -- marketing pages related to Zadroga.
Q. What is Zadroga?
A. It's a 9/11 victims compensation fund.
Q. Anything else?
A. They might have touched upon some pages involving Peterson.
Q. Anything else?
A. They've offered many different types of advice over the last several years. I can't remember each one with specificity. That's what comes to mind. And if you have something in particular you'd like to ask, by all means.

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Q. Fischer Porter & Thomas P.C., is that a law firm?
A. Yes, it is.
Q. Did Fischer Porter & Thomas P.C. ever provide any RD Legal entity with any legal advice regarding any marketing materials utilized in connection with the domestic flagship fund?
A. I myself never brought them into that collaborative process.
Q. Are you aware of whether Fischer Porter & Thomas P.C. ever provided anybody at RD Legal with any legal advice regarding marketing materials utilized by the domestic flagship fund or in connection with the domestic flagship fund?
A. I'd be surprised if they were ever brought into that process, but I have no firsthand knowledge.
Q. And just to clarify, is it your testimony that you have no firsthand knowledge of any legal advice Fischer Porter & Thomas provided relating to marketing materials --
A. To anyone else. I said I did not bring them into the collaborative process. What I -- what is difficult for me to comment on is whether anyone else might have brought them into the collaborative process. What I can say on that note is not to the best of my

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recollection.
Q. And just so I don't get bogged down in collaborative process, to the best of your recollection, did Fischer Porter & Thomas ever provide any legal advice relating to -- to anyone at any RD Legal entity relating to any marketing materials utilized in connection with the domestic flagship fund?
A. I thought I answered that. I did not bring them into the collaborative process involving the in-house professionals or the outside counsel, but I'm unaware if anyone else did. But I'd be surprised if they did.
Q. You're speaking of the collaborative process, and I just want to make sure the answer covers whether there's any legal advice that might have been rendered outside of that process.
So my question is simply: Are you aware of whether Fischer Porter & Thomas ever provided any legal advice, whether inside the collaborative process or otherwise, to anybody at RD Legal relating to any marketing materials utilized in connection with the domestic flagship fund?
A. Let me make -- let me try to clarify for you. Virtually every aspect of the operation, management, or administration of the activities of the investment

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manager were done collaboratively. Okay? That's as a place to start.

Q. Okay. Are you aware of Fischer Porter & Thomas providing any legal advice to anybody at any RD Legal entity regarding any marketing materials utilized in connection with the domestic flagship fund?

A. I will repeat, I myself never brought them into the collaborative process. I do not -- I am not aware of anyone else having done so, and with that, I would add I'd be surprised if they were brought into that process.

Q. Did any firm that you're aware of ever provide any legal advice outside of the collaborative process you described regarding marketing materials utilized for the domestic flagship fund?

A. No.

Q. Same question for the offshore flagship fund.

A. No. It was always done collaboratively. Things organizationally were always done collaboratively. It was a consistent methodology since the inception of the fund.

Q. Just to close the loop on Fischer Porter, I'm going to ask the same question about the offshore flagship fund. Do you have any recollection or any knowledge of Fischer Porter offering any legal advice to

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anybody at any RD Legal entity relating to the offshore flagship fund's marketing materials?

A. Fischer -- haven't we just been speaking about Fischer Porter?

Q. You asked me to distinguish between the domestic flagship fund and the offshore flagship fund. The last question --

A. No, same answer vis-a-vis both funds, domestic and offshore. And you haven't, by the way, brought into the picture the Unit Trust, but I'll simply lump in the Unit Trust with the offshore.

Q. Okay.

A. There's a Japanese Unit Trust.

Q. When was that created?

A. That's a trick question. I don't remember now. I can't tell you. You'd have to look at the offering documents.

Q. Reid & Hellyer, are you familiar with that firm?

A. Reid & Hellyer?

Q. Right after Fischer Porter.

A. Okay. The question, please?

Q. Are you familiar with a firm that goes by the name of Reid & Hellyer?

A. Vaguely.

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Q. Sitting here today, do you know if they provided any legal services for any RD Legal entities?

A. They absolutely provided legal services to the domestic and the flagship domestic and flagship offshore.

Q. Did they ever provide any legal advice to anybody at any RD Legal entity relating to marketing materials utilized in connection with the domestic flagship fund?

A. I myself never brought them into the collaborative process, nor, to my knowledge, did anyone else bring them into the collaborative process that we engaged.

Q. Same question regarding the offshore flagship.

A. Same answer.

Q. Stetina Brunda Garred & Brucker, P.C., are you familiar with that firm?

A. Yes.

Q. Did anybody at Stetina Brunda Garred & Brucker, P.C. ever provide any legal advice to anybody at any RD Legal entity relating to the marketing materials utilized by the domestic flagship fund?

A. Yes.

Q. What marketing materials -- well, same question for the offshore flagship.

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A. Yes.

Q. What marketing materials did Reid & Hellyer -- I'm sorry, did Stetina Brunda provide legal advice about?

A. It would have been all. But let me make your life a little simpler. They're copyright attorneys, so we would have used them for very limited purpose.

Q. When you say all marketing materials, what are you referring to?

A. Anything we did, anything that we utilized that might have a copyright or a trademark.

Q. Do you consider the Alpha Generation to be part of, generally speaking, marketing materials for RD Legal?

A. I believe you do, yes.

Q. You've understood the questions today about marketing materials to include Alpha?

A. Yes.

Q. Are you familiar with a document titled --

A. Well, no, that wasn't part of the question. But yes, the Alpha was a marketing presentation that we employed. Just to keep the record straight.

Q. And when you've been answering about who advised on certain marketing materials, Alpha wasn't included in your answer?

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right?
A. Yes. I'm sorry, I should have said that.
Q. Did you seek a declaration, or did you or anybody on RD Legal Funding Partners behalf seek a declaration from Mr. Osborn's behalf in this litigation? Meaning the New Jersey litigation.
A. Personally, no. It would have been sought by counsel.
Q. Are you aware that he submitted a declaration in connection with that litigation?
MR. WILLINGHAM: Who is "he"?
MR. BIRNBAUM: Mr. Osborn.
A. My understanding is he might have submitted several.
Q. Have you ever transacted any business with Mr. Osborn or any entity he's affiliated with?
A. Over all time I suppose is your question, since it's broad? Yes.
Q. Correct. Did you enter into any funding agreements with any law firm Mr. Osborn was affiliated with?
MR. HEALY: For purposes of your questions, I assume you mean you to mean somebody at RD Legal entities.
MR. BIRNBAUM: Correct.
MR. HEALY: When you're asking about him personally.

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MR. BIRNBAUM: Correct.
A. RD Legal Funding Partners, thank you, entered into several transactions with Mr. Osborn and/or his affiliate law firms.
Q. Did any of those transactions relate to cases involving bisphosphonates?
A. I think that's what -- part of what we referred to internally as the jaw cases. I think that's --
Q. Have you heard of those referred to as ONJ cases, as well?
A. Yes.
Q. Did you ever enter into any transactions -- withdrawn.
Did RD Legal Funding Partners enter into any transactions with Mr. Osborn or any entity with which he's affiliated related to the jaw or ONJ cases?
A. Yes. RD Legal Funding Partners did.
Q. And did they do that on anybody's behalf?
A. I don't understand the question.
Q. Did those transactions with Mr. Osborn or any affiliated entity related to the jaw cases result in any receivables owed to either of the flagship funds?
A. Yes.
Q. Was it one of the flagship funds or both?
A. It would have been both, as I -- it would have been both.
Q. As best you could recall, when did any RD Legal entity first enter into any transaction with Mr. Osborn relating to any of the jaw cases?
A. I'd be guessing, but perhaps 2009.
Q. And --
A. Maybe '10. I really don't recall at this point. I'd have to look at the records.
Q. And did you understand the jaw cases to involve three different drugs put out by different companies?
A. That's a manner of describing it, yes.
Q. Generally speaking, and I'm taking this from the declaration that's before you, were those drugs Actonel by Procter & Gamble, Fosamax by Merck and Aredia and Zometa by Novartis?
A. I believe so.
Q. Were you involved in any -- were there any negotiations between any RD Legal entities and Mr. Osborn that led to the transactions relating to the jaw cases that you noted?
A. Can you repeat the question?
Q. Sure. I'll change the question.
Did you have any discussions with Mr. Osborn leading up to the RD Legal transactions with Mr. Osborn relating to the jaw cases?

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A. Certainly.
Q. Can you describe the form of agreement, if any, that RD Legal entered into with Mr. Osborn relating to the jaw cases?
A. There was an assumption -- if I recall correctly, there was an assignment and assumption agreement. That was the start of it, if I recall correctly.
Q. And what did you understand that assignment and assumption agreement to entitle any RD Legal entity to, if anything?
A. It was effective -- it is my understanding, without seeing it, is that it's a reaffirmation of an obligation and effectively repledges other collateral.
Q. When you say a reaffirmation of an obligation, what obligation are you referring to?
A. The obligation that was in place by a predecessor law firm called Beatie & Osborn, and it probably included Osborn Law, as well, which was the successor law firm.
Q. Did you understand that Osborn Law succeeded the predecessor law firms in or about 2009?
A. I don't remember the exact time period. It might have been 2011. I'd have to really -- 2009 to 2011, perhaps.

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Q. And you did business with Mr. -- RD Legal did business with Mr. Osborn both when he was at Beatie & Osborn and also later when he was at Osborn Law; is that fair?
A. Yes. RD Legal Funding Partners, RD Legal Funding in one form or another has done business with Mr. Osborn since 2001, 2002, 2003. But for a long time.
Q. Do you know if sitting here today -- withdrawn. Was it your understanding, when you entered into agreements with Mr. Osborn, that Mr. Osborn represented certain clients in connection with the jaw cases?
A. It was the -- it was the -- it was the understanding of everyone within the origination department, as well as my own and firm-wide, that he represented numerous plaintiffs in this litigation.
Q. And by "this litigation," what are you referring to?
A. The jaw -- we can call it -- if I may suggest the jaw lit -- just referring to it as the jaw litigation.
Q. Were the cases against Procter & Gamble, Merck, and Novartis all combined as one litigation? If you know.
A. I don't think so, but I'm not a hundred per --

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I'm not certain if it was all encapsulated into one MDL or not.
Q. At some point, did you have any understanding as to whether any of Mr. Osborn's clients entered into a settlement agreement settling jaw litigation against Novartis?
A. There did come a point in time when they did.
Q. Same question as to the case against Merck. Did you ever have an understanding as to whether any of Mr. Osborn's clients entered into a settlement agreement relating to the jaw cases against Merck?
A. I believe they did.
Q. And did you have that same understanding regarding Mr. Osborn's clients against Procter & Gamble, in cases against Procter & Gamble?
A. Procter & Gamble is one of the three Actonel? Yes. I believe that's my understanding.
Q. Do you have any understanding as to whether there was one settlement agreement that settled many cases, many of Mr. Osborn's clients' cases against Procter & Gamble as opposed to individual settlement agreements?
A. I think it was -- I think all of them were settled in an MDL type methodology. Whether it was one MDL or several, I'm uncertain.

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Q. What is your understanding as to how the Merck Fosamax cases were resolved for Mr. Osborn's clients?
A. I don't have an understanding. Other than knowing that it did settle, that's where my understanding stops.
Q. Do you have any understanding as to whether all of the cases settled as part of one agreement or whether there are individual cases or anything like that?
MR. HEALY: The question is his understanding as he recalls now or at the time?
MR. BIRNBAUM: Right now.
MR. HEALY: Because some time has passed.
MR. BIRNBAUM: Right now.
Q. I'm not asking about the terms of any specific agreement. I just want to get an understanding the way you described for Procter & Gamble, if you understood whether there was some kind of MDL or other process or whether there were individual cases or something different. So with that is context, I'll ask a less objectionable question. Did you have any understanding as to whether Mr. Osborn's -- how Mr. Osborn's clients resolved their litigation against Merck?
A. Mass torts are typically settled en masse and then assigned to an administrator to walk through the

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individual claims. So my understanding here would be that there are three separate settlement agreement.
Q. One for Merck, one for Novartis, and one for Procter & Gamble?
A. That's what I believe.
Q. When did the settlement agreement against Procter & Gamble get signed by the parties? If you know.
A. I don't know --
MR. HEALY: As he sits here now?
A. I don't know the dates.
Q. When did the Merck agreement get signed?
A. I don't know the dates.
Q. Novartis?
A. A similar response. I don't know the exact dates.
Q. Do you have any general understanding as to what year the Novartis litigation was settled?
A. I think these were settled -- collectively the jaw cases were settled over the last two or three years. Somewhere in that time frame; I don't know where. And these settlements were -- some of these settlement agreements were not made public.
Q. When you first entered into agreement with Mr. Osborn, and by "you" I mean RD Legal in this case,

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regarding the jaw cases, did you have any understanding at that time as to whether the jaw cases were settled?
A. They were not and -- they were not.
Q. Did you know that they were not at the time?
A. Yes.
Q. How did you come to learn that they eventually did get settled?
A. Through Mr. Osborn.
Q. Sitting here today, do you know whether Mr. Osborn ever lied to you about whether any of his jaw cases were settled?
A. I don't believe so.
Q. Did you understand that as part -- have any understanding as to whether -- withdrawn.
Are you familiar with the phrase Load Star case?
A. Load Star is -- I think you're confused, counselor.
Q. I'm sorry. I am.
Do you know whether any of the cases against Novartis, the jaw cases against Novartis -- withdrawn.
Are you familiar with the phrase bellwether case?
A. Yes.
Q. What do you understand a bellwether case to be?

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A. In an MDL, often times the presiding judge will send matters various -- of various underlying cases out for trial.
Q. Do you have any understanding as to why that's done?
A. It helps the judge. It's useful in getting parties to discuss settlement.
Q. Were there any such cases, bellwether cases that you know of in the jaw litigation?
A. Yes, there was. And organizationally, yes, we did.
Q. Yes, we did what?
A. Organizationally, the bellwether cases were reported to -- in an AUP, so it would have gone through the finance department, it would have gone through the legal department as part of a collaborative process, again, and it was reported in various documents.
Q. Did you ever understand there to be any judgments in the jaw cases pursuant to which any RD Legal entity was entitled to any money prior to the settling of those cases?
A. To my understanding, there have been no -- actually, yes, there were judgments that were entered and subsequently appealed as part of the bellwether process.

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Q. Can you describe the magnitude -- well, did those judgments include any awards to any particular plaintiffs?
A. Of course.
Q. Do you know whether Mr. Osborn was entitled to any portion of those awards?
A. Several of the cases that were sent out for trial might have been his. I don't recall.
Q. Did RD have any rights to any legal fees based on any of the judgments you're describing prior to the settlement of the jaw cases?
A. If they were his and had he collected them, the answer would be yes.
Q. Do you know whether he ever collected them prior to the settlement of any jaw cases?
A. I'm unsure.
Q. What proportion would you say of the total amount of jaw cases did you understand to have some kind of final judgment?
A. You don't understand the process. It's part of the bellwether process.
Q. What proportion of the overall jaw cases did you understand to be subject to any judgment prior to the settlement of the jaw cases?
A. My understanding is that there were less -- I'd

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have to look back at the various AUPs and the Smith Mazure reports, but there were probably less than 20 verdicts that would have been reduced to judgments.
Q. Other than the verdicts that were reduced to judgments, are you aware of any other judgments -- any other cases that were reduced to judgments prior to the settling of the jaw cases?
MR. ROTH: Could you repeat that question?
MR. BIRNBAUM: Sure. I'll withdraw and ask a different one.
Q. Did you ever get any repayment from Mr. Osborn pursuant to any of RD's agreements with any of Mr. Osborn's firms prior to the settlement of the jaw cases?
A. We might have gotten some payments in. I'd have to check with the office and our administrator. I don't know as I sit here today.
Q. Did RD have a process of monitoring whether the jaw cases had settled?
MR. WILLINGHAM: When you say RD, what are you referring to?
Q. Did any of the RD Legal entities have any process through which there was any monitoring of whether any of the jaw cases you've described settled?
A. I'm certain there were Google alerts put in

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place. There were periodic communications by the origination department with Mr. Osborn. We had engaged Smith Mazure to do periodic audits and speak with Mr. Osborn. So there was an open communication.

Q. Do you believe anybody ever misinformed you about whether the jaw cases were settled at any particular time?

A. I don't believe that Mr. Os -- Mr. Osborn ever -- what word did you use? I'm sorry.

MR. HEALY: Misinformed.

Q. Misinformed.

A. Misinformed either myself or anyone associated with the investment manager, whether it be an employee of investors -- an employee of RD Legal Capital or any of its affiliates.

MR. WILLINGHAM: Just an objection to the last question. It calls for speculation.

Q. You answered as to Mr. Osborn. Do you know whether anybody else ever provided you with false or misleading information as to whether any of the jaw cases were settled?

MR. HEALY: The question is does he believe anyone ever provided him false information?

MR. BIRNBAUM: Correct.

MR. WILLINGHAM: He said he doesn't know.

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MR. HEALY: So we would object to the question as phrased and ask that it be rephrased whether he believes or has knowledge anyone provided false information.

A. Has the question been rephrased?

Q. It hasn't been.

MR. HEALY: We object to the form of the question. Please answer it.

A. Not to my knowledge.

Q. Did there come a time at which you believed money had been set aside for the payment of any of Mr. -- of the jaw plaintiffs?

A. Money had been set aside as part of the settlement, if that's what you mean to say.

Q. Well, it isn't, but thank you.

A. I'm trying to clarify.

Q. So at some point, as part of a settlement, did you come to understand that money had been set aside by certain drug companies for payment to certain jaw plaintiffs?

A. Yes.

Q. And prior to the settlement of the jaw cases, did you ever believe that money had ever been placed into an account for use to pay the jaw plaintiffs?

A. It would have been as judgments went up on appeal, unless that aspect were waived, and I wouldn't know that.

Q. Would the money there just be related to those specific judgments, or would it relate to the entire world of jaw plaintiffs?

A. It would relate to those specific judgments, the bellwether cases that actually went to judgment.

Q. Would you --

MR. BIRNBAUM: Let's mark as Exhibit 264 a September 2012 version of an RD Legal Due Diligence Questionnaire.

(Exhibit No. 264 was marked for identification.)

BY MR. BIRNBAUM:

Q. Take as much time as you need to review it, Mr. Dersovitz. My question is simply going to be whether you recognize this document.

A. Yes, I do.

Q. What do you understand this document to be?

A. We were talking about it earlier. It's a DDQ that was provided to sophisticated investors as part of -- as part of a package of other documents.

MR. WILLINGHAM: Just for identifying this one, this document also has Exhibit 111 and the date 4/21/16 at the top, which appears to be an exhibit sticker from some other proceeding.

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MR. BIRNBAUM: Correct.

Q. I'll also mention that it is dated September 2012. So I should ask, did you understand there to be different iterations of the DDQ document?

A. Yes.

Q. I want to call your attention to some language on page 11, next to what reads "List the instrument types you use by percentage." You'll see it reads, "The fund is predominantly in fee acceleration and less than 5 percent is in credit line facilities."

Do you see that?

A. Yes, I do.

Q. What is -- what is meant by credit line facilities? If you know.

A. We had a document that we referred to as a credit line.

Q. And how would you describe -- is a credit line something RD Legal offered plaintiffs' attorneys?

A. From time to time, in years past.

Q. And when it says the fund is predominantly in fee acceleration, I want to ask you what that means, but I certainly don't want to hide the ball, so I'll just also note about three paragraphs below there is something that refers to fee acceleration.

I'll start with this question, then: Was it

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true in 2012 that the onshore flagship fund was predominantly in fee acceleration?
A. Yes, it is; and yes, it was.
Q. And is that also true for the offshore fund?
A. Yes, it was, and yes, it was.
Q. Because, and I think you mentioned this earlier, the DDQ on its face, page 1, seems to apply to both the onshore and offshore flagship funds. I'm not going to distinguish in my questions about here, but obviously if there's a difference, I invite you to --
A. Understood.
Q. -- draw that distinction.
A. Understood. I'm sorry for not waiting for the end.
Q. When you say that it is correct that in 2012 the flagship funds were predominantly in fee acceleration, what do you mean by fee acceleration?
A. We would advance fees on settlements and/or judgments where a corpus of money had been identified. That was what would have been meant. I didn't mean anything. I wasn't the author of this document.
Q. Did you ever tell people orally, in substance, that the funds were in the practice of advancing fees where a settlement or judgment had been -- withdrawn. I confess that I don't know exactly what you said.

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Did you ever describe orally to anybody what the fund did?
A. Many times.
Q. And was it consistent with the fee acceleration description you just gave?
A. It was consistent with the totality of the documents that we had. A presentation is a 5, 10, 15-minute teaser of a conversation where we just go over the basics and eye level strategy. But to get an understanding of the document, what I had suggest -- what I had said earlier was you have to look at the totality of the documents.
Q. Did you ever tell anybody orally that RD Legal was predominantly in the fee acceleration business?
A. No, I would never have said it like that. That's not how I speak.
Q. Did you ever tell potential investors orally, in substance, that the funds were predominantly in fee acceleration?
MR. HEALY: Object to form.
A. No.
Q. No, you did not say that?
A. No. That's not what I would have said. I know that for a fact.
Q. And why would you not have said to people that

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the funds were predominantly in fee acceleration?
A. Because what I would have said is that the funds factor legal fees and/or settlements where a corpus of money has been identified. That was the typical description that I used to describe what it is that we do.
Q. As of September 2012, did you understand the jaw cases to be cases in which a settlement had been reached?
A. No, I did not.
Q. Did you understand the jaw cases to be cases in which a fee had been earned?
A. No, I did not.
Q. Did you understand the jaw cases to be cases where a corpus of money had been identified?
A. No, I did not.
Q. Did the jaw cases fit into the fee acceleration part of RD's business, the credit line facility part of RD's business, or something different?
A. Something different.
Q. So you consider it neither fee acceleration nor the credit line. Is that fair?
A. Correct. There isn't a finance company in business that doesn't have workout situations in place.
Q. Did you ever discuss any portfolio

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concentration limits with any potential investors in the flagship funds?
MR. HEALY: You're talking about oral conversations? Oral communications?
MR. BIRNBAUM: Correct.
A. Maybe at the very beginning. What I would have spoken about would have been that we look to the -- we historically and continue to look to the long-term unsecured bond ratings of the underlying obligors or payors as a factor to consider vis-a-vis exposure. That's what I would have said on that topic.
Q. In 2012, did the flagship funds have any concentration limits?
A. We had limits in place, but as you can see from the financials and other disclosures, that from time to time they were elevated, increased, and later on they turned into guidelines.
Q. Before they became guidelines, were the concentration limits ever recorded anywhere?
MR. HEALY: Object to form.
A. What do you mean by recorded?
Q. Were there ever written concentration limits that applied to the flagship funds?
A. There might have been, and there were waivers of those, as well. So you can't look at one without the

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A. Workout is -- I would almost dare call it a term of art in the finance world. When a transaction doesn't work out as anticipated, alternative things happen and you come to an accommodation or an agreement regarding the repayment.

Q. Do you ever inform any potential investors in either of the flagship funds that at some point more than 10 percent of net assets in the offshore fund were involved in something you considered a workout situation?

MR. HEALY: Wait. Can you read that question back?

(Record read.)

A. So if you go back to what my testimony was earlier today, everything was done collaboratively. Investor relations were typically handled by that department. So understanding that issue and the fact that my investor department communicated with investors predominantly, yes. In the AUP, which were distribute -- AUPs that were distributed to investors on a quarterly basis, on at least one communication to investors that was posted on the website, the investor website dated May 30th of 2012, with an understanding that all investors, both existing and prospective, were encouraged to log on to that site.

Q. Other than in the AUPs, do you know of anywhere

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else or any other means through which any potential investors in any flagship fund were informed as to the percentage of investments of the fund that related to workout situation?

A. The May 30th communication on the website might have contained that. I know that it contained a description of what occurred, as did the AUPs. There were numerous e-mails over the years that I might have been carbon copied on from Katarina regarding Osborn and so on and so on.

Q. Did you ever orally communicate with any potential investors in any flagship fund that the Novartis Pharmaceuticals Corp. payor listed in the RD Legal Funding financial statements referred to a workout situation?

A. Of course.

MR. HEALY: Orally communicate, you said?

MR. BIRNBAUM: Yes.

Q. Did you ever orally communicate?

A. We must have.

Q. You said "we." My question was whether you personally did.

A. We must have. Everything was done collectively. We must have because investors, prospective investors diligenced Novartis, Osborn, and

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workouts.

Q. When you spoke with investors, did you speak as a chorus with everybody else at the process?

MR. HEALY: Objection.

A. I was only one part of a total presentation. I would give an investor -- I would generally give investors the flavor of what it is that we do, acknowledge that we're no different than anyone else in that we have workouts, yes.

Q. What, if anything, did you personally tell potential investors in the flagship funds about workout situations?

A. That we would have them, and questions would come up from time to time and I would communicate that when asked.

Q. Did you ever --

A. There's nothing to hide. It's normal.

Q. Did you ever field questions as to -- from any potential investors in the flagship fund as to the magnitude of workout situations the funds were involved in?

A. Sure --

MR. HEALY: Objection. The question is to the magnitude?

MR. BIRNBAUM: Yes.

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MR. HEALY: Object to form.

A. So yes. When you understand that I is we and we, meaning organizationally, encouraged people to look at the AUPs, made those available to people, the answer is yes.

Q. And other than your reference to the AUPs, was there anything else you personally told investors, that you can recall sitting here today, about any workout situations other than that you would, quote, "have them"?

A. When --

MR. HEALY: Objection. He already testified that he discussed this with investors and investors did diligence on Osborn and other matters. They necessarily had to have discussed it with him, otherwise they would not have known to do that diligence.

THE WITNESS: Correct. And it's not only me. I'm one part of the group. Okay?

Q. My question is only you.

A. But it's not only me. It's not only me.

Q. Did you rely on other people to communicate the magnitude of the workout situations to investors?

MR. HEALY: Objection as to whatever you mean by the magnitude.

A. I relied on my marketing department, Amy when

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she spoke to investors, to truthfully convey everything to investors, and I do know that from time to time I would get more particular questions that I had to answer about Osborn, about Cohen. There -- you cannot have a finance company without a workout.

Q. Looking at page 6 of Exhibit 265, there's a reference to East Coast Investments LLC/201 Kennedy Consulting LLC. Do you see that?

A. Yes.

Q. The percentage of net assets for that is 9.41. Do you see that?

A. Correct.

Q. What does East Coast Investments LLC/201 Kennedy Consulting LLC describe?

A. A transaction involving a legal fee, as best as I can recall.

Q. If we can pull up 264 again, please. We were looking at page 11 before where there's a description of fee acceleration and lines of credit. Do you remember that?

A. Yes, sir.

Q. So. East Coast Investments/201 Kennedy Consulting receivables described in 265, Exhibit 265, does that fit into either of the categories in Exhibit 264 on page 11, Fee Acceleration, Factoring, Or

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Line of Credit?

A. I believe it does.

Q. Which category?

A. Fee acceleration.

Q. The fee acceleration description in 264, there's a sentence that reads, "A fee acceleration investment is the purchase of a legal fee discount from a law firm once a settlement has been reached and the legal fee is earned."

Is that an accurate description of what you understood a fee acceleration to be in September of 2012?

A. Yes.

Q. Returning to 265 and the line on East Coast Investments and 201 Kennedy Consulting, were all of the cases relating to those receivables involving -- withdrawn.

Returning to page 6 of Exhibit 265 and the line regarding East Coast Investments LLC/201 Kennedy Consulting, did all of the cases relating to those receivables involve a settlement that had been reached where the legal fee had been earned?

A. They involved a criminal legal fee that was due and owing to a law firm. And as I've told you and as I've suggested before, you have to look at the totality

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of the documents vis-a-vis what is an appropriate investment for the funds.

Q. Was there any settlement that had been reached for the cases underlying the East Coast/201 Kennedy Consulting line?

A. No.

Q. There's another line that says Merck Sharp & Dohme Corp. formerly known as Merck & Co., Inc. Do you see that?

A. On what exhibit?

Q. I'm sorry. I'm on page 6 of 265, the financial statements.

I'm sorry. Did you say yes, you see that?

A. I see it. I didn't realize there was an open question.

Q. Were there certain receivables that RD Legal purchased relating to Merck & Co.?

A. Yes.

Q. Was that involving -- did that involve -- did any of those receivables relate to any of the jaw cases we looked at earlier today?

A. Yes.

Q. And did any of those receivables relate to something other than the jaw cases?

A. It's possible that there was another Merck

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position in the fund.

Q. Did RD Legal ever do --

MR. HEALY: I'm sorry. Are you finished?

Q. I'm sorry. Are you done?

A. It's possible that there was another Merck position in the fund simultaneously. I presume now as I sit here that it's predominantly Merck, but it's the jaw -- one component of the jaw cases, but it's something that would have to get checked out.

Q. Did RD Legal ever enter into any agreements relating to legal fees associated with Vioxx cases?

A. Sure.

Q. And at the time of --

A. It's Merck. I think it was Merck. Sorry.

Q. And at the time RD Legal entered into those agreements relating to the Vioxx cases, were the Vioxx cases settled?

A. Yes.

Q. Do you know who the manufacturer of Vioxx is?

A. Not off the top -- I don't remember if it's Merck or not. That's why I said what I said. You'd have to check.

Q. Where in the financial statements, if anywhere, could I check to see the kinds of cases that underlie the Merck & Co. line?

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A. More fundamentally, you'd have to ask the marketing department or someone in management what payor is corresponding to what cases.
Q. Is there a way, sitting here today, to figure that out just from the financial statements?
A. No, but the final statement is only one piece of the puzzle. If you had accessed the investor website or the AUPs, you would have been able to get at this information, or more simply, to ask the question.
Q. How about the same question about funds under the control of the U.S. government. Is there a way of telling, just by looking at the financial statement alone, what cases underlie the funds under control of U.S. government line?
MR. WILLINGHAM: You mean to him or to someone else?
Q. Can you, Mr. Dersovitz -- sitting here today, can you, Mr. Dersovitz, with whatever knowledge you've accumulated from your positions at RD, point me to any information in Exhibit 265 that would disclose what cases underlie funds under the control of U.S. government?
A. You'd have to utilize other documents that were available to an investor or ask directly. There were AUPs, there were offering materials, there were marketing pieces, and there were fund disclosures that

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were done via e-mail and on the website. In this document per se (indicating), meaning, to be precise, 265, it might not be immediately apparent.
MR. WILLINGHAM: Was it apparent to you?
MR. BIRNBAUM: Objection. You can clarify later.
MR. WILLINGHAM: You asked him his understanding.
THE WITNESS: So the answer, it wouldn't have been because -- it was and it was not because I wasn't responsible for the production. I -- it's -- I relied on professionals, internal and external, to generate this and presume that it's accurate.
Q. Did you ever ask Ms. Markovic what she handed out at investor presentations?
A. From time to time, sure.
Q. And did she -- do you have any reason to believe she didn't answer you honestly -- withdrawn. Did she answer you?
A. From time to -- yes, of course.
Q. Do you have any reason to believe she answered you in any way other than honestly?
A. Never.
Q. Did she ever tell you that she handed out marketing presentations?
A. Of course.
Q. Did she tell you she handed out the Alpha

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presentation?
A. Of course.
Q. Did she tell you --
A. Well, different reiterations of it.
Q. Did she tell you that on some occasions she gave potential investors the FAQ -- some iteration of the FAQ document?
A. To be precise, I think anytime the presentation was given, the FAQ was also given once it was prepared.
Q. Were there any other documents you understood investors to get as a general matter before investing in the funds? And to be clear, I mean were affirmatively handed either on a thumb drive or on paper form or some other form as opposed to being given access to if they wanted to opt into this website.
MR. HEALY: You're asking about potential investors before they signed the NDA?
MR. BIRNBAUM: Before could be back to birth.
MR. HEALY: So information given to an investor before the time they subscribe and allocate into the fund.
MR. BIRNBAUM: Correct.
Q. Did you have any understanding as to any documents that were routinely given to investors before they subscribe and allocate towards the fund?

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A. My understanding is virtually all -- not all, virtually all sophisticated investors conducted a level of due diligence.
Q. And as for my question, did you understand Ms. Markovic to hand any documents, in paper or electronic form, to investors before they bought into the funds, flagship funds?
A. Yes. I relied on an investor's sophistication to do their own diligence on a fund. The marketing presentation and an FAQ is only the beginning of the process.
Q. Did you understand -- have any understanding as to whether Ms. Markovic ordinarily gave potential investors the fund's financial statements when marketing the fund to them?
A. Of course.
MR. HEALY: Before they signed an NDA?
THE WITNESS: I was just going to say that.
MR. BIRNBAUM: Before they invested.
A. Customarily we encouraged investors to do diligence, and as part of that process they would sign an NDA and be given the whole -- access to the total -- what I've been describing today as the totality of the documents.
Q. What percentage of potential investors did you

Div. Ex. #216

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. NY-09278-A

RD LEGAL CAPITAL, LLC)

SUBJECT: RD Legal Introductory Call

PAGES: 1 through 40

AUDIO TRANSCRIPTION

Diversified Reporting Services, Inc.

(202) 467-9200

PROCEEDINGS

MALE VOICE: In that time been working diligently to get our own internally managed limited partnership structure up and running. That is we're an RAA with $1.1 billion in assets, but the investment that we're contemplating making at RD Legal is through a fund that's going to be launched. We have the legal completed, we have a couple people signed up. That is going to come together for initial deployment of capital January 1st of 2013. So we're running hard at getting the initial portfolio constructed.

We're not -- we're intentionally trying to start this thing small and grow it over time, so we're not sure how much we're going to have on January 1st, but we intend to continue to raise capital indefinitely and call more capital quarterly, so it could be that January 1st we're still kind of small and then we grow over the coming quarters and years.

Our hope is that we would have 5 to $10 million by the end of the year and up to 20 or 25 by the end of 2013. I'm not sure if that's going to happen or not, but that's our goal. So that's where we're at. We're pretty much read to go, but if we -- if for whatever reason we don't get it done to do this one this quarter, it doesn't mean we're not interested. We have another opportunity

three months after that.

But that leads me to my first questions, which is just on the minimum investment, and I don't want to spend too much time on it, but I know -- you've stated the minimum is a million dollars, but I think it was indicated that there was some flexibility there. I wanted to just confirm that there is some flexibility there.

Our intent would be -- if this is a strategy that we like and we want to get into, we would certainly intend to at some point get to a million dollars. The only reason we would need that flexibility would be if we're not large enough to support a full commitment on day one. Is that something that you think is going to be a problem?

FEMALE VOICE: We can certainly work with you. Since we've said that there was some flexibility, generally I think we can go under 500,000, but it would have to be with the understanding that there would be a commitment to a million within the first year.

MALE VOICE: Okay. I don't think that's a problem. We would certainly -- we would do at least a half a million, and like I said, the intent is not for us to have a whole bunch of half a million dollar investments. So if we couldn't get to that million,

either something went wrong with us raising capital or something went wrong in the interim with your strategy. So it would be our intent to continue to grow the size of our investment if we were to start below the million.

FEMALE VOICE: Sure enough. No problem.

MALE VOICE: We can pick that conversation up later. So just from a logistics standpoint, how often do you take capital? Is it at the end of every quarter?

FEMALE VOICE: We actually can take capital even within the month.

MALE VOICE: Okay.

FEMALE VOICE: We can take capital as you get it.

MALE VOICE: Okay. So if we told you that we were --

RONI: For the most part.

MALE VOICE: So if --

RONI: I'm sorry I interjected. This is Roni.

MALE VOICE: That's okay.

RONI: For the most part. It really -- it depends what our deal flow is at that precise moment in time and how much capital, if any, we're sitting on because we're waiting for deals to flow.

MALE VOICE: Okay. Well, we intend to take in

capital at the very end of each quarter, and we can have it sitting around for a little bit, but our hope is that we can deploy that pretty much as quickly as we bring it in. So I think the thinking right now is if we were to go ahead we would want to make our initial investment as close to January 1st as possible. So if that was the case, and assuming you could take it and deploy it, when would you need to know from us that that was going to happen? What's the commitment advance time?

RONI: It -- this is Roni again. It would be nice if we could have a week to two weeks' notice because we can tell you what our demand is at that point in time.

MALE VOICE: Okay. Right now based on what you know about your deal flow, do you think something in the range of 500 to a million could be deployed on or around January 1st?

RONI: That's not even an issue. We've got so much deal flow.

MALE VOICE: Okay.

RONI: But to give you an example, in May we received an allocation form two pension funds for 25 million or 27 million, and we were sitting on it for a short while.

MALE VOICE: Okay. Well --

FEMALE VOICE: But the 500 is no problem by

January. And just so you know, when we receive it, it's effective the following business day just for your records.

MALE VOICE: And you start accruing the pref immediately right?

FEMALE VOICE: Yes.

MALE VOICE: Okay. All right. And then -- excuse me. So the 13 and a half percent pref starts to accrue from day one. but it's not a cash flow distribution as we've talked about; it's just a capital account credit, and then starting after the first year we have access to some liquidity, but there's no -- this is not an income strategy, right?

FEMALE VOICE: That's correct. That's absolutely correct.

MALE VOICE: All right. That -- I think those are -- it's pretty straightforward. Those are the logistical questions that I have. So, you know, we don't want to take up too much of Roni's time. So if you want to get into kind of your overview of the funds, that would be helpful to hear Roni talk about the fund for Jordan and I even though we've talked to you in the past. And for the rest of the team to hear that overview from someone directly at RD Legal would be helpful as well.

FEMALE VOICE: Sure. No problem.

RONI: Okay. To start, the most important thing that you gentleman appreciate -- and I apologize if there are women in the room, I've only heard a guy's name.

MALE VOICE: There aren't. It's all guys. You can call us gentlemen.

RONI: Okay. Okay. We don't lend money. We purchase legal fees. Okay? There's a big distinction there in terms of where you fall, okay, as a secured creditor. We're not a -- while we maintain a first priority lien position, we structure the transaction as a purchase and sale so that it brings with it a fiduciary relationship on the part of the intervening attorney.

And if the intervening attorney, for instance, were to go bankrupt, all we simply have to do is petition the bankruptcy court to allow us -- or to have the asset pass outside of the estate. That is the linchpin of the strategy. What we're dealing with primarily, 100 percent, are settled cases. So there is no litigation risk in the strategy.

MALE VOICE: Roni, I don't want to interrupt --

RONI: It's very --

MALE VOICE: -- you too early in your spiel, but if you could spend a couple maybe extra minutes on that point. it would be useful because I've heard that

from Rick, from everyone that we've talked to since, and I know that that's a key part of your strategy. As non-attorneys sitting in this room, I guess we find that -- not hard to believe.

It's not that we don't trust you; it's just something that's difficult for us to get our arms around. I don't know if it's too many Law and Order shows or whatever, but explain to us how at some point it reaches a point in the legal process that it's inconceivable that the deal falls through?

RONI: Okay. Well, we all know that parties litigate. Litigation takes three to five years. At a certain point in time, there's (inaudible) an accord and satisfaction between two parties. People enter into agreement where Party A says I will pay Party B, okay, certain sum of money, and upon payment of that sum of money, Party B will provide a release to Party A. There's essentially an accord.

Practically speaking, please appreciate that if settlements fell apart, litigation wouldn't take three to five years; it would take 20 years, and obviously that's not what occurs. Why am I saying this? Okay? The counterparties that we're dealing with are not mom and pops. They are Fortune 500 companies that have boards, claims departments that are settling cases as a routine

part of their business. Does that make sense?

MALE VOICE: It does. So are you saying that these deals are then -- are all the receivables that you're buying the result of an agreed upon settlement? Or are there cases that actually go to a court decision?

RONI: No, you see, that's -- when people think about this strategy, they initially think about litigation risk, appeals, but a settlement can occur pre-litigation, during the pendency of the litigation, post-appeal. None of that is really relevant. Okay? A settlement is a settlement is a settlement. At some point during the litigation process, Party A agrees to pay Party B. And what we're doing is accelerating the legal fees to attorneys that are entitled to their fee.

Now we accelerate legal fees on settlements and judgments that are collectable. Now please understand one other component. 95 to 97 percent of settlements pay immediately. So if a lawyer has waiting or litigating for three to five years and all they have to do is wait another 15 to 30 days, they don't need us. That's not our niche.

There's a small percentage of settlements, 2 to 4 percent I would estimate, that have a post-settlement payment delay associated with it. Why? Imagine there's an infant, a child, a wrongful death where you've got an

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estate. Are you aware – I practiced in New York for many years – that in New York state, for instance – and some jurisdictions it's not quite like this, but in most jurisdictions it is – the parent of an infant is not able to settle the child's claim.

Once the opposing attorneys have agreed to a settlement, they have to take that settlement to a judge to have a judge approve that settlement. That process can take three months at a minimum. I once had a situation where it took a year and a half, two years. But that's rare in that type –

JOHN: The judge – Roni, the judge can't change that settlement, right? I mean so the settlement is agreed between the two parties. The judge just manages the payout process? Is that the case?

RONI: Well, 99.99999 percent of the time that's true. Once in a blue moon, a judge will interject and say, you know what, that's not adequate. Understand something. No one ever comes to the process and says you're paying too much. The only complaint ever is – and this is more common in a class action than in the type of discussion that I'm talking – type of case that I'm talking about now.

No one ever comes to the discussion and says I'm getting too much money. If a complaint or a comment

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is made that a settlement is inappropriate, it's always because it's not enough. And what that does, it causes the parties to go back to the table and renegotiate the settlement, because you have to remember the incentive is still there in that situation, to settle and compromise the claim. Because if you don't compromise it, the exposure or the liability is still there on the balance sheet. It doesn't go away.

So the situation where it occurs from time to time is in a class action. Has anyone in your office ever received a notice at home where you're notified of a settlement that is proposed?

MALE VOICE: We get them all the time on the securities litigation.

RONI: Exactly. If you're a shareholder in that entity, would you ever complain that you're getting too much? So let's assume for the moment that you go to that – it's called a fairness hearing. And you're going to voice your objection, and the judge buys into it. He's going to have a bench conference with defense counsel to say, defense counsel, I need you to go back to your board and I need you to get $50 million more approved on this securities class action.

Well, the attorney is going to call the board, have a meeting with the board, and essentially tell them

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I've got good news and bad news. The good news is I'm a great lawyer, I did an unbelievable job for you. The bad news is that the judge didn't buy into the settlement. You're going to have to instead of authorizing 400 million, you're going to have to authorize 450. But you have to remember that the reason you settled this case was because there was $2 billion of liability on your balance sheet.

So after everyone has their emotional outbursts and everyone pounds the table, they're going to come to their senses and approve the new acquired settlement amount. What the real – what that brings about is one of the two main risks in this strategy. Does that make sense so far? That people don't post – go ahead. I'm sorry.

MALE VOICE: No, it does. I just have one more point of –

JOHN: So – hang on. So one of the risks in this strategy is –

MALE VOICE: Well, he's going to get into the risk. I just want to clarify one more thing. Because I hear what you're saying, and, again, I believe you. I just – so at the point where Party A and Party B agree that this payment is going to happen, there are some legally binding then contract between the two that

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legally binds –

RONI: Absolutely.

MALE VOICE: – Party B to pay Party A, and then that becomes – where does that go in the capital structure of Party B. Say it's a public company or whatever.

RONI: Unsecured.

MALE VOICE: I guess it doesn't matter.

RONI: Unsecured.

MALE VOICE: Unsecured.

RONI: Unsecured until the corpus is segregated out by court order, and that's why we look at the long-term unsecured bond rating of the entity that's paying the tab before we make the advance. That's one of our underwriting criteria. But before I even get to the risks, can I circle back to an earlier point that I should have made?

MALE VOICE: Please.

RONI: The litigation takes – litigation takes three to five years. So that means that the money or the revenue that a law firm is generating today reflects who they were three to five years ago. Settlements occur episodically during a given year. So that means that your cash flow is unpredictable. While most settlements, as I said, pay immediately, there's a small percentage of

settlements that has a significant post-settlement payment delay associated with it.

Well, wouldn't you know, those cases tend to be the bigger cases that generate the larger fees? So imagine coming home to your wife one night -- because I did as a young man starting my own practice -- and saying, "Honey, we just made $700,000; I settled my first case for 2 million bucks." And I can remember this conversation as I'm sitting here with -- sitting here today with my wife.

I took home a check for $25,000 and so did my partner. The balance of that settlement went to pay back bills. And you know what? From the point in time that I settled that case till the point in time that I collected it, it was a significant payment delay. So I came home to my wife, told her, "Honey, I just made 700 grand, but we're not collecting it for" -- five, six months or a year, whatever it was. Okay? Just imagine how that made her feel. I live that every single day of my life.

Cash flow management in that business is horrific. What's unusual about that business, it's one of the few businesses that can actually afford 18 to 24 percent per annum for money because the ROI is so tremendous in the business that it can withstand that type of charge for capital. It's just that it's episodic

and coincidentally your larger payments -- your larger fees typically have a delay associated with them.

I should have started off with that. I apologize.

MALE VOICE: That's all right. That's good --

JOHN: I'm glad you added that caveat, Roni --

RONI: (Inaudible) for the business.

JOHN: -- because we were worried the (inaudible) attorneys weren't making enough money. So --

(Laughter.)

FEMALE VOICE: Poor guys.

RONI: Questions so far.

JORDAN: Roni, it's Jordan here. I have a question. So you mentioned -- the first thing you said is that RD Legal Partners doesn't lend money. I read in the PPM that the line of credit facet of the strategy is somewhat an immaterial level of the total AUM under the strategy, about 5 percent, so you can make the case if it's material or not. So what is the long-term type of prospects for that facet of the strategy?

RONI: Today the balance is $2.5 million out of 145, whatever percentage that is. That's the number you shot me coincidentally today? Okay, as of September, that's the balance. It's a diminishing component of the business. It flows from pre-crisis where there was a bit

of competition in this space, not in a tangential space. We really have very limited, if any, competition in factoring.

You have to appreciate that the marketing task that we have is quite significant. It's a high hurdle. We have to find an attorney who is need of money at precisely the point in time that they have the settlement. That's a tough marketing task. So pre-financial crisis, most of our competition went into the credit facility space. It's much -- it's a much easier marketing task to knock on attorneys' -- an attorney's door and suggest a credit facility to them. Okay?

Because based on what I've said about their cash flow, they always need cash. So any attorney that you offer a million bucks to is going to take the money. We'd -- I personally am not a fan of that asset class because it's not bankruptcy-proof. You're just a secured creditor, and you usually get diluted.

MALE VOICE: Okay. So that -- the trajectory of that business then in your opinion continues to be lower until it goes away or is it going to remain part of the business?

RONI: Yes. It's a de minimis piece of the business. It -- I don't like it, I don't want it, we don't really do it. And these are old, legacy-type

positions.

MALE VOICE: All right. I think you were going to get into the risks.

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 payment delay has a legal process that needs to follow. There's a predictability associated with how long that legal process should take. What we do as a rule of thumb is essentially double that -- double to triple that period of time. Our typical underwriting duration -- and if you think about it as a loan, we charge our clients 18 to 24 percent per annum, we typically discount for two to four years. So when you think about a legal fee that an attorney is going to factor with us, we typically offer them as a purchase price a loan to value of anywhere between 25 percent to 50 percent of the fee that you're purchasing, and I apologize if I'm intermingling purchases and loans, but it really is the easiest way to appreciate the advance amount.

MALE VOICE: Yeah, I think we --

JOHN: So you're -- just make that --

understand that, right? This is John. You're offering 25 to 50 percent of the settled fee amount, correct?

RONI: No, of the portion that they're factoring. So what we do is if something has a three-month expectancy or a six-month expectancy, we will typically discount the transaction for two years to four years, maybe sometimes a year and a half. So we'll double to triple the expected duration so that there's no reason for us to take the risk of time. We simply advance less to the client.

So let me give you a simple example. Imagine -- for simplicity, let's assume we're only discounting for a year, okay, and charging 20 percent and just bear with me and assume the math works. So imagine someone comes to us with a million-dollar legal fee that they want to factor. Maybe they made 2 million or 4 million, okay? But they only need to factor a million. We will offer them $800,000 -- as I said, remember, for this example it's one year -- to buy their million-dollar fee entitlement. Okay?

The contract will say we're purchasing your legal fee of a million dollars for $800,000. Having said that, if we're repaid within the first 30 days, we will give you a rebate of 184,000 for a net to us of 816. And if we're paid within 31 to 60 days, we will give you a

rebate of 168 and so on and so on. So every month, we will accrete on a straight line an incremental 2 percent. Just bear with me. The math works. Okay? Does that makes sense?

MALE VOICE: It does.

RONI: So even though we expect that receivable to pay out at 848, 864, somewhere in that range, we're still going to purchase it for a long -- or discount it for a longer period of time because there's no reason for us to risk the time.

MALE VOICE: So this is what you're saying where duration becomes the risk. The risk is that it takes longer even than you thought and that you --

RONI: Correct.

MALE VOICE: Right, that you underwrote it for --

RONI: Correct.

MALE VOICE: -- to actually collect that payment?

RONI: Correct. And historically, that has been an insignificant issue. That -- and understand something else. A, it impacts ROI and not principal. That's number one. Number two, that's one of the benefits of the 13 and a half percent preferred cumulative return that we afford investors.

MALE VOICE: Because you take the first loss or the first reduction in ROI.

RONI: Correct.

MALE VOICE: Okay.

RONI: Questions?

MALE VOICE: That one's I think pretty straightforward, the duration risk.

RONI: Okay. The second risk, which can be tremendously mitigated as well, too, ties to one of the first comments that I made. It's the risk of theft. Okay? You've got to remember in each of these situations there's a client involved, John or Jane Doe. The attorney is their fiduciary. If the attorney happens to come into possession of the client's money, A, they're required to deposit it only into their trust account, and, B, if they were to take that money for themselves and not remit it to the client, where I come from that's theft. It's certainly a disbarrable event.

So the nice thing in this strategy which people don't immediately appreciate who are familiar with the asset-backed world, while we don't have 100 percent control of cash, we actually manage to get about 70 percent control of actual dollars collected. We have the best hammer available.

And it's why theft has not been a real issue

for us, nor has fraud. And that is simply because if a lawyer does something with the money that belongs to us -- and, mind you, I'm not for one moment suggesting that lawyers never give us a hard time and that we don't from time to time have issues.

But the nice thing about this strategy is this: All I have to do is call them up, yell, scream, use a couple of expletives, and they always manage to come -- to meet me at a conference room and offer alternative assets that we can get control of cash over or an immediate cash payment. There are no games here. Their license is on the line. See, the funny thing is it's better than the collateral that most financial people are accustomed to.

You're used to taking a mortgage on a building. We'll I'll turn it upside-down and then suggest to you if God forbid I ever lost this building or my wife actually ever lost this building, she could reinvent herself and buy it back in two to three years. Whereas if I lose my law license, I can never practice law again.

That's the difference. It's an unbelievable sledgehammer over someone's head. And that's what gets -- that's what mitigates theft. And --

MALE VOICE: So just so I understand, when you

say theft, theoretically -- and I understand that it hasn't happened and you take measures to make sure that - -

RONI: Oh, it has happened.

MALE VOICE: It's happened to you?

RONI: It has happened. Of course. Lawyers are lawyers. Lawyers are people. That's what I was alluding to. Don't -- we've had issues from time to time. But it --

MALE VOICE: So when you say issues, so an attorney gets paid --

RONI: -- mitigated.

MALE VOICE: -- and then they don't turn around and give it to you? That's what you're saying?

RONI: Sure.

MALE VOICE: Okay.

RONI: Absolutely.

MALE VOICE: And then you call them and say --

RONI: It doesn't happen much.

MALE VOICE: Right. That's when you call them and say give it to me or else.

RONI: I call them and say -- correct. And that's when they realize they have no choice. But understand something else. We manage to achieve approximately 70 percent control of cash. And that's the

point I was just about to make. So we send lien notifications to the -- what we call the obligor, which is the -- essentially the attorney or the administrator for the insurance company, Fortune 500 entity, municipality that is going to pay the settlement. And 70 percent of the dollars that we collect come directly through those entities. Okay?

Other mitigants that we employ is if two or three attorneys are partners in a law firm, anyone that's over 10 percent has to sign the assignment and sale document, because then what happens is every partner, every member of the law firm essentially becomes the cop on the beat for us because if one attorney would want to go and take our money, the other two appreciate that their license is on the line.

The other thing that we do to mitigate risk of theft is most -- in many situations on the larger cases, the initial attorney that was retained on the matter is not the same attorney that settles the matter. Attorneys farm cases to one another based on their level of experience and expertise in a given area. So someone -- have you guys ever seen those TV commercials late at night for mass torts?

MALE VOICE: Yeah.

RONI: Okay. So I'll just use an example.

Sokolove, okay? He's just a phone bank. That guy hasn't seen the inside of a courthouse in probably 30 years.

JOHN: Most of these guys are that way, right?

RONI: He -- excuse me?

JOHN: Or a lot of them. A lot of the ones that advertise on TV are just marketing machines. Correct?

RONI: Correct. But -- and that's true of a lot of the cases that we actually factor, and they're -- most of the attorneys that we factor are not marketing machines. In the profession, they're called mills. Okay? They're -- they just don't have the level of expertise in a given area whether it's products liability, whether it's mass tort and so on and so on. They farm cases to better and more experienced counsel.

So when the attorney that was initially retained on the matter approaches us, all we have to do is take him or her out of the chain of cash. So we send a lien notification to what you call the trial counsel, the law firm that actually settled the matter. And they pay us directly. So those are the various mitigants that we use to reduce theft. And it -- and theft has not -- as I said earlier, has not been a major issue in this strategy because of precisely that reason. Our losses are very small by comparison.

OLEG: Roni, this is Oleg. I just have a question on the cash flow, you know, being unsmooth or erratic for law firms. Is there a substitute form of financing where they can obtain a lower interest rate? It strikes me that paying 18 to 24 percent to somehow make your cash flows smoother is a very high rate. I mean can you -- can -- are there any alternatives or substitutes for that?

RONI: Well, the erratic nature of the cash flow has a couple of implications, to destroy your FICA score. So when you go to your bank as I recall doing years and years ago and saying -- well, it's a little different, but when you -- when you go to your bank, the first thing that they're going to take off is what's your FICA score. Well, attorneys typically have lower FICA scores than the community at large because while they are -- while they pay their bills, they tend to be slow-paid. And that reduces your FICA score.

The second thing, Oleg, is imagine I go to you and tell you I've just settled a case for $3 million, here's a settlement agreement that's fully executed, and I'd appreciate it if you would consider offering me half a million. You would say that's really great, it's really thick; I've never really seen anything like this. Well, can you offer me a CD as well? Can you offer me a

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second mortgage on a home? That's what you're accustomed to. You don't understand the settlement agreement. So that's why these lawyers can't go to alternative or institutional lenders, because they're not accustomed to this asset class.

Now this is an interesting segue to another point.

FEMALE VOICE: Well, we want to make sure that you understand that first. Was that clear, Oleg?

OLEG: Yeah, yeah.

MALE VOICE: It's a nontraditional source of collateral that no one else is going to loan on.

RONI: Correct.

FEMALE VOICE: And if anything, banking standards have gotten much more difficult as I think we can all appreciate. So where they weren't able to understand the legal fee of collateral to begin with, now after the financial crisis, it's --

RONI: Forget it.

FEMALE VOICE: Yeah, it's not going to happen for a while. So that's one of the -- and, again, do remember that this situation is unique to lawyers who practice in the contingency space.

RONI: It's not -- it doesn't -- it's not relative to transactional attorneys because transactional

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attorneys --

FEMALE VOICE: Have cash flow.

RONI: -- have cash flow on a recurring monthly basis. They work, I don't know, 150 hours a month. They get paid for 150 hours the following month. There's a predictability to their cash flow, which helps me get into the next segue.

One of the conclusions that people occasionally infer from the presentation -- or at least the way I present -- is that this is a problem that only young attorneys have. Not so. So now you're a 40 year-old man or woman, you've got a relatively successful practice, and you just settled two or three cases in a new area that you really hadn't done much of. So what are you going to do? You're going to take revenues from today -- or you're going to take dollars from today's revenue stream and market for the new type of case inventory, because a light bulb went off.

That's a really good area. It wasn't too hard, it didn't take too long, this, that. But, guess what, it still constricts your cash flow. Everyone's always trying to grow their business whether you're 20 -- I don't know, 27 to 30 like I was when I started my firm or you're 60. So it's not only young lawyers; it's lawyers during their entire career.

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The first deal I did occurred in August of '96. I gave a lawyer $9,600. I did business with that -- and I collected $10,000 a couple of weeks later. I did business with that lawyer for -- and it was a small law firm -- for two or three years, and then they disappeared for a couple of years. And then I did a $3 million deal. So they moved "up the food chain." But here's another issue --

JOHN: Roni, how many law firms do you have relationships like this with?

RONI: Oh, it's so good now. It is growing by leaps and bounds. So last May or June the people were thankfully beginning to recognize that we perform, that we're non-correlated and so on and so on. And we've always had a group of about five or six people that were searching Lexis, Westlaw and other databases to increase the number of attorneys that we would market to.

With an understanding or an appreciation that money would thankfully begin to flow, I increased that department from five people to -- it varies a little bit, but we generally have between 25 and 30 part-timers now who all they're doing is adding to our database on a monthly basis. So whereas two -- whereas three years ago -- well, I'll go back a little further.

Whereas five years ago we would do business

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with one or two new attorneys a month, today the number is between seven and thirteen new attorneys every single month. And they tend to be repeat customers.

FEMALE VOICE: Let's just go back to the database. So Roni was talking about before in the origination area of a business, the database has now grown in excess of 65,000 attorneys. So 95,000 are on any given occasion either getting a blind email --

RONI: Tombstone.

FEMALE VOICE: -- tombstone, direct contact. Some way or another, RD Legal is getting in front of them on a regular basis. Of those, you know -- you can continue on your discussion of the repeat business that you -- it's over 50 percent of the attorneys on file work with us over and over again.

JOHN: So are those just -- are those --

RONI: That --

JOHN: Are those just attorneys that work on contingencies only?

FEMALE VOICE: Correct.

RONI: Absolutely. Those are the only attorneys that we market to because the rest don't need us.

MALE VOICE: There's 95,000 --

RONI: And we --

MALE VOICE: – litigation-only contingency attorneys in your database?

RONI: Oh, no, no, no, no. Okay. Here's a little bit of fatherly pride.

FEMALE VOICE: Oh, no. Here we go.

(Laughter.)

RONI: Okay? A little bit of fatherly pride. So my younger son is now a junior. But when he was a freshman in college -- what is a freshman? No, he can't get a job anywhere. So I put my son in the database department. Okay? And wouldn't you know, on the first or second day that he's working here, he tells me, "Dad, you're doing it all wrong."

I just roll my eyes. I just roll my eyes. "Okay, Jake. What's the deal? Tell me what I need to be doing and why I'm doing it incorrectly."

Well, he said, "You need to design – you need to implement a reverse web crawler."

I said, "Excuse me?"

"Dad, this is what a web crawler does, this is what you need to do."

"Okay, Jake. You're the big shot? You go and get it done."

He did. He went on a program called Elance.com and essentially retained an Indonesian and Indian -- two

separate computer programmers, designed a reverse web crawler that scoured the web for attorneys that on their site claim to practice or advertise for negligent cases, construction cases, environmental torts, mass torts, and so on and so on.

Well, that project was completed by the end of the summer that year, and it pulled down 965,000 attorneys on an Excel spreadsheet. And that is what the 30 kids downstairs are working on that I referred to earlier. They are scouring that sheet and adding and cleaning up the database that we're maintaining. And those – once they hit the database, then we start marketing to them. So there are much more than 95,000 attorneys who are doing contingency work in this country.

MALE VOICE: So how many of them have you actually done business with?

RONI: 200. 200 or so.

JOHN: So it's 965,000 potential targets, 95,000 that you're marketing to, you've done business with 200.

FEMALE VOICE: Right, because, remember, our area of focus is very, very specific. First of all we have to work with those that are only settled claims. That's the first criteria. The top five criteria is -- and attorneys, once they go on the website and start

entering their information, can sometimes eliminate themselves just by going through the first bit of criteria they have to meet for us to even begin looking at them.

They have to prove that there is a settlement, they have to show proof of the total amount of the legal fee, there has to be proof of that. We have to be able to have the first lien priority position over all the assets in the law firm, and they have to be in good standing with the bar, and we obviously do a credit review. All these things have to happen before they even get through to --

RONI: The process.

FEMALE VOICE: – for our underwriting to even have a closer look at them, so quite a few will get eliminated before we even see them.

MALE VOICE: Well, I mean how many –

FEMALE VOICE: So our niche, again, is – we want to reiterate that, but the niche is very specific. It's post-settlement, and it's only those cases that for one reason or another have some sort of delay attached with them.

MALE VOICE: Yeah –

FEMALE VOICE: So it's a very specific niche.

MALE VOICE: No, we understand, and we're not

in any way insinuating that 200 is not a lot. I mean honestly even if the universe was only 300 and you were doing 200, it doesn't matter to us as long as 200 is enough for you to keep getting deal flow. And it sounds like you're comfortable –

RONI: (Inaudible) growing every single month.

MALE VOICE: – with where you're at from a deal flow standpoint. Yeah.

FEMALE VOICE: Right, well, the other thing that we should talk about with regard to deal flow is the head of our origination. Roni brought on a gentleman by the name of Joe Genovese (phonetic) who is heading up the origination department. One of the tasks that he's been charged with is to brand the RD Legal name to the attorneys.

So where before it was just kind of scraping the databases and so forth, now there's an additional layer of branding where he's going into conferences and meetings and all sorts of ways to get the name out there. And we're starting to see the fruits of his labor.

RONI: Right. That's what I was so ecstatic about a couple of moments ago. We are just beginning to see the fruits of our labor of the last two years or the year and a half.

MALE VOICE: That's great. So –

FEMALE VOICE: We actually have a luxury problem. We have more opportunities than we have cash to deploy.

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.

MALE VOICE: So you don't have any SMA accounts or anything like that, separately managed pension pools because they're large enough?

RONI: No, not at present.

MALE VOICE: Okay. That's fine. The question then becomes how do you manage deal flow. If you had multiple ones, how do you decide which one goes where? But you're saying that's not an issue.

FEMALE VOICE: Oh, the --

RONI: That's not an issue, and I wouldn't even deal with cherry-picking. Because the way I would deal with it is if we were to enter into a managed account for someone, whether -- let's just assume for simplicity that we do it on a go-forward basis. The port -- the two funds would have to participate in every single transaction because I don't want -- and the participant would only be an eligible -- or I would only agree to afford them an opportunity to participate in transactions that we can't originate in-house. But they would have to share in every other one. Because --

MALE VOICE: Okay.

RONI: -- I have a fiduciary responsibility myself, and I don't want to be placed in an uncomfortable position.

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. We -- well, what would you like me to comment on? I just -- I don't want to leap into this on my own.

MALE VOICE: There's --

RONI: How we manage?

MALE VOICE: Well, there's two issues. It's the size of -- really, the size that you would let anyone -- exposure to any one single settlement get to is one issue. And then separately now that 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. But now that we know that you do have this large one, I guess knowing a little more about that settlement in particular would help to get us more comfortable with that concentrated risk. So they're two separate issues.

RONI: Okay. So please appreciate that the first dollar in any trade is always a concentration because this Iranian opportunity is going to be followed by another large opportunity set which is called Zadroga. And I'll get to your question in a minute. Zadroga is

an opportunity where the federal government has signed off on legislation to make award payments to 9/11 first responders. People are now waiting for their award letters. So we've recently sent -- where the foundation that's responsible for the 9/11 first responders actually sent an email blast of 10,000 or so emails to prospective award recipients on the Zadroga bill.

And they're expected to begin receiving their award letters in the first quarter of 2013, and what we communicated to them was once you receive your award letters, we would like for you to consider us to make advances if you'd like to accelerate a portion of your awards. Okay? So that's the next opportunity that's coming down the pike.

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 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 sanctions 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.)

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Div. Ex. #223

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17342

In the Matter of

RD LEGAL CAPITAL, LLC and RONI DERSOVITZ,

Respondents.

THE EXPERT REPORT OF PROFESSOR ANTHONY J. SEBOK

January 27, 2017

TABLE OF CONTENTS

I. Introduction and Summary of Opinions

I have been retained as an expert in *In the Matter of RD Legal Capital, LLC and Roni Dersovitz*, File No. 3-17342, by the Division of Enforcement ("Division") of the Securities and Exchange Commission ("SEC"). This action is an Administrative Proceeding brought by the Division against RD Legal Capital, LLC ("RDLC"), a formerly SEC-registered investment advisor, and Roni Dersovitz, President and Chief Executive Officer of RDLC. In this action, the Division alleges that RDLC and Mr. Dersovitz willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The Division also alleges that Mr. Dersovitz willfully aided and abetted and caused RDLC's violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5. According to the Order Instituting Proceedings in this matter, Respondents violated these laws through a scheme to defraud investors that included misrepresenting the type and diversification of assets under management by investment funds under their control, and exploiting unreasonable asset valuations to withdraw fund "profits" at the expense of those funds' liquidity.

Part II of this Report summarizes my background, qualifications, and experience. Part III provides the basis for my report, including the material I reviewed. Part IV provides background on investments in law-related activities and describes the terminology adopted by participants in this area of finance. Part V contains my opinions regarding the nature of the risks of the investments made by two of the investment funds under the control of RDLC and Mr. Dersovitz, RD Legal Funding Partners, LP and RD Legal Offshore Fund, Ltd. (collectively, the "Funds").

My opinions can be summarized as follows:

- There is a distinct market in investment in law-related activities in the United States and it is comprised of various types of litigation investments.
- The Funds controlled by RDLC and Mr. Dersovitz purchased litigation investments.

- The differing types of litigation investments are risky for different reasons endogenous to the investment type.

- RDLC and Mr. Dersovitz described the risk faced by the Funds they controlled by representing the Funds' investments as one investment type, namely factoring. In fact, the Funds bore significant risks which were different in kind, not just degree, from the risks borne by factors when buying accounts receivables.

II. Qualifications, Experience, and Compensation of Expert

A. General Background

I am employed as a Professor of Law by the Benjamin N. Cardozo School of Law of Yeshiva University, where I have taught since 2007. I also serve as Co-Director of the Burns Center for Ethics in the Practice of Law at Cardozo Law School. Prior to 2007, I was the Centennial Professor of Law and Associate Dean for Scholarship at Brooklyn Law School, where I had taught since 1992. Courses I have taught include Torts, Advanced Torts, Professional Responsibility, Insurance Law, Remedies, Third Party Investment in Litigation, Products Liability, Constitutional Law, Jurisprudence and seminars in Mass Torts and Social Justice and Tort Theory. Between 2013 and 2016, I was a Distinguished Research Professor, Swansea University, Wales, UK. I have taught at Columbia University School of Law in New York, NY, Fordham University in New York, NY, Princeton University in Princeton, NJ, Freie Universität, in Berlin, Germany, and Tsinghua University School of Law, in Beijing, China. My academic research includes litigation finance, tort law, and legal ethics.

I received a B.A., *magna cum laude*, from Cornell University in 1984. I received an M.Phil. in Politics from the University of Oxford in 1986. I received a J.D. from Yale Law School in 1991, where I was a Senior Editor of the *Yale Law Journal* and the Managing Editor of the *Yale Law and Policy Review*. I received a Ph.D. in Politics from Princeton University in 1993. After law school, I clerked for the Hon. Edward Cahn, U.S. District Court, Philadelphia, PA. I am licensed to practice law in New York.

B. Academic and Professional Experience

I regularly attend meetings and conferences designed to address issues of litigation investment, civil litigation, and legal ethics. I am a member of the American Law Institute and the Bar Association of the City of New York, where I served on the Products Liability Committee in 2000-2003 and 2005-2007 and the Civil Rights Committee in 1998-1999. I served as the Co-Reporter for the ABA Commission on Ethics 20/20 and the Third-Party Financing Of Litigation Working Group in 2011-2012. I was a Drafter for the Section on Principles of Procedural Justice, ABA Litigation Section Project, "The Rule of Law in Times of Calamity" in 2006. I am the current Chair of the Section on Remedies of the American Association of Law Schools ("AALS"), as well as a member of the AALS Section of Insurance Law and the past Chair of the AALS Section on Torts and Compensation Systems.

I have authored numerous publications and given presentations on topics relating to litigation finance, legal ethics, and tort law. My scholarship has appeared, among other places, in books or as chapters in books published by Wolters Kluwer, Cambridge University Press, Oxford University Press, and Edward Elgar Publishing, and as articles in the *Vanderbilt Law Review*, the *Michigan Law Review*, the *NYU Journal of Law & Business*, the *William & Mary Law Review*, the *DePaul Law Review*, the *Fordham Law Review*, the *Canadian Business Law Journal*, and the *Journal of Tort Law.* A more complete list of my publications and presentations is included in my *curriculum vitae*, attached as Appendix 1.

I have spoken to many audiences on topics relating to litigation finance, legal ethics, and tort law, including conferences and symposia sponsored by Vanderbilt University School of Law, N.Y.U. School of Law, Georgetown University Law Center, Stanford Law School, Washington and Lee University School of Law, the University of Windsor (Ontario) School of Law, George Washington University School of Law, George Mason University School of Law,

Fordham University School of Law, and DePaul University School of Law. I have spoken on the topic of litigation finance and legal ethics at panels sponsored by the Bar Association of the City of New York, the New York State Bar Association, the ABA Center for Professional Development, the ABA National Conference on Professional Responsibility, the Institute for Law & Economic Policy, the Defense Research Institute, and the Rand Corporation's Institute for Civil Justice.

C. Expert Experience

I have served as a consultant for numerous companies involved in litigation finance including Credit Suisse and Juridica Litigation Investment. I am currently an ethics advisor for Burford Capital. I provided an expert affidavit in support of Plaintiffs' Memorandum Responding to the Court's *Sua Sponte* Orders Of August 4, 2010 And August 17, 2010 in *In Re: World Trade Center Disaster Site Litigation*, No. 21-MC-100 (AKH) (S.D.N.Y.), in 2010.

D. Terms of Engagement

I have been engaged by the Division to provide expert services in *In the Matter of RD Legal Capital, LLC and Roni Dersovitz*, File No. 3-17342. I am being compensated at the rate of $500 per hour for research and drafting and $700 per hour for testimony. My compensation is not dependent on the outcome of this proceeding.

III. Basis for Statements of Opinion

I base this Report on my review of certain documents, records, filings and other information related that were provided to me by counsel for the Division or are publicly available. The documents on which I primarily rely include testimony transcripts and exhibits thereto, and other materials, such as the Order Instituting Proceedings and the Wells Submissions of RDLC and Roni Dersovitz. A list of these documents is set forth in Appendix 2. I also base

this Report on my education, training, and experience in the litigation investment industries, and my background in the fields of litigation investment, professional responsibility, and tort law.

IV. Background on Investment in Law-Related Activities

A. Summary

As explained in this section, investment in law-related activities may include:

a) direct investment by a non-lawyer into the cause of action of a plaintiff, including the purchase of pre-settlement or pre-judgment awards (litigation finance);

b) direct investment by an attorney into the cause of action by a client (the contingent fee);

c) conventional lending to attorneys where the obligation to repay is not contingent on the outcome of any legal matter (credit transactions);

d) the purchase of rights to payment of earned legal fees or proceeds arising from cases post-settlement or judgment ("conventional" factoring), and

e) investment in unearned attorney's fees prior to settlement or judgment (the purchase of contract rights in contingent fees).

The risks inherent (or endogenous) to each of these types of law-related investments differ in accordance with the nature of the investment, including possession risk (as defined below).

The following Section IV.B discusses the history of investing into law-related activities, including litigation finance, credit transactions involving attorneys, and factoring of legal receivables. It defines a taxonomy for various legal investment types. Section IV.C defines and discusses the types of risk endogenous in these various legal investments.

B. Investment in Law-Related Activities

Historically speaking, investment in law-related activities has been either prohibited or permitted under extremely limited circumstances.[1] As a historical matter, assignments of causes of action were prohibited, so the only person who could bring a claim against another party in a civil case was the original victim of the adverse party's alleged wrongdoing. The common law doctrine of maintenance prohibited strangers from aiding others to prosecute civil litigation for any reason other than family loyalty or charity. The common law doctrine of champerty prohibited strangers from contracting with strangers to provide any form of aid in the prosecution of a lawsuit for a monetary reward. These doctrines originally extended to attorneys, so the practice of charging contingency fees was prohibited.

1. Modern Assignment and Champerty (Litigation Finance)

Since the late nineteenth century, all of the doctrines described in the previous paragraph have been liberalized so that strangers may invest in law-related activities to varying degrees. Free alienability of causes of action is now the norm, subject only to certain common law and statutory limitations. Maintenance and champerty are permitted in about one half of the

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[1] There is no single definition of the words "invest" or "investment" in law. The words "invest" or "investment" may be defined by a statute or through a meaning adopted by common usage in the courts and legal community. For example, Black's Law Dictionary (14th ed. 2014), defines "invest" as "to make an outlay of money for profit," and "investment" as "an expenditure to acquire property or assets to produce revenue; a capital outlay." *See also Joy A. McElroy, M.D., Inc. v. Maryl Grp., Inc.*, 107 Haw. 423, 435, 114 P.3d 929, 941 (Ct. App. 2005) (adopting a "dictionary definition of 'invest' as 'to put (money) to use, by purchase or expenditure, in something offering profitable returns, esp. interest or income.'"). Under the definitions above, lending is a form of investment. *See Taylor v. Bar Plan Mut. Ins. Co.*, 2014 Mo. App. LEXIS 486, *46 (Ct. App. Apr. 29, 2014) (Fischer, J., dissenting) (the term investment "is broad—an investment is both an outlay of funds with the expectation that some income or profit will result and a purchase with the expectation to receive a benefit").

Furthermore, although this is not dispositive, all of the Offering Memoranda I have reviewed describe the purpose of the Funds as "investing" its assets in the transactions described within the documents.

jurisdictions in the United States, subject to certain limitations.[2] "Litigation finance," therefore, is law-related investment in which the investor's recovery is contingent on the outcome of adjudication. When an attorney invests in her own clients' causes of actions, the transaction is not known as litigation finance, but, for historical reasons, is known as the "contingent fee."[3] Limitations on the contingent fee have been lifted in practically all American jurisdictions, and contingent fee contracts are permitted subject to certain limitations imposed through the doctrines of professional responsibility.[4]

2. Credit Transactions with Attorneys

Investment in law-related activities may include lending to attorneys.[5] Conventional lending to attorneys, in which credit is extended to an attorney or a law firm engaged in the practice of law, does not involve the "investment of money in a common enterprise with profits to come solely from the efforts of others," since the payments received by a conventional lender are not contingent upon the outcome of the activity that the lender is funding, i.e., it is not contingent on the outcome of any particular suit the attorney may be pursuing.[6] However,

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2 In the United States twelve jurisdictions explicitly prohibit champerty. *See* Anthony J. Sebok, *The Inauthentic Claim*, 64 VAND. L. REV. 61, 102 (2011). There have been recent decisions reaffirming state prohibitions and limitations. *See* John Beisner and Jordan Schwartz, *How Litigation Funding Is Bringing Champerty Back To Life*, Law360, January 20, 2017, at https://www.law360.com/internationalarbitration/articles/882069/how-litigation-funding-is-bringing-champerty-back-to-life (reviewing recent decisions in Pennsylvania and North Carolina) (last visited on January 24, 2017).

3 *See* John Leubsdorf, *Toward a History of the American Rules on Attorney Fee Recovery*, 47 LAW & CONTEMP. PROBS. 9, 16-17 (1984).

4 The rules of professional responsibility still prohibit certain forms of investment in law-related activities by non-lawyers, so per Rule 5.4 of the Model Rules of Professional Conduct, non-lawyers may not "share" legal fees with attorneys; non-lawyers may not form a partnership with an attorney to practice law; and an attorney generally may not practice law in a professional corporation organized to practice law if any part of the corporation is owned by a non-lawyer.

5 *See supra* note 1.

6 *SEC v. W. J. Howey Co.*, 328 U.S. 293, 301 (1946).

lending to attorneys where the lending contract either (1) conditions the repayment of the loan on the success of a specific litigation identified by the attorney or (2) gives the lender a security interest in the attorney's unearned fees in a case identified by the attorney, is not conventional lending and is more likely to be considered a form of investment in a law-related activity. Where a loan—whether recourse or non-recourse—incorporates conditions (1) and/or (2) into its credit terms, there is a possibility that the attorney is engaging in fee-splitting and the enforceability of the terms of the transaction may be affected by a local jurisdiction's interpretation of the rules of professional responsibility.[7]

3. Factoring Legal Recoveries and Fees

Investment in law-related activities may include factoring a plaintiff's legal recoveries and/or an attorney's legal fees. "Factoring" is term with a well-established meaning in both legal and commercial usage. "Factoring is a process by which a business sells to another business, at a small discount, its right to collect money before the money is paid."[8]

A party to a lawsuit that has been settled or in which there has been a judgment for money may be faced with a delay between securing a resolution to the case and receiving the proceeds of that resolution. These proceeds may be factored in much the same way that the payment of a completed contract for the delivery of a service or product may be factored. The party who owns the proceeds may sell them to the purchaser (known as the "factor") at a discount, thus enjoying the benefit of certain and immediate possession of the proceeds for a price. Conventional factoring of proceeds does not implicate champerty concerns since the factor's payment does not support the stranger's litigation, as the stranger's litigation has been completed.

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7 *See infra* Section IV.C.2.b.

8 *Houston Lighting & Power Co. v. Wharton*, 101 S.W.3d 633, 636 (Tex. App. 2003).

The same incentives that motivate any business to factor payments may motivate an at-attorney to factor her fees. Where an attorney is employed under an hourly or fixed fee contract, the attorney may wish to gain immediate possession over her earned fees, and she can achieve this by selling her right to payment by her client to a factor (at a discount, of course).[9] Where an attorney is employed under a contingent fee contract, her incentives may be similar to those of a plaintiff who chooses to factor proceeds from cases in which there has been a settlement or a final non-appealable judgment obtained after litigation with an appearing defendant.[10] The attorney who represents a client in a lawsuit that has settled or has gone to final judgment has a legal right to receive the fees from her client, which she may wish to factor.

As noted above, since there is no single definition of "investment," it is possible to apply that term to a wide range of factoring transactions that otherwise have little similarity with each other. In the case of an attorney factoring hourly fees earned over the course of representation of a long-time client, the factor's payment does not depend on any contingency related to the underlying fee due to the attorney, since the number of hours and hourly rate were fixed at the time of billing and before the factor contracted with the attorney. In addition, the duration of the

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[9] *See, e.g.*, *Santander Bank, N.A. v. Durham Commercial Capital Corp.*, 2016 U.S. Dist. LEXIS 5430 (D. Mass. Jan. 15, 2016); *Durham Commer. Capital Corp. v. Select Portfolio Servicing, Inc.*, 2016 U.S. Dist. LEXIS 143229 (M.D. Fla. Oct. 17, 2016). In both cases, the factors purchased fees that were charged by law firms representing financial institutions—where the fee agreement is unlikely to be contingent. The facts revealed in each cases indicate that the fee agreements were either hourly or fixed fees.

[10] Throughout this report, the distinction between final judgments obtained after litigation with an appearing defendant on one hand and default judgments on the other are important. As such, this report will utilize "judgments" and "default judgments" exclusively of the other term. *See infra* discussion at note 68 for further discussion of why the distinction matters. *See also* discussion at Section IV.C.2.b.

period between the purchase of the fee and the collection of it from the client is often limited and is always defined (e.g., 30 or 90 days after the bill is sent out). It resembles a "true sale."[11]

Some, but not all, of the same elements may be present when a factor purchases post-settlement recoveries from a plaintiff.[12] As one commentator has observed, post-settlement factoring of recoveries from plaintiffs "involves little uncertainty, because the quality and value of legal claims has already been ascertained" and the duration, while longer, may be anticipated.[13] The only difference between factoring post-settlement attorney's fees and factoring plaintiff's post-settlement recoveries is that in the former, the obligor is the attorney's own client, while in the latter it is the plaintiff's opponent. The same is true where a factor purchases post-settlement contingent fees from an attorney—the obligor is now not the attorney's client but the attorney's client's opponent. All three of these variations of factoring (hourly and fixed fee; recoveries; and contingent fees) are examples of factoring a legal "receivable." The only practical difference is that the "counterparty risk"—the risk that the obligor will default—shifts from one third party (a client) to another (the client's opponent).[14]

Factoring legal receivables is a conventional form of factoring and, as such, lacks certain features often associated with investment; specifically, that the factor is not "in a common

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11 *See* Steven L. Schwarcz, *The Parts Are Greater than the Whole: How Securitization of Divisible Interests Can Revolutionize Structured Finance and Open the Capital Markets to Middle Market Companies*, 1993 COLUM. BUS. L. REV. 139, 143 (1993) ("Sales that are effective against creditors and the estate of a bankrupt originator, in that the property is no longer 'property of the debtor's estate' . . . are generally referred to as 'true sales.'" (footnote omitted)).

12 *See* Radek Goral, *Justice Dealers: The Ecosystem of American Litigation Finance*, 21 STAN. J.L. BUS. & FIN. 98, 130 (2015) ("In many ways, the post settlement funding is akin to traditional factoring of receivables.").

13 *Id.*

14 *Id.* at 130-31 ("counterparty risk" in post-settlement factoring of recoveries and contingent fees is low because "cases where the depth of the defendant's pockets is in serious question are not very likely to be financed").

enterprise" where the factor's future profits will come solely from the future efforts of others. On the other hand, where the factor "purchases" a *future* recovery from a plaintiff, or a *future* contingent fee from an attorney, the transaction lacks certain features typical of conventional factoring.[15] In pre-settlement funding, the funder purchases a right to collect proceeds *if* they come into existence (i.e., an inchoate right), not actual existing proceeds themselves (as in the

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[15] When an attorney "sells an interest in a contingent fee" to a factor, she may be doing one of two things. She is either selling her rights *in* the proceeds of her fee, in which she has rights *in rem* to money, or she is selling her rights *to* earn her contingent fee, in which case she has equitable rights in a contract right. The former transaction is referred to as the sale of accounts receivables, while the latter is referred to in various ways, depending on whether courts have chosen to use the terminology of the pre-1974 reform UCC, or the post-1974 reform UCC.

The distinction between the sale of earned contingent fees (accounts receivables) and unearned contingent fees (contract rights or accounts) has been recognized by numerous courts. *See, e.g., PNC Bank v. Berg*, 1997 Del. Super. LEXIS 19, *26-27 (Super. Ct. Jan. 31, 1997). As one leading treatise stated, the "[r]ights of lawyers under contingent fee contracts are 'contract rights' or possibly 'accounts' in which an Article 9 security interest may be created." PETER F. COOGAN, ET. AL., SECURED TRANSACTIONS UNDER THE UCC ¶ 19.02 (2016 Matthew Bender).

While courts have been willing to recognize that contract rights or accounts in unearned legal fees in the context of secured transactions under Article 9, they have also recognized that they are not like accounts receivables in ways that may matter to the holder of the collateral. The most important difference that courts have noted in the context of unearned fees—especially unearned contingent fees—is that their value is more indeterminate than the same fee *after* it has been earned. As the court in *U.S. Claims, Inc. v. Flomenhaft & Cannata, LLC*, 519 F. Supp. 2d 515 (E.D. Pa. 2006), observed, while it is true that the reason a right to an unearned contingent fee is treated as property, and not a general or payment intangible, is that it is not contingent and its monetary value depends entirely on the existence—in the future—of a judgment or settlement, which means that while the equitable right to payment can never be destroyed, its monetary value may turn out to be zero:

> What was transferred by virtue of the purchase agreements at issue here was not the underlying tort claims of the claimants, but rather the right of [the lawyers] to collect legal fees for the services they provided in prosecuting those claims. . . [W]here a fee contract is involved . . . there is nevertheless a "right to payment," even if that right is rendered *more speculative* by the fact that the amount of payment earned by future performance depends on a favorable resolution of the underlying legal action.

Id. at 522 (emphasis added).

sale of earned hourly or fixed fees or a judgment).[16] The transaction is for a contract right, not a settlement or judgment reduced to proceeds.[17]

In fact, while it is theoretically possible to refer to the purchase of contingent plaintiff recoveries as "factoring," it is not common practice. Firms that purchase such interests refer to the practice as "litigation finance."[18] Given that a factor receives only a contingent or inchoate right when purchasing an interest in a recovery before it has been settled or reduced to judgment, these transactions are, despite the label someone might put on it, really nothing less than investment in litigation (*see supra* Section IV.B.1). When an investor purchases a right to collect inchoate proceeds, they are engaged in litigation finance (in those states that permit it) and champerty (in those states that forbid it). No court calls it factoring.[19]

Furthermore, while it is theoretically possible to refer to the purchase of contingent legal fees as "factoring," that too, is not common practice. No court calls the purchase of inchoate legal fees "factoring" for two reasons. The first is just an extension to unearned legal fees of the

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16 *See, e.g., Congoleum Corp. v. Pergament (In re Congoleum Corp.)*, 2007 Bankr. LEXIS 4357, *21 (Bankr. D.N.J. Dec. 28, 2007) ("While the Debtor is correct in noting that this Letter Agreement discusses assignment of 'proceeds,' the Court is satisfied that the term 'proceeds' means the funds themselves, not some inchoate right to collect the funds.").

17 *See, e.g., Utica Nat'l Bank & Trust Co. v. Associated Producers Co.*, 622 P.2d 1061, 1064 (Okla. 1980) ("A 'contract right', as distinguished from an account, is 'any right to payment under a contract not yet earned by performance.' Contract rights may be regarded as 'potential accounts' which ripen into accounts by an effected performance.").

18 Burford Capital, a leading commercial litigation investor, states that it "provide[s] funding secured by legal receivables . . . [b]y assuming the cost and risk of litigation through a non-recourse investment." Buford Capital, "Defining Litigation Finance" at http://www.burfordcapital.com/wp-content/uploads/2016/09/Burford-Commercial_Litigation_Finance-US_Web.pdf (last visited on January 14, 2017).

19 *See, e.g., Miller UK Ltd. v. Caterpillar, Inc.*, 17 F. Supp. 3d 711, 727 (N.D. Ill. 2014) ("The ABA Commission on Ethics 20/20's white paper of February, 2012 concluded that 'shifts away from older legal doctrines such as champerty, and society's embracing of credit as a financial tool have paved the way for a litigation financing. . . .'") (citations omitted).

reasoning applied above to unearned recoveries.[20] The second reason courts do not use the term factoring in the context of unearned contingent fees extends beyond one of terminology. It is that parties may be wary of bringing cases involving disputes over investment by non-lawyers into unearned contingent fees before the courts because they are of questionable enforceability. Numerous state ethics opinions have held that a lawyer may not allow a non-lawyer to take a security interest in an unearned contingent fee.[21] The rationales for this prohibition are various. Most ethics committees are concerned that, were a non-lawyer to own a property interest in an attorney's contingent fee award, that lawyer would be splitting her fee with a non-lawyer in violation of Model Rule of Professional Conduct 5.4(a). The status of this prohibition is currently unclear, but until it is clarified, it would be inaccurate to state that the purchase of unearned contingent fees, to the extent that it occurs, is a form of factoring.

Finally, it should be noted that in addition to the legal and ethical concerns, there is a practical reason why neither investors nor the courts refer to investment in pre-settlement or pre-judgment legal fee or recovery receivables as factoring, and reserve the term factoring only for use in connection with the purchase of post-settlement or judgment legal receivables. Pre-settlement or judgment "factoring" is typically riskier than conventional factoring. The additional risk arises not only from the increased duration between the factor's purchase of the proceeds and the point in time when the factor is paid, but also due to the increased risk inherent

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20 *See, e.g., PNC Bank*, 1997 Del. Super. LEXIS 19 at *25-26 (contrasting attorney's accounts receivables, which are earned, with attorney's contract rights to fees, which are inchoate and contingent).

21 *See* North Carolina Formal Ethics Op. 2006-12; Maine Prof. Ethics Comm. Formal Op. 193 (2007); Utah Ethics Advisory Opinion No. 97-11; Utah Ethics Advisory Opinion No. 02-01; Utah Ethics Advisory Opinion No. 06-03; Advisory Opinion, Ohio Supreme Court's Board of Commissioners on Grievances and Discipline, Opinion 2004-2. *See also* Beisner and Schwartz, *supra* note 2 (reporting a Pennsylvania court's rejection of lending agreement secured by an attorney's expected fees).

(or endogenous) to litigation—a contingent event that depends on numerous factors, such as the subjective attitudes of judges and juries; the possibility that new facts and law will be developed after the factoring contact is complete, and the possibility that the attorneys prosecuting the case will violate their ethical obligations or commit malpractice. While some of these risks (or some other similar risk, including insolvency) might manifest themselves in the period of time between the completion of a post-settlement or post-judgment factoring contract and the factor's coming into possession of the earned proceeds or fee, the risk is much smaller—not only because the duration of time is ordinarily shorter, but because the range of the risks is simply narrower and, to the extent that some risks are inevitable, post-settlement or judgment risks can be identified and underwritten more accurately *ex ante* in the case of conventional factoring.[22]

In sum, investment in law-related activities may include: (a) litigation finance (the direct investment by a non-lawyer into the cause of action of a plaintiff or the purchase of such plaintiff's proceeds pre-settlement or pre-judgment); (b) the contingent fee (the direct investment by an attorney into the cause of action by a client); (c) credit transactions (conventional lending to attorneys where the obligation to repay is not contingent on the outcome of any legal matter); (d) "conventional" factoring (the purchase of rights earned legal fees or proceeds arising from cases post-settlement or post-judgment); and (e) investment in unearned attorney's fees prior to settlement or judgment (the purchase of contract rights in contingent fees). There remains some controversy over what to call transactions that purport to "purchase" inchoate rights to legal recoveries and legal fees; in my opinion the question is settled with regard to the former and somewhat unsettled with regard to the latter. The former (relating to legal recoveries) are simply

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22 *See* Goral, *Justice Dealers*, at 127 ("Since facts or law relevant for the outcome [in cases pre-settlement or judgment] remain unknown or undecided, such disputes are subject to substantial uncertainty and are considered high-risk. Their evaluation requires case-specific expertise, which results in relatively higher transaction costs.").

cases of litigation finance, and therefore not a type of factoring. The latter transactions (relating to legal fees), if they are valid, are sales of contract rights—and not a type of factoring, either.

C. Types of Risks in Legal Investment

There is a market for legal investment consisting of the types of litigation investment vehicles listed above. Within the class of permissible investments (investments that are currently permitted by courts), market participants choose among the different vehicles as a matter of business judgment.[23] The reasons for a person investing in litigation to choose to employ any of the vehicles described above can vary according to various factors, including the investor's familiarity with certain segments of the legal system.[24] In addition to other subjective factors that may inform a decision by an investor with regard to what kind of investment to make, the investment decision will obviously be informed by the risk that each investment decision poses.[25]

1. Exogenous and Endogenous Risk

Litigation investors use different kinds of information to evaluate risk. Risk can be exogenous (i.e., not correlated to the elements that define the investment type) or endogenous (i.e., those risks that are correlated to the investment type). Facts concerning the specifics of a particular transaction—the character of the underlying legal matter; facts about the adverse party and the counterparty to the transaction; and other facts that may affect both the time and likelihood that the underlying litigation investment contract will be performed—are exogenous

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23 *See* Jeremy Kidd, *Modeling the Likely Effects of Litigation Financing*, 47 LOYOLA UNIV. CHI. L.J. 1239, 1245 (2016) ("Important to the investment decision of any litigation investor is whether or not the claim is likely to yield a positive return.").

24 *See* Joanna M. Sheppard, *Economic Conundrums in Search of a Solution: The Functions of Third-Party Litigation Finance*, 47 ARIZ. ST. L.J. 919, 933 (2015) ("Third-party litigation financiers employ relationships within the legal sector, knowledge of specific law firms (and even specific lawyers), and knowledge of legal positions to evaluate cases.").

25 *See id.* at 932 ("... litigation financiers are, first and foremost, investors. In general, investors all share a common want: the maximum possible risk-adjusted return on investment.").

to the type of litigation investment. They are not correlated to the elements that define the par-particular investment type and distinguish it from other types.

On the other hand, there are some facts about a transaction that refer to risks endogenous to the type of litigation investment, meaning those facts help distinguish one type of legal investment from another. For example, the reason that the legal investment market distinguishes between litigation finance on the one hand and factoring on the other is that the investor's recovery in the former relies on a risk that is salient to that investment type, namely that "facts or law relevant for the outcome remain unknown or undecided."[26] The reason that the legal investment market distinguishes between credit transactions and factoring is that the investor's recovery in the former relies on a different risk that is salient to that investment type, namely that the counterparty (i.e., the borrowing attorney) will be insolvent.[27]

The point is not that a risk endogenous to one investment type is not present to some extent in the others. The point is that when participants in the litigation investment market make statements about risk, they are expressing beliefs about the character of the risks endogenous to the investment type. Insolvency is a risk found in all types of investment in law-related activities. But it is not the most salient endogenous risk in all the investment types. The most salient endogenous risk of credit transactions is insolvency. The most salient endogenous risk of litigation finance is completion. The salient endogenous risk of *conventional* factoring is delay of possession. The corollary to this is that a statement that refers to one of the investment types identified in this section is a statement about its salient endogenous risk. Thus, if a speaker calls

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26 *See* Goral, *Justice Dealers*, at 127.

27 *See* Nora Freeman Engstrom, *Lawyer Lending: Costs and Consequences*, 63 DEPAUL L. REV. 377, 393-394 (2014) (distinguishing recourse lending from "specialized non-recourse lenders"); Victoria Shannon Sahani, *Harmonizing Third-Party Litigation Funding Regulation*, 36 Cardozo L. Rev. 861, 892 (2015) (distinguishing champerty from lending).

a transaction "factoring legal receivables" when in fact the transaction's endogenous risks re-resemble those of "pre-settlement funding" or "litigation finance," then the statement is inaccurate as it relates to the information it coveys about the endogenous risk faced by the investment type.

2. Endogenous Risk in Factoring Legal Receivables

The type of risk endogenous to the conventional factoring of legal fees actually earned by an attorney is the risk that the money owned by the factor will not come into his possession when he anticipated it would or that it never comes into his possession at all. This focus on the risk of non-possession is based on an analysis of the structure and economics of the factoring transaction. Where possession comes later than anticipated, the possession risk is one of *delay*, and the cost is the time-value of money. Where possession never comes at all, the risk is to *the whole transaction* and the cost is the entire investment and its time-value. The first kind of risk of non-possession is what most people think about when they try to understand why there is any money to be made in factoring. In a conventional factoring transaction, even if the factor is confident that he will receive the money owned by the counterparty; the factor cannot be rationally confident about the time of delivery.[28]

In my opinion, however, it is a mistake to assume that the only risk of non-possession is delay in possession. There is always additional non-possession risk arising from the factor never coming into possession of the money that he bought from the counterparty. This opinion calls the risk of permanent non-possession "possession risk." In conventional factoring involving earned *hourly* fees, possession risk is the risk faced by the factor that the counterparty's client

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[28] *See* Goral, *Justice Dealers*, at 130 ("Since the legal disputes suitable for post-settlement funding have already been finally resolved, the funder advances money against proceeds which by then are earned but not yet satisfied by the losing party, at a discount commensurate with the risk that they will not be paid on time.").

will not deliver to the factor payment upon presentation of a verified invoice. In conventional factoring involving earned *contingent* fees, possession risk is the risk faced by the factor that the counterparty or the adverse party sued by the counterparty will not deliver to the factor payment upon presentation of an enforceable settlement agreement or judgment resulting from a proceeding in which the adverse party has appeared and contested the counterparty's suit (as opposed to a default judgment[29]). In both cases, the most important endogenous risk faced by an investor who chooses to factor earned attorney's fees (after the risk of delay in possession) comes from the failure of transfer of money to which the factor clearly has title.[30] In general, possession risk is low: that is why factoring contracts are usually priced at a small discount to the face value of the accounts receivables purchased, even in legal fees receivables factoring.[31]

Possession risk is itself a product of identifiable sub-risks that combine together to make possession more or less likely. These sub-risks comprising possession risk include theft, insolvency, and completion risk.

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29 The risk of collection on default judgments is distinguishable from judgments in which a party appeared to contest the suit. *See* discussion *infra* Section V.A.3.a. *See also supra* note 10.

30 As one commentator described it:

> The proceeds of a finally resolved case owed to the plaintiff (and from the plaintiff to her lawyer under the contingency fee agreement) become bookable assets - accounts receivable. They are . . . assigned to the financier for collection purposes, usually with a full, subsidiary recourse (in case the defendant fails to make good on the award or settlement, the financier has the right to demand payment from the plaintiff) . . . .

Goral, *Justice Dealers*, at 130 n.107.

31 *See Houston Lighting*, 101 S.W.3d at 636 ("Factoring is a process by which a business sells to another business, *at a small discount*, its right to collect money before the money is paid." (emphasis added)); Goral, *Justice Dealers*, at 130 (describing legal receivables factoring as "a special kind of bridge financing").

a. Theft and Insolvency Risks to Possession

The first of these risks is theft: the risk that the party in possession of the money to which the factor has title will illegally refuse to allow the factor to take possession. Risk of theft is not insignificant. A counterparty may sell their accounts receivables to more than one factor.[32] It is also possible that the counterparty holding the proceeds of a settlement or judgment in a client escrow account steals all or part of the funds. Finally, it is possible that the counterparty's account debtor (the client) will successfully steal the money owned by the factor.[33]

The second sub-risk is insolvency: the risk that the party in possession of the money to which the factor has title lacks assets. The risk of insolvency of an account debtor (i.e., a client with an ongoing hourly or fixed fee agreement with the counterparty) or a settlement or judgment debtor (i.e., the adverse party in litigation with the client) is not insignificant and something for which the factor may underwrite using various tools, including research into the financial situation of the counterparty's client.[34] In addition, in cases involving the factoring of earned contingent fees, the factor's ability to evaluate the debtor's creditworthiness is much higher than in most cases of litigation finance, since the time between the purchase of the fee and point of possession is compressed compared with pre-settlement or pre-judgment investment.[35]

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32 *See U.S. Claims, Inc.*, 519 F. Supp. 2d 515. The counterparty allegedly sold the same asset twice, which is theft by fraud.

33 In most contingent fee cases, the recovery is deposited in an escrow account controlled by the attorney.

34 The factor's one advantage during insolvency is the bankruptcy protection that a UCC filing may provide against unsecured creditors, since the proceeds of a judgment (including the proceeds of a judgment that comprise earned attorney's fees) are property of the counterparty (and her attorney) and not the bankruptcy estate.

35 *See* Goral, *Justice Dealers*, at 130-31 (factoring involves little uncertainty, because the only risk that "remains is the counterparty risk (the chance that the defendant will default), although cases where the depth of the defendant's pockets is in serious question are not very likely to be financed.").

b. Completion Risk

A third sub-risk is "failure to complete": the risk that the party in possession of the money to which the factor has title does not transfer the money due to the counterparty's failure to complete all the steps which would make possession possible. This opinion will refer to this as "completion risk." Completion risk is a risk that a factor must consider regardless of whether the attorney's proceeds arise post-settlement or post-judgment.

i. Completion Risks in Certain Post-Judgment Matters

Completion risk post-judgment (in instances after a trial or a contested dispositive motion[36]) is extremely low since the adverse party has already accepted jurisdiction and has cooperated with the attorney to the extent that it has made pre-trial and (in cases that go that far) trial appearances. For example, the adverse party may either refuse to satisfy the judgment, in which case the attorney has to take additional steps relating to enforcement (attachment, sheriff sale, etc.), or that there may be multiple judgments against the adverse party and the attorney must rush to complete the case before bankruptcy is declared.[37] Yet the burdens of enforcement that determine the completion risk endogenous to a factoring contract *post-judgment* are relatively minimal where the judgment arises from adjudication. This is because the party has appeared and availed itself of the judicial process, typically an indicator that there is an ability and incentive to pay a lawfully rendered judgment.[38]

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36 Assuming appellate rights are exhausted and the adverse party has an incentive to pay, as discussed *infra* note 68.

37 This is the situation that faced the attorneys who successfully won trial judgments against A.H. Robins before it declared bankruptcy. *See A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 996 (4th Cir. 1986) ("Prior to the filing, a number of suits had been tried and, while Robins had prevailed in some of the actions, judgments in large and burdensome amounts had been recovered in others.").

38 *See infra* note 68 discussing incentives of parties to pay judgments.

On the other hand, as will be discussed in detail below in Section VI, completion risk is relatively high post-default judgment where there has been no appearance by the adverse party. In that case, the endogenous completion risk is not speculative or prospective—the adverse party has refused to participate in the judicial process, perhaps because it rejects the court's jurisdiction, is judgment proof, or is otherwise avoiding enforcement (e.g., dissipating assets). In some cases—such as the *Peterson* case that is part of the Division of Enforcement's complaint against RDLC[39]—the burdens of enforcement are so high that the completion risk faced by the plaintiff attorney cannot be compared to the completion risks faced by attorney who factored their legal fees after obtaining a settlement or winning a trial. It would be like comparing apples and oranges. When the completion risk in a default judgment becomes as high as it was at certain points in *Peterson,* the investment risk in the attorney's fee is similar to the investment risks in pre-settlement or pre-judgment litigations. In other words, when the completion risk in a default judgment becomes as high as it was at certain points in *Peterson,* the investment risk looks more like the risk found in litigation finance, as opposed to factoring.

ii. Completion Risks in Post-Settlement Factoring With Few or No Conditions

In contrast to the completion risk faced by an investor in default judgments, completion risk in post-settlement factoring is extremely low because (i) a factor, by definition, can more definitively ascertain "the quality and value" of the legal claim upon which the counterparty's proceeds depend,[40] and (ii) the adverse party has already accepted jurisdiction and has cooperated with the attorney by entering into a settlement agreement. But the completion risk is

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39 The "*Peterson* case" refers to the litigation against Iran described in the Order Instituting Administrative Proceedings, File No. 3-17342, ¶ 21 n.1, culminating in the Supreme Court's decision in *Bank Markazi v. Peterson*, 136 S. Ct. 1310 (2016).

40 *Id.*

not zero: A court's approval of a settlement may include conditions subsequent.[41] Furthermore, some post-settlement factoring occurs before court approval if there is a memorandum of understanding ("MOU") between the counterparty and the adverse party.[42] Since the proceeds of an earned fee are not created until the "conclusion of [a] suit," a factor's right to possession is subject to actions subsequent to a settlement (or a judgment) that would defeat or reduce the counterparty attorney's right to the proceeds purchased by the factor.[43]

Completion risk is lowest in factoring involving attorney's fees that are purchased after the parties have received court approval for their settlement. In court approved settlements, all of the parties are motivated to see that conditions subsequent—even those outside of their control, as in *Cadle Co. v. Schlichtmann*, 267 F.3d 14 (1st Cir. 2001)—are fulfilled. The risk is only marginally higher in settlements awaiting court approval since a court may find the terms of the settlement inadequate or may find fault with the performance of those terms. Finally, while it is theoretically true that attorneys are subject to disciplinary and malpractice complaints by dissatisfied clients after having secured proceeds for them through a settlement, such complaints

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41 This happened in *Cadle Co. v. Schlichtmann*, where a buyer took possession of contingent fees that were earned by an attorney in a case that was settled for $825,000 "with distribution subject to the settlement's approval by the Massachusetts Department of Environmental Protection." 267 F.3d 14 (1st Cir. 2001). In a subsequent action to take possession of the contingent fee, the court held that, at the date of the settlement, the buyer had an equitable ownership interest in the fee that became a right to the proceeds upon the approval of the settlement's terms by the Massachusetts Department of Environmental Protection. *Id.*

42 *See, e.g., RDLF Fin. Servs., LLC v. Esquire Capital Corp.*, 34 Misc. 3d 1235(A), 2012 N.Y. Misc. LEXIS 914 (Sup. Ct. N.Y. County 2012). In this case, the purchaser purchased contingent fees that were earned by an attorney in a case settled for "the prospective sum of $607,500." *Id.* at *4. The settlement had not yet been approved by the court, and when it was, the court approved the settlement for $506,659.

43 *See Marsh, Day & Calhoun v. Solomon*, 204 Conn. 639, 643 (1987) (an attorney's right to a fee is protected by a "charging lien, which is a lien placed upon any money recovery or fund due the client *at the conclusion of suit*" (emphasis added)). Such actions might include, for example, a claim by the counterparty's client that the fee was not earned fully (or at all) because it was excessive or because of other malpractice.

are very rare (since clients who receive proceeds are often grateful) and, even if they occur, they are unlikely to succeed (because the claim relies on proving that the attorney could have secured even more for the client, or could have secured the same result for a lower fee).

iii. Completion Risks in Default Judgments and Settlements with Many Conditions

Under conditions where completion requires significant attorney legal services, such as in a default judgment or a settlement where the conditions subsequent are complex and might take years to resolve, the contract becomes much riskier. The additional quantum of complexity introduces additional uncertainty of outcome—since it is harder to be confident that a settlement will be approved if there are multiple conditions subsequent requiring multiple stages of judicial and third party approval. The more work that must be done by the counterparty attorney after a factoring contract is signed, the more it looks like pre-settlement legal investment, or litigation finance, and less like conventional factoring. Calling such a transaction "factoring" would be placing form over substance.

The following is a simple illustration of the point made in the previous paragraph. In *Cadle*, a debt buying firm, Cadle, took possession of an attorney's earned fee because it purchased debt from a bank that held a secured interest in the attorney's contingent fee, which became the bank's property after the attorney's law firm went bankrupt. When Cadle bought the debt, the case out of which the fee would be earned had settled but was awaiting a condition subsequent to be satisfied, which happened four years later.[44]

One could imagine the facts of *Cadle* altered in the following way. Cadle could have simply bought the contingent fee from the attorney in 1991, when the underlying case settled and

[44] The question in *Cadle* was whether the entire fee earned by the attorney was property owned by Cadle, even though some of the fee was earned after the attorney began work on his own post-bankruptcy. The answer was yes. *See Cadle*, 267 F.3d at 21.

the attorney reasonably believed that his fee would be 32% of $825,000—the amount that was placed into escrow as required by the court, which also required a condition subsequent to be satisfied for the case to be "complete." Had Cadle done so, it would have engaged in a transaction that faced certain completion risks. The condition subsequent—approval of a clean-up by a state agency that was not a party to the litigation—occurred in 1995. In the intervening four years, according to the court records, the attorney put significant new work into the case to secure the condition subsequent. To describe the hypothetical 1991 transaction as "post-settlement factoring" puts form over substance and would inaccurately describe the risks of the hypothetical transaction. The transaction would have involved the payment of money to an attorney where the parties knew, when the funding occurred, that the case required significant additional legal work despite the existence of a court-approved settlement. The money paid to the attorney by Cadle would likely have been used to secure the completion of the case on behalf of the attorney's client. Therefore, the attorney had not yet fully earned his fee when he took the money from Cadle, because at the time of the transaction more work had to be done, comprising part of his fee. As such, the fee would not come into existence as proceeds until many years after the settlement and after the attorney's work had been completed.[45] In other words, the

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[45] For this reason, one ethics committee took the position that it is *per se* unethical for an attorney to factor her contingent fees:

> Delay between reaching a settlement agreement and the payment of the settlement funds is not justification for a lawyer selling his or her legal fee to obtain immediate cash. Delay is part of the process. Attorneys and clients should be well aware that money does not appear like magic upon reaching a settlement agreement.
>
> *A lawyer's legal representation of the client does not end upon reaching a settlement agreement, but continues from settlement agreement through the time of receiving and disbursing the settlement money.* A lot can happen in that interval. As one example, settlement agreements requiring court approval always carry uncertainty as to whether approval will be forthcoming from the court. Until the money agreed upon in the settlement is paid and disbursed, the attorney has not completed his or her legal representation of the client.

hypothetical transaction between Cadle and the attorney would be a classic example of litigation finance.

In this hypothetical, the fact that Cadle gave the money only after a court-ordered settlement had been obtained is irrelevant to the correct description of the investment type: it would be inaccurate to describe the hypothetical transaction as factoring the attorney's accounts receivables for two reasons. First, when the completion risk of a transaction becomes too large, the transaction can no longer be called factoring, even if it occurs after a settlement or a judgment. And second, factoring necessarily implies that a fee has been fully earned; as such, the hypothetical transaction cannot be described as factoring because when the investor paid the attorney, the fees had not been fully earned.

V. Expert Opinions

This part of my report states RDLC inaccurately described the litigation investments in which it was expending funds as factoring legal fees when a significant portion of its transactions with attorneys was not factoring. Further, RDLC inaccurately represented the degree of possession risk it faced in its transactions with attorneys by omitting any discussion of the completion risk endogenous to the type of investment in which a significant portion of their investments were made, namely, the purchase of contract rights to unearned contingent fees arising from a default judgment as well as the funding of lawyers involved in a criminal action, a *qui tam* action, and unsettled multi-district mass tort litigation.

Advisory Opinion, Ohio Supreme Court's Board of Commissioners on Grievances and Discipline, Opinion 2004-2 (emphasis added).

A. Describing the Funds as Factoring Legal Receivables Derived from Settlements and Judgments Failed to Capture Significant Risks Endogenous to Many of the Funds' Investments

1. RDLC Financed Pre-Settlement and Pre-Judgment Cases

RDLC says that it is the only "significant sized, SEC registered entity . . . with a 'post settlement' strategy."[46] RDLC defines itself in contrast to firms that invest in litigation prior to settlement and judgment. In plain English, RDLC says that it does factoring and that the "other firms" do litigation finance. The statement that "[t]here are entities that lend money to contingency fee attorneys, but they take litigation risk, which we don't," draws a distinction between RDLC and firms like Burford, LawCash, and Bentham IMF—firms that explicitly take on litigation risk as part of their investment strategy because they invest in litigation before it has been resolved by settlement or judgment.[47]

In my opinion, RDLC's transactions with certain law firms that were involved in mass torts and *qui tam* actions were pre-settlement, litigation finance transactions that are indistinguishable from transactions that are typically conducted by firms that "take litigation risk," like Burford, LawCash, and Bentham. In other words, RDLC took litigation risk in its positions in the Funds.

For example, since 2005, RDLC has engaged in pre-settlement litigation funding with attorneys who were counsel in litigation relating to the class of drugs known as bisphosphonates manufactured and sold under the brand names "Aredia" and "Zometa" by Novartis, "Fosamax"

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[46] January 2013 Frequently Asked Questions Document ("FAQ") at p. 3; *and see* June 2014 Due Diligence Questionnaire ("DDQ") at p. 9 ("We have not identified any other registered entities that traffic solely in post-settlement legal fee receivables.").

[47] June 2014 DDQ at p. 9.

by Merck, and "Actonel" by Procter & Gamble/Sanofi-Aventis.[48] Based on documents I re-reviewed, it appears that between 2007 and 2014, RDLC advanced millions of dollars to counsel in these cases to fund the ongoing litigation.[49] The cases were in a classic "pre-settlement" posture through at approximately 2014.[50]

In addition, in 2009, RDLC "purchased" $4.2 million in unearned contingent fees from attorneys representing a relator in a *qui tam* action in the Southern District of Florida.[51] Apparently, the *qui tam* action had both criminal and civil components, and the attorneys represented to RDLC that their fee would total at least $4.2 million and perhaps "in excess" of $5.8 million.[52] At that time, the attorneys had not yet earned their fee (because the relator award had not been determined), the civil portion of the action had not yet been settled, and any final settlement would be subject to additional negotiations with the Justice Department. The cases upon which the attorney's fees would be derived were in a classic "pre-settlement" posture and, as such, were subject to litigation risk distinguishable from the completion risks endogenous to settled cases.

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48 *See also* Verified Complaint For Injunctive and Other Relief, *RD Legal Funding Partners, LP v. Mel Powell, et al.*, No. 14-cv-7983 (FSH-MAH) (D.N.J. Dec. 23, 2014), at ¶ 12 (hereinafter, "Powell Complaint").

49 *See* Attachment to Nov. 6, 2013 Email from Philip Larochelle to Eric Liu, RDLC-SEC 313840 (showing the sum of the "Purchase Price" to counsel between 2007 and 2013 exceeding $11 million).

50 *See* Powell Complaint at 17-18; Jan. 12, 2017 Deposition of Daniel A. Osborn at 56:7-58:5 (describing timeline leading to Novartis settlement).

51 *See* Complaint, *RD Legal Funding, LLC v. Barry A Cohen, P.A., et al.*, No. 13-cv-077 (JLL-MAH) (D.N.J. Jan. 3, 2013), at ¶ 39.

52 *Id.* at ¶ 44.

2. Through Early 2013, RDLC Inaccurately Conveyed That It Factored Only Settlements

As discussed below, the Offering Memoranda (i.e., the various Confidential Private Offering Memoranda) and Marketing Documents (e.g., Frequently Asked Question ("FAQs"), Due Diligence Questionnaires ("DDQs"), and other marketing presentations used in connection with offerings to investors) utilized by RDLC and Mr. Dersovitz between 2010 and early 2013 to solicit investors for the Funds convey that the Funds had factored only receivables arising from settlements and, beginning sometime in 2013, judgments. In my opinion, statements by RDLC through early 2013 that the Funds only factored settlements or receivables derived from settled cases were not accurate.

As stated above in Section IV.B.3, "post-settlement" investing is not a type of litigation investment; it is an indication of the investment type called "factoring."[53] In testimony, Mr. Dersovitz stated that RDLC's investment strategy was built on one investment type, i.e., factoring:

> What do we do? We factor legal fees. . . . [I]t doesn't matter to me how a legal fee comes about. That's the point that I was making earlier. *It merely needs to be demonstrated and collectible and predictable to some extent in terms of how long it will take.*[54]

The Offering Memoranda in the Funds between 2007 and 2014 purport to tell investors about the Funds' investment goals and strategies. Beginning in 2007, the Offering Memoranda describe the Funds' strategy as based on three different types of investment: "Legal Fee

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[53] This is because post-settlement purchases of attorney's fees are only one type of factoring legal proceeds. It does not include, for example, factoring earned hourly and fixed legal fees.

[54] Mar. 15, 2016 Testimony of Roni Dersovitz, at 528:12-18. *See also id.* at 491:12-13 ("At the end of the day, we factor legal fees.").

Factoring," "Credit Lines," and "Other Advances to Law Firms." I will discuss only "Legal Fee Factoring," which, according to RDLC, comprised the bulk of the capital invested by RDLC.[55]

Between 2007 and 2013, the Offering Memoranda defined "legal fee factoring" (or "Factoring Transaction") in the section entitled "Investment Strategy."[56] The text's description of factoring was conventional: the sale by a seller (e.g., an attorney) of its rights to payment, known as receivables, from a third party, known as a debtor, to a buyer (e.g., the Funds).[57] It is identical to the definition of factoring provided in Section IV.B.3, *supra.* The term "receivable" (in the context of the legal fee factoring) is defined by the Offering Memoranda. A "Legal Fee Receivable" is the purchase of "accounts receivables representing legal fees derived by the Law Firms from litigation, judgments and settlements."[58]

The phrase "litigation, judgments and settlements" requires parsing, since it appears, at first glance, to fail the basic tenet of legal drafting that no definition should contain surplusage.[59] Before a court can issue a judgment or approve a settlement, it must have before it a cause of action. The act of preparing and filing a cause of action for a client is "litigation." Therefore, attorney's fees earned as a result of a judgment or settlement are inherently earned by litigation. Fees "derived" from a judgment or a settlement are, by definition, derived from litigation.

To rescue the definition of a Legal Fee Receivable in the Offering Memoranda from surplusage, it would be necessary to impute a non-standard use of the word "litigation."

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55 *E.g.*, April 2011 DDQ at 10-11 (stating that approximately 95% of the Fund is invested in the factoring of legal fee receivables).

56 *E.g.*, April 2012 Confidential Private Offering Memorandum ("POM") for RD Legal Funding Partners, LP at 8-12.

57 *Id.* at 8-9.

58 *Id.* at 7.

59 *See generally, e.g., JA Apparel Corp. v. Abboud*, 568 F.3d 390, 408 (2d Cir. 2009) (on the "the rule against surplusage").

Judgments and settlements result in judicial orders resolving the cause of actions (i.e., the litiga-litigations) before the court. In a non-standard context, "litigation" may refer to legal services performed on behalf of the client that are not calculated to result in a *judicial* order. Such services might include representing a client in a compensation program, communicating with a liability insurer, or communicating with a potential adverse party in order to avoid filing a case.[60] In my opinion, however, this is an awkward and non-standard understanding of the words "litigation," "judgment," and "settlement." Although the use of the words "litigation," "judgment," and "settlement" in the definition of Legal Fee Receivable does not expressly contradict standard usage, it is confusing, and as such, is incomplete without further elaboration in the Offering Memoranda.

Further elaboration is provided in the explanation of "Legal Fee Factoring" in the Investment Strategy section of the Offering Memoranda. Between 2007 and 2012, the Offering Memoranda state that "[a]ll of the legal 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."[61] This sentence, read in conjunction with the definition of Legal Fee Receivable provided earlier in the Offering Memoranda, communicates to the investor that the Funds, while capable of investing in (i) attorney receivables that are derived from legal services related to representation not intended to result in a cause of action or (ii) legal services related to representation intended to secure judgments, are, for all material purposes, in fact investing in attorney receivables related to representation where a settlement has been secured.

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60 One possible purpose for adding the word 'litigation' in this context was to convey to the investor that legal fee factoring may involve the purchase of accounts receivables arising from hourly or fixed fee retainer agreements and not only contingent fee agreements, since it is more likely (but by no means necessary) that attorneys would be retained to handle legal matters *not intended* to result in the filing of a case under a contract involving an hourly or fixed fee.

61 April 2012 POM at 9.

In other words, the purpose of the definition of Legal Fee Receivable at the beginning of the section describing the Funds' investment strategy is to define in what the Funds *could* invest, while the text that comes later in the same section informs the investor in what the Funds *have* invested. This reading of the structure of the section of the Offering Document entitled "Investment Program" is supported by the fact that the description of the types of legal receivables in which the Funds have invested is significantly different after 2012.

In 2013, the Offering Memoranda mention, for the first time, that the Funds' investment goals include investments in receivables that are *not* attorney receivables. In the introductory section titled "Investment Objective and Strategy," the Offering Memoranda state that the Funds will invest in "accounts receivable representing the plaintiff's portion of proceeds arising from final judgment awards or settlements."[62] In this section, the Offering Memoranda define the term "Plaintiff Receivables" in parallel with the already-existing defined term Legal Fee Receivable, the definition of which remains identical to the definition employed in 2007–2012.

Later in the section on Investment Strategy, the section that was once titled "Legal Fee Factoring" is now titled "Legal Fee Receivables and Plaintiff Receivables Factoring."[63] The section states that "all of the Receivables" in which the Funds are investing "arise from litigation in which a binding settlement agreement or memorandum of understanding among the parties has been reached, *or a judgment has been entered against a judgment debtor*" (emphasis added). This sentence implies that, in contrast to the statements made for the identical purpose in the Offering Memoranda in 2007-2012, the investor is being informed that the Receivables in which the Funds are investing include proceeds derived from a judgment.

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62 June 2013 POM for RD Legal Funding Partners, LP at 7.

63 *Id.* at 9.

Since the defined term "Receivables" in the 2013 Offering Memoranda includes both Plaintiff Receivables and Legal Fee Receivables, it is possible that the text conveys to the investor that the Funds have begun to invest in two different receivables: attorneys' and plaintiffs'. It does not clearly state that both of these receivables are derived from judgments; it is possible that its meaning is that only plaintiffs' receivables are derived from judgments and attorneys receivables are still derived only from settlements. This reading would be consistent with the fact that the Offering Memoranda in 2013 adopted for its definition of Legal Fee Receivable (fees derived from litigation, judgments and settlements) the same terms it has used since 2007—a definition that, as explained above, was offered in conjunction with the statement that RDLC only factors fees arising from settlements.

When the Marketing Documents refer to "legal fee factoring" or the factoring of "Legal Fee receivables," they only refer to settlements as the source of the attorney's fees that are purchased by RDLC for its Funds. For example, in a 2013 FAQ, RDLC stated that "the primary strategy employed is one in which receivables arising from *settled lawsuits* are purchased at a discount."[64] In a 2011 Due Diligence questionnaire, RDLC defined factoring as "fee acceleration" and then made the following statement: "A fee acceleration investment is the purchase of a legal fee at a discount from a law firm, *once a settlement has been reached* and the legal fee is earned."[65] This statement conveys that RDLC only factors fees derived from settlements. It also conveys that it factors fees that have been "fully earned," something which, as I will explain in the next section, is not true in the case of the default judgments in which RDLC invested.

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64 January 2013 FAQ at p. 1 (emphasis added) (no other strategy is mentioned).

65 December 2010 DDQ at p. 11 (emphasis added) (the face of the document bears the date December 2010, but the document properties reveal that it was created on March 31, 2011).

In my opinion,[66] the Offering Memoranda through early 2013, when read in their entirety in connection with, or independently of, the Marketing Documents, convey the meaning that the Funds were only investing in attorney's fees derived from settlements. This statement is not accurate because, since 2010, the Funds had invested in legal fee receivables arising from the *Peterson* case, which was a case involving a default judgment, not a settlement and, in addition, the Funds were invested in the pre-settlement pharmaceutical and *qui tam* actions described in Section V.A.1. Logically, if the fact that the Funds were beginning to invest in "judgments" was significant and worth an explicit notation when the Funds began to invest in plaintiffs' receivables arising from default judgments in 2013, the Offering Memoranda should have attached the same significance—and made the same explicit notation—when the Funds invested in the attorneys' legal fee receivables arising from the *Peterson* default judgments in 2010.

3. RDLC Inaccurately Described the Possession Risk Endogenous to Litigation Investment in Attorney's Fees Derived from Default Judgments

a. RDLC's Statements That Settlements and Judgments Are Interchangeable Proxies For Possession Risk Are Incorrect

RDLC has taken the position that the investment risks endogenous in legal fee receivables arising from settlements are the same as those arising from judgments and so the terms can be used interchangeably:

> Q: Let me ask you a clarifier. What you described as judgments, were you including that in the -- in your definition of settlements?
>
> THE WITNESS: . . . . Yes. . . Settlements and/or judgments are subject to the final approval. Whether it be of the settlement or of the turnover we discount the

[66] I understand that RDLC and Mr. Dersovitz did not produce privileged communications concerning the Offering Memoranda. I was unable to consider the effect, if any, of such communications in this opinion. As such, my opinion is based on the construction of the versions of such documents provided to investors.

process. And with an understanding in both instances that there is inherent risk of failure.[67]

In my opinion, the terms "settlements" and "judgments" are not interchangeable in the context of RDLC's description of its investment strategy. As explained in Section IV.B, the statements concerning investment strategy inform the reader or listener of the types of litigation investment that the Funds either have made or plan to make. Terms such as "litigation finance," "lending," and "factoring" communicate important information about endogenous risks borne by the investor. A statement about the type of legal outcome (e.g., settlement vs. judgment) underlying the type of legal investment pursued (e.g., litigation financing vs. factoring) is not a substitute for a statement about the type of legal investments that comprise an investment strategy. A statement about the type of legal outcome underlying the type of legal investment pursued may illustrate the strategy adopted by the investor for weighing the various sub-risks that comprise the risk endogenous to a type of legal investment. If, however, a legal outcome presents sub-risks that are atypical of the type of legal investment to which it purportedly belongs, then the speaker is mislabeling the investment by failing to note that they are using legal investment terminology in a non-standard manner.

The terms "settlements" and "judgments" may be interchangeable when communicating the degree of possession risk faced by a factor where the sub-risks comprising each are similar, such as in the case where the judgment is a result of adjudication against a party with the ability and incentive to pay a lawfully issued judgment.[68] "Adjudication" refers to a court order

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[67] Mar. 15, 2016 Testimony of Roni Dersovitz at 425:17-22.

[68] By way of illustration, an unappealable judgment lawfully issued against McDonald's as a result of adjudication is likely to be satisfied by the judgment debtor, which has the ability to pay and every incentive to obey the ruling of the court in order to retain access to the courts and markets, avoid costly and disruptive judgment enforcement efforts, and avoid reputational harm.

following either a trial or a dispositive motion where the adverse party has accepted the court's jurisdiction and attempted to defend against the claim or otherwise respond to them in good faith. The reasons for the similarity between a settlement approved by a court and a judgment resulting from such adjudication are easy to see: in both types of legal outcomes "the quality and value of legal claims has already been ascertained" by the time the factor makes the investment.[69] The similarity between a settlement not yet approved by a court and a judgment resulting from adjudication may be less that than the similarity between a settlement approved by a court and a judgment resulting from adjudication, but these differences are of degree and not kind.[70]

But, as explained above in Section IV.C.2.b.iii, there comes a point where the possession risk of a default judgment, like that of certain settlements, is so great that it is misleading to treat an investment in the fees arising from it as factoring (as opposed to litigation financing), and, more to the point, it is inaccurate to say that its possession risk is represented by reference to "settlements" in general. Default judgments typically present a very different kind of possession risk than judgments resulting from adjudication or settlement. This is why, for example, the market in default judgments is characterized by much higher discounts than the market in the factoring of legal fees or proceeds arising from settlement.[71] The *Peterson* case, while unusual in some ways, presents an investment opportunity based on the possession of legal fees arising

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The ability to pay and these incentives may be lacking on the part of default judgment debtors. *See also supra* discussion in Section IV.C.2.b.

69 Goral, *Justice Dealers*, at 130.

70 See the discussion of the factoring of legal proceeds post-settlement where there is an MOU, not court approval, in Section IV.3, *supra.*

71 There are few opportunities for investment in either legal fees or proceeds arising from judgment for various reasons. Perhaps most significant is that there is no market: the share of cases resolved through adjudication the plaintiff's favor is much smaller than the share of cases resolved by settlement or default judgment. *See* Marc Galanter & Mia Cahill, *"Most Cases Settle": Judicial Promotion and Regulation of Settlements*, 46 STAN. L. REV. 1339, 1340 (1994) (referring to research indicating that seventy-eight percent of surveyed cases ended in settlement).

from a default judgment. In my opinion, it is inaccurate to use the term "settlement" to represent the possession risk posed by *Peterson* to RDLC, or even the term "judgment" without qualifying it as a default judgment subject to multiple completion risks, including most significantly, the failure of the turnover litigation.

b. Default Judgments Face High Completion Risk

A client who retains an attorney on a conditional fee agreement retains the attorney to competently represent him until the completion of the matter. This means that the attorney does not have rights to the proceeds produced by the representation on behalf of the client until the representation is completed. Obviously, *completion* of representation can only be stated with confidence once the client has obtained his ends, which in the case of legal representation to obtain compensation, is the client taking possession of the recovery.[72]

Possession risk in a factoring contract for contingent fees reflects the completion risk faced by the attorney. In some cases, e.g., most settlements and judgments by adjudication, the completion risk will be low. However, *relative to the completion risk typical to settlements and judgments by adjudication*, the completion risk faced by attorneys in default judgments is significantly higher. It is similar to the completion risk faced by the attorney in the *Cadle Co.* hypothetical discussed in Section IV.C.2.b.iii, *supra.*

Completion risk is much higher in investments in attorney's fees arising from default judgments than in investments in attorney's fees arising from settlements primarily because the cost of enforcement is high or the likelihood of successful enforcement is low (and sometimes

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[72] *See Collins v. Shayne*, 1978 Ohio App. LEXIS 10249, at *9 (Ct. App. Dec. 28, 1978) ("Clearly, no right to a fee exists, unless and until the work is satisfactorily concluded . . ."); Advisory Opinion, Ohio Supreme Court's Board of Commissioners on Grievances and Discipline, Opinion 2004-2 ("Until the money . . . is paid and disbursed, the attorney has not completed his or her legal representation of the client.").

both). In both settlements and judgments resulting from adjudication, the enforcement cost is low relative to default judgments, and the likelihood for success is relatively higher. In a settlement, the adverse party expressed a subjective intention to cooperate with the attorney's client; thus, the likelihood of completion is high. On the other hand, the adverse party in a default judgment often expressed no subjective intentions at all, and, if they did, the intentions are to reject cooperation with the court or the client, as demonstrated by a rejection of jurisdiction.[73]

As noted by RDLC, since there is no point for the adverse party to spend money (his own lawyers' legal fees) on settlement negotiation unless there was reason to believe that there were funds sufficient to satisfy the amount agreed upon in the settlement, there is a good chance that enforcement of the settlement will require minimal additional legal activity by the attorney who has sold her accounts receivables.[74] The opposite is the case in default judgments. If the reason the adverse party has defaulted is that they were not aware of the suit, then the attorney for a party who has secured a default judgment will have to perform additional legal services to locate and enforce the judgment against the adverse party. If the reason the default party has defaulted

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[73] Mr. Dersovitz denied that the subjective intent manifested by settling parties is relevant to his evaluation of possession risk:

> Q: So in the context of settlements . . . you have two parties reaching an agreement and that gives you some comfort?
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> A: I take no comfort . . . because that's irrelevant. The difference between a settlement and a judgment, in a settlement you have two counterparties that have come to terms. In a judgment you've effectively got a judgment debtor who says, Find the money if you can. And the creditor says, Got you.

Mar. 15, 2016 Dersovitz Tr. at 434:24–435:8. This statement is incorrect in at least one respect: An attorney cannot honestly represent to a factor that she has completed the case from which her fee will be derived if (i) the adverse party is saying "Find the money if you can," and (ii) if the attorney, should she find the money, must commence proceedings to obtain the money.

[74] *See, e.g.*, July 2013 Alpha Generation Presentation at p. 12 ("Defendants have no incentive to settle if they cannot make payment.").

is that they reject jurisdiction or believe that they can avoid enforcement through additional litigation, then the attorney for a party who has secured a default judgment knows that the bulk of the legal services for which they have been retained will occur after the default judgment is obtained. Therefore, in my opinion, the completion risk to a factor who buys a contingent fee deriving from a default judgment cannot be compared to the completion risk to a factor who buys a contingent fee deriving from a settlement or MOU.

The possession risk endogenous to RDLC's investment in attorney's fees (as opposed to plaintiffs' judgments) arising from the *Peterson* case is similar to the completion risks faced by the attorneys themselves. These completion risks, i.e., those faced by an attorney in a case in which the legal services provided to the client necessarily involves the enforcement of a default judgment against a foreign government that is hostile to the United States, is illustrated in *Jacobson v. Oliver*.[75] In *Jacobson*, an attorney was retained in 1992 by a client to sue the Republic of Iran for damages resulting from acts of terrorism. In 1998, the attorney secured a default judgment which was not enforceable until Congress passed the Victims of Trafficking and Violence Protection Act of 2000.[76] The client dismissed the attorney in 2000, and in 2006, the client sued the attorney in malpractice and asked to have the attorney's lien on his award set aside.[77] The client's arguments for malpractice included the claim that the contingent fee agreement was unreasonable because of changed circumstances—where it may have been reasonable for the attorney to have anticipated that a reasonable fee for the litigation was 35% in 1992, it was no longer reasonable in 1998 because "Iran's decision not to appear . . . rendered the

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75 555 F. Supp. 2d 72 (D.D.C. 2008).

76 *Id.* at 76.

77 *Id.*

agreement unreasonable because it drastically reduced the amount of work required of defend-defendant."[78]

The court rejected the client's argument because the attorney proved that the enforcement of the default judgment required significant additional legal work and that the work performed after the default judgment contributed to the completion of the legal representation of the client.[79] The court observed that, at the point at which the default judgment had been obtained, the risk that the attorney would receive no proceeds from the case were high.[80] *Jacobson* illustrates that the completion risk faced by an attorney in a default judgment case with a foreign adverse party that rejects jurisdiction is equivalent to the risk faced by an attorney at the outset of litigation. In other words, for an investor seeking to invest in proceeds arising from the enforcement of a default judgment in a case like *Jacobson*, it is more accurate to say that the possession risk was similar to that of pre-settlement litigation finance rather than post-settlement factoring.

When RDLC made its initial investment in the *Peterson* case, the completion risk faced by the attorneys whose fees it "purchased" was qualitatively similar to the completion risk faced by the attorney in *Jacobson* at the point that the court in *Jacobson* deemed such risk to be high. From 2010 until August 2012—when Congress passed the "Iran Threat Reduction and Syria Human Rights Act of 2012"—the completion risk faced by the attorneys in *Peterson* paralleled the completion risk faced by the attorneys in *Jacobson* between 1998 and 2000 (which is when

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78 *Id.* at 84.

79 *Id.* at 86.

80 *Id.*

the Victims of Trafficking and Violence Protection Act of 2000 was passed by Congress). The *Jacobson* court judged the completion risk to be "consistently and invariably high."[81]

In my opinion, there is no point in speculating when, if ever, the completion risk in *Peterson* decreased to the point where it would be accurate to use the word "settlement" to characterize the completion risk faced by the attorneys in *Peterson*. No reasonable person would have said that an investment in the contingent attorney's fees arising from *Peterson* possessed the same completion risk as such fees arising from a settlement in 2008 (when the default judgment was entered in the case). RDLC's and Mr. Dersovitz's contention that the contingent attorney's fees arising from *Peterson* possessed the same completion risk as a settlement in 2010, when a turnover action was filed by the attorneys, is not accurate in my opinion. RDLC's same statements in 2011, despite no further developments in the case, were also inaccurate. RDLC made the same statement in June 2012, when the only new development was an executive action by President Obama that blocked the movement of assets allegedly subject to enforcement by the attorneys.[82] In my opinion, that statement also inaccurately conveyed the risks of investing in the *Peterson* receivables in June 2012. RDLC made the same statement in September 2012, after Congress passed the Iran Threat Reduction and Syria Human Rights Act of 2012.[83] In my opinion, that statement was similarly inaccurate concerning the risks.

These statements were inaccurate for two reasons. First, when the Act was passed, the attorneys and RDLC knew that collection was subject to the contested turnover litigation, which came to include challenges to the Iran Threat Reduction and Syria Human Rights Act of 2012. That litigation could have resulted in varying outcomes over varying timelines, including the

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81 *Id.*

82 *See* June 15, 2012 Alpha Generation Presentation.

83 *See* September 2012 DDQ.

statute being struck down, precisely the same risk that exists in pre-settlement legal finance—that new facts and law will be developed after the factoring contact is complete.[84] This risk continued into 2016 since the legal challenges to Iran Threat Reduction and Syria Human Rights Act of 2012 persisted through the date of the Supreme Court's decision in *Peterson*.[85] Moreover, in the context of all its previous statements, RDLC's use of the word "settlement" in September 2012 and thereafter could only have been understood as a continuation of the previous false statement claim that *any* default judgment posed the same completion risk as a settlement.

VI. Summary

I was asked to consider whether investments described as the purchase of law firms' accounts receivables and the factoring of legal receivables possess the same kinds of investment risk as investments made by the Funds controlled by RDLC and Mr. Dersovitz, such as default judgments against foreign nations that had refused to appear in court and unearned fees in mass tort litigation that had not yet settled. In my opinion, the terms "accounts receivables" and "factoring legal receivables" do not accurately represent the risks relating to many of the investments made by the RD Legal Funds.

Anthony J. Sebok
January 27, 2017

84 *See supra* Section IV.B.1.

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

APPENDIX 1

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EDUCATION

Princeton University, Ph.D. (Politics) 1993

Yale Law School, J.D. (Law) 1991

University of Oxford, M.Phil. (Politics) 1986

Cornell University, B.A. *magna cum laude* (Philosophy) 1984

EMPLOYMENT

Professor of Law, Benjamin N. Cardozo School of Law, New York, NY, 2007 – present

Distinguished Research Professor, Swansea University, Wales, UK, 2013 – 2016

Joseph F. Cunningham Visiting Professor of Commercial and Insurance Law, Columbia Law School, New York, NY, Fall 2011

Visiting Professor of Law, Tsinghua University School of Law, Beijing, China, Summer 2010

Visiting Professor of Public and International Affairs, Princeton University, 2007-08

Associate Dean for Research, Brooklyn Law School, Brooklyn, NY, 2006-07

Fellow, Program in Law and Public Affairs and **Visiting Professor of Public and International Affairs**, Princeton University, 2005-06

Centennial Professor of Law, Brooklyn Law School, Brooklyn, NY, 2005-2007

Professor, Brooklyn Law School, Brooklyn, NY, 1997-2005

DAAD Visiting Professor, Freie Universität, Berlin, 2001

Berlin Prize Fellow, The American Academy in Berlin, 1999

Visiting Associate Professor, Benjamin N. Cardozo School of Law, New York, NY, Spring 1997

Assistant Professor, Brooklyn Law School, Brooklyn, NY, 1992-95

Law Clerk, Chief Judge Edward Cahn, U.S. District Court, Philadelphia, PA, 1991-1992

TEACHING

Torts, Professional Responsibility, Jurisprudence, Advanced Torts, Remedies, Insurance Law, Mass Torts and Social Justice (seminar), Tort Theory (seminar), Comparative Products Liability, Constitutional Law

BOOKS AND ESSAYS

TORT LAW: GLOBAL PERSPECTIVES (with Mauro Bussani) (Oxford University Press, forthcoming 2017)

TORT LAW: RESPONSIBILITIES AND REDRESS, FOURTH EDITION (with John C.P. Goldberg & Benjamin Zipursky) (Wolters Kluwer, 2016)

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A Frolic Of His Own (June 17, 2015)

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Television: The Oprah Winfrey Show, CBS Evening News, CNN, BBC World Business Report, Reuters TV, and RNN

Radio: NPR, WNYC, PRI's Marketplace. BBC Radio, Bavaria Radio and South African Radio

AWARDS AND FELLOWSHIPS

Berlin Prize Fellow, The American Academy in Berlin, 1999
Research Fellow, Humboldt Universität, Berlin, Germany, 1999
Fellow, Program in Law and Public Affairs, Princeton University, Princeton, NJ, 2005-06

PROFESSIONAL ACTIVITIES

American Bar Association

American Law Institute

American Association of Law Schools (Sections on Insurance Law, Remedies, Torts and Compensation Systems (President, 2014-15), and Jurisprudence)

Ethics Consultant, Burford Group (U.K. and USA)

Co-Reporter, ABA Commission on Ethics 20/20, Third-Party Financing Of Litigation Working Group (2011 – 2012)

Drafter, Section on Principles of Procedural Justice, ABA Litigation Section Project, "The Rule of Law in Times of Calamity" (2006)

Products Liability Committee, Association of the Bar of the City of New York (2000-03) (2005 – 2007)

Civil Rights Committee, Association of the Bar of the City of New York (1998 – 1999)

Lectures and Continuing Education Committee, Association of the Bar of the City of New York (1995 – 96)

APPENDIX 2

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Advisory Opinion, Ohio Supreme Court's Board of Commissioners on Grievances and Discipline, Opinion 2004-2

Testimony (including Exhibits)

SEC Testimony of Roni Dersovitz

Deposition of Roni Dersovitz

Deposition of Daniel A. Osborn

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- December 2010 (the face of the document bears the date December 2010, but the document properties reveal that it was created on March 31, 2011)
- September 2012
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RD Legal Funding and RD Legal Funding Offshore Fund Marketing Presentation, dated:

- December 31, 2010
- August 31, 2011

RD Legal Capital, LLC Confidential Overview Alpha Generation and Process, dated:

- June 2009
- December 2010
- August 2011
- December 2011
- January 2012
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- August 2012
- December 2012
- March 2013
- July 2013

- November 2013
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- August 2014
- April 2015
- November 2015

RD Legal Capital: Frequently Asked Questions, dated:

- January 2013
- July 2013
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Confidential Private Offering Memorandum, Limited Partnership Interests of RD Legal Funding Partners LP, dated:

- July 2007
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- December 2011
- April 2012
- June 2013

Confidential Explanatory Memorandum, RD Legal Funding Offshore Fund, LTD., dated:

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- February 2011
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- December 2011
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Confidential Explanatory Memorandum, RD Legal Special Opportunities Partners, LP, dated:

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- May 2014
- July 2014

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Anthony J. Sebok, *The Inauthentic Claim*, 64 VAND. L. REV. 61 (2011)

Joanna M. Sheppard, *Economic Conundrums in Search of a Solution: The Functions of Third-Party Litigation Finance*, 47 ARIZ. ST. L.J. 919 (2015)

Div. Ex. #233

WGL

MEMORANDUM

TO: FILE
FROM: WGL
SUBJECT: RD LEGAL CAPITAL
DATE: JAN. 13, 2011

I spoke with Kevin, as well as 2 other people whose names I don't recall, via a conference call. Arrangements were made for them to put me up at a hotel in New York next week.

They have 15 employees. It looks like they have about $40 million out and are constantly looking for money. They mentioned that they could use another $20,000 if it were available. Half of their investors are private high-network individuals and the other half are institutional investors. They have about 25 total investors.

Their return is called an "open-ended" return of 13.5%. They don't guarantee the 13.5%, but the investor gets paid before any other major distributions, but after overhead. In other words, they reserve enough money to make sure that the investor gets a 13.5% yield on his money which is payable quarterly. However, there is a 1-year lock or freeze which means that I can't take out my money for the first year, and then, I can draw down quarterly up to 25% of principal and accrued interest. This is a negative from an investor point of view, but allows them to rely upon certain money to keep on turning. Their portfolio, incidentally, turns every 16 months. No mention was made of a specific minimum, but I think they'll take $100,000-$150,000. They explained away the Caymans Island

company as a way for high-net worth investors to fund the company. An off-shore arrangement, but I'll be doing business with the Delaware company. However, they did acknowledge a mistake in the last email that was sent Jan. 12th with the Composite, where it says "RD Legal Funds Composite (Caymans Island Company)" – it should have been "Delaware Company". Moreover, this Composite doesn't show too good to the extent that November influx of funds was only $250,000 and the money put out was only $125,000.

In determining whether I'm going to go ahead with them, I have to look in detail at their costs of doing business.

They didn't know much about their founder, Dersovitz; when I questioned whether he was a member of the Bar, they mentioned New Jersey or New York. Have to check out further.

They've been on and off advertising in the Trial Lawyers magazine and going to trial lawyers conventions over the past number of years.

Most of their business today is advancing on settlement cases, which I still don't completely understand. Very little is offered via the credit line. Their fee acceleration program is basically akin to a factor. I asked why an attorney would want to borrow money for the 60 day interim period of time, from time of settlement to time cash received, and pay their high interest rates, and they didn't really give me an adequate answer which I should explore further. The interest rate for this short period of time is at least 40%. However, once again, if their average turnover of loans takes 16 months and we're talking about a 60-day hedge loan from settlement to cash acceptance, that's quite a difference between 60 days and 16 months.

I believe they mentioned something about reserving $360,000 a month to pay overhead before any distributions, but check this out further.