

9791nadh

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

2  
3 UNITED STATES OF AMERICA,

3  
4 v.

09-CR-433 (JGK)

4  
5 ARTHUR NADEL,

6 Defendant.

Bail Hearing

6  
7 -----x

7  
8 New York, N.Y.

8 July 9, 2009

9 4:43 p.m.

9  
10 Before:

10  
11 HON. JOHN G. KOELTL,

11  
12 District Judge

12  
13  
14 APPEARANCES

14  
15 LEV L. DASSIN

15 Acting United States Attorney for the  
16 Southern District of New York

16 REED M. BRODSKY

17 Assistant United States Attorney

17 JAMES BOROD, Intern

18 FEDERAL DEFENDERS OF NY, INC.

19 Attorneys for Defendant

19 BY: MARK B. GOMBINER, ESQ.

20 MARTIN COHEN, ESQ.

21 ALSO PRESENT: BURTON W. WIAND, ESQ., Receiver

22  
23  
24  
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1 (In open court)

2 (Case called)

3 THE CLERK: Parties, please state your name for the  
4 record.

5 MR. BRODSKY: Good afternoon, your Honor. Reed  
6 Brodsky on behalf of the government. With me is an intern from  
7 our office for the summer, James Borod.

8 THE COURT: Good afternoon. Mark Gombiner, Federal  
9 Defenders, for Mr. Nadel, and Martin Cohen from my office is  
10 also present, your Honor.

11 MR. COHEN: Good afternoon, your Honor.

12 THE COURT: Good afternoon. I note that the defendant  
13 is present.

14 We had a prior hearing, and the defendant was going to  
15 take under consideration what I had said last time, and I  
16 thought that the parties were going to attempt to work together  
17 to attempt to arrive at some bail package. I've gotten a  
18 letter from defense counsel dated July 7th setting out a  
19 proposed bail package. I asked for another report from  
20 pretrial services, and I have a report dated July 8th, 2009,  
21 which repeats the pretrial services recommendation. It also  
22 includes the statement, based upon what the defendant has said  
23 before, that the defendant advised that his wife, children and  
24 stepchildren will be able to assist him with bail. And he  
25 notes that his children and stepchildren are all gainfully

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1 employed. And --

2 MR. GOMBINER: Your Honor, I would note that although  
3 that report is dated July 8, 2009, I think that's simply  
4 repeating something that Mr. Nadel said in a much earlier stage  
5 in the proceedings. It's not based on any new statement.

6 THE COURT: Right. No, I understand that. I  
7 understand that.

8 And I also asked that the receiver or representative  
9 of the receiver be here.

10 MR. BRODSKY: Yes, your Honor. For the Court's  
11 information, Burton Wiand is present. He is the receiver and  
12 he is present.

13 THE COURT: Okay. Thank you. The reason that I asked  
14 that the receiver be here is that the one letter from the  
15 receiver was unclear to me in terms of, it was unclear to the  
16 parties at the last proceeding as to whether there was I  
17 believe \$28 million of assets that were not able to be located,  
18 identified, and that that was separate from the government's  
19 allegation that there were certain assets that had gone to  
20 Mr. Nadel and that were unable to be identified.

21 So I have the defendant's letter, and I'm perfectly  
22 prepared to listen to the parties. I haven't gotten a response  
23 from the government.

24 I made, I believe, the Court's position clear at the  
25 last conference. The law is well established that there's a

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1 two-part inquiry. The first part of the inquiry is: Has the  
2 government shown that there is a risk of flight or danger to  
3 the community if the defendant is released? There is ample  
4 evidence of a risk of flight based on numerous factors, which I  
5 could go through on the record and which Judge Cote has gone  
6 through on the record, including the fact that the offense is a  
7 substantial one, the amount of money involved in the offense is  
8 a substantial amount of money, the defendant has previously  
9 fled -- although a criminal complaint was not outstanding, the  
10 defendant fled under circumstances indicating that he did not  
11 wish to be found and created some documents that could be  
12 viewed as deceptive. The charges are serious charges. The  
13 potential penalties are very serious. There is thus a great  
14 incentive to flee. There are issues with respect to what  
15 resources the defendant has in order to flee. The defendant  
16 did take off on a previous time. Whether there are resources  
17 available to the defendant now to flee is a question. But  
18 there's a substantial basis for the first part of the inquiry,  
19 that the defendant is a substantial risk of flight.

20 On the other hand, the second part of the inquiry,  
21 whether there are conditions or combination of conditions that  
22 could reasonably assure the presence of the defendant, is  
23 another issue. Judge Cote strove to establish a set of  
24 conditions that could reasonably ensure the presence of the  
25 defendant. The defendant said that he couldn't meet those

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1 conditions. I indicated that I was inclined to reduce the  
2 conditions to make them sufficient to assure the defendant's  
3 continuing presence and I was searching for a set of conditions  
4 which would in fact be sufficient. And I got the defendant's  
5 proposal.

6 And again, I'm prepared to listen to the defendant and  
7 the government. I would have at least hoped that the parties  
8 would have attempted to reach some agreement with respect to an  
9 acceptable bail package. I note, in that connection, that  
10 pretrial services had recommended, some time ago, four  
11 financially responsible persons. The defendant has now come up  
12 with three financially responsible persons and a reduced amount  
13 of the bond, secured by the defendant's home in Florida.

14 The bail package in Dreier was a \$10 million bond but  
15 signed by two people, son and mother. The bond in Madoff was  
16 \$10 million bond cosigned by his wife and brother. In both of  
17 those cases, there were additional elements of security in  
18 terms of the protective services, which are absent here.

19 Ultimately, the issue for the Court is, what's a  
20 sufficient bail package to reasonably assure the continuing  
21 presence of the defendant.

22 MR. BRODSKY: Your Honor, may I address the Court on  
23 these issues?

24 THE COURT: You know, I should add -- Yes, of course,  
25 I'm going to listen to the government. But I really would hope  
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1 that the government would be constructive on this issue.

2 MR. BRODSKY: Well, your Honor, let me see if I can  
3 provide you with the government's perspective.

4 THE COURT: And let me just add one other thing.

5 MR. BRODSKY: Yes, certainly.

6 THE COURT: When I'm asking for constructiveness --

7 MR. BRODSKY: Certainly.

8 THE COURT: -- it doesn't help, it really doesn't help  
9 to press the argument again, as the government had in its  
10 initial papers, that the defendant is a danger to the community  
11 in the sense of an economic danger to the community. I fully  
12 accept that there can be cases in which a defendant can be a  
13 danger to the community based upon economic danger to the  
14 community. The realistic possibility that people will be  
15 investing with the defendant while the defendant is on bail is  
16 not a constructive suggestion, or a constructive reason to deny  
17 bail. That's an observation. You can certainly continue to  
18 make the arguments, but it doesn't carry a lot of weight.

19 Nor, frankly, is an argument that says, we say there's  
20 no condition that can reasonably assure the presence of the  
21 defendant. You know, I've heard that argument, but it's hard  
22 to believe, hard to believe that when other alleged frauds  
23 equal to or greater than the defendant's, where defendants are  
24 released on bail over the government's objection, the  
25 defendants do not flee, that this defendant is so different.

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1 I realize all the differences. I realize, you know,  
2 every difference in every case, between, you know, on the one  
3 hand the scope of the fraud in some other cases as compared to  
4 this case, the age of this defendant compared to other  
5 defendants. I realize that there has to be an individualized  
6 assessment in each case, but the question is, you know, whether  
7 the parties are in good faith attempting to come up with the  
8 package that can reasonably assure the presence of the  
9 defendant or whether the parties are just going to say, no,  
10 there's no package.

11 So yes, I'll listen to the government.

12 MR. BRODSKY: Thank you, your Honor.

13 I take a step back, your Honor, and just say that the  
14 conditions -- at the time Judge Cote imposed her conditions,  
15 the defendants informed the judge that Mr. Nadel would not be  
16 able to meet them, but what the judge said was, those are the  
17 reasonable conditions that she found were necessary to ensure  
18 his appearance. At that time Mr. Nadel still said he couldn't  
19 meet them.

20 Now there has been one material change since that  
21 time. The material change has been that the defendant has been  
22 indicted by a grand jury sitting in the Southern District of  
23 New York for the charged crimes, which raises, in our view, the  
24 level of seriousness from a complaint to a grand jury  
25 indictment.

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1 Now let me address, your Honor, the important concerns  
2 your Honor is raising, which is the constructive --

3 THE COURT: No, hold on, hold on, hold on. That's not  
4 completely fair, frankly. When the complaint was issued, in  
5 terms of a defendant's calculations as to whether a defendant  
6 should flee, would any reasonable defendant say, there's only a  
7 complaint, maybe there will be no indictment here so I really  
8 don't have to flee?

9 MR. BRODSKY: Your Honor, I think --

10 THE COURT: So the second reason that I don't think  
11 that that argument is wholly fair is, the other change, as in  
12 Dreier, is that the receiver has been actively involved in  
13 seizing property, and the amount of property that's been seized  
14 from the time that Judge Cote issued her decision and today is  
15 far greater. I mean, there were other assets that were out  
16 there which have now gone. There were other corporations,  
17 planes, houses, all gone.

18 MR. BRODSKY: Your Honor, you make two valid points.  
19 With respect to the grand jury point, I'm repeating Second  
20 Circuit caselaw, which stands for the proposition, from the  
21 caselaw that I've read, that there is a change when there's a  
22 grand jury indictment versus a complaint. That's the point I  
23 was addressing there.

24 With respect to the receiver, your Honor, I think you  
25 raise a great point, which is, where are we with respect to the  
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1 THE COURT: Absolutely. So for the record, tell us  
2 who you are, what your position is in connection with  
3 Mr. Nadel, what your background is and how you were appointed.

4 THE WITNESS: Okay. As I said, my name is Burton  
5 Wiand. I am an attorney with the Fowler White Boggs firm in  
6 Tampa, Florida. And there I have been involved in various  
7 different kinds of private practice relating to financial  
8 services for -- since 1984, and a lot of that involves  
9 regulatory defense, criminal defense, and a lot of it involves  
10 litigation and dispute resolution between members of the  
11 financial industry.

12 In addition, prior to that, from 1971 to 1984, I was  
13 an attorney with the United States Securities & Exchange  
14 Commission in Washington, the Division of Enforcement, and I  
15 started out as a staff attorney, worked through, conducting  
16 investigations and things of that nature, and when I left in  
17 1984, I was assistant chief trial counsel or something like  
18 that. I was essentially the senior active litigator in  
19 Washington.

20 THE COURT: In Washington rather than Tampa?

21 THE WITNESS: I was in Washington, yes, sir.

22 THE COURT: Okay.

23 THE WITNESS: The -- over the years of my practice, a  
24 lot of it involves dealing with various governmental agencies.  
25 On occasion I have been asked to come in as an independent

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Wiand testimony

1 third party with various name designations at the request of a  
2 government agency or a court to provide some independence in a  
3 situation. It might be as an arbiter or as a claims counsel or  
4 as a receiver. And I've -- this is the third time I think I  
5 have served as a receiver. The last two, including this one,  
6 have involved hedge fund Ponzi schemes. I am just about to  
7 wrap up or I am just about to make the first major distribution  
8 out of one that is winding up in Tampa that involves a fellow  
9 named Howard -- SEC v. Howard Waxenberg.

10 And then in January of this year I had contact with  
11 the SEC when this matter broke. They proposed three different  
12 people to Judge Lazzara in Tampa, and he appointed me as the  
13 receiver in this matter. And in that I'm charged with  
14 gathering assets, conducting investigation with respect to  
15 what's transpired, operating and managing whatever assets are  
16 there, including businesses, and then concurrently, and usually  
17 somewhat subsequently, conducting the claims process and  
18 distributing whatever comes out of this. The matter that I was  
19 directed to was the -- this Ponzi scheme situation that  
20 Mr. Nadel and his companies were involved in. When we began  
21 this, we initially went down and took possession of the offices  
22 and the records and the various computerized records and things  
23 of that nature and began to, what I would say was unpeel the  
24 onion as to what was there. What has appeared is that there  
25 was various different investment funds run and that over the

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1 period -- over a period of time investors were told that there  
2 were certain levels of performance within these funds which did  
3 not occur, and through distributions and withdrawals, the  
4 amount of the funds went down. They were not -- there were not  
5 profits to support those withdrawals and distributions, and  
6 eventually it came to a screeching halt. And I think in  
7 December of 2008 there were \$47 million worth of withdrawal  
8 requests and there was about a million dollars left in the  
9 funds. Given that picture, we began to try to find out what  
10 happened to it.

11 I think that my first report I know has been filed  
12 with the Court, possibly the second one, but approximately  
13 \$400 million was raised. Of that, a great deal of it was  
14 distributed, and there were losses apparently to investors of  
15 around 167 million. And these figures are approximate, Judge.  
16 I don't have them actually memorized. But they're close.

17 And with respect to the other funds, it appears that  
18 approximately \$95 million were -- was taken from the period of  
19 time that we have focused on, and we believe this went on  
20 earlier but we haven't been able to do that yet. That  
21 \$95 million was diverted to other purposes.

22 I think somewhere along the line before your Honor,  
23 there became an idea that we have accounted for everything in  
24 respect to this matter, and that has not occurred. There are  
25 certain levels of accounting that has taken place. We have the

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1 trading activity that took place from 2002 to 2009, through the  
2 accounts at Goldman Sachs, and we have accounted for the  
3 results of that trading and the distribution of those funds,  
4 but that distribution occurred through certain entities and  
5 that ended up in large part in Mr. Nadel's hands or certain  
6 other people. With respect to that, we're still tracing and we  
7 are going forward to try to find that. And if someone was to  
8 say, well, the receiver has accounted for every dollar, that is  
9 just not the case.

10 As an example of what I'm talking about, through the  
11 management of these funds, there was an apparent ongoing scheme  
12 of cherry picking, where profitable trades were moved into  
13 personal accounts of Mr. Nadel and, it's possible, to others.  
14 We are trying to sort that out to see how those -- see where  
15 those funds went, but it's clear that profitable trades were  
16 credited to these personal accounts. They were quite  
17 profitable, while the other ones were losing money.

18 Then in addition to that, the accounts were not  
19 profitable, but fictitious results were prepared, and through  
20 an accounting system, it would be represented that there were  
21 profits each year of say 20 percent. And then the compensation  
22 that was withdrawn from that was 2 percent management fee plus  
23 a 20 percent of the profits. Well, there were no profits.  
24 That's still 20 percent of these fictitious profits were taken,  
25 and so that just continued to bleed the corpus of whatever the

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1 investors had put into this -- into these various funds and it  
2 caused the -- so that the actual value of the funds decreased  
3 very rapidly while it was being represented to investors that  
4 those funds were increasing in value. We have traced dollars  
5 out of those funds into various activities that were controlled  
6 by Mr. Nadel, and then we began to trace that money from there.  
7 He made investments through any number of companies, many of  
8 which we have pulled into the receivership. There are  
9 corporations there that he ran and controlled. They had bank  
10 accounts. The bank accounts from there, you know, money went  
11 to other places.

12 He also set up a system of what I would call shadow  
13 accounts where, at Wachovia Bank, he set up accounts like --  
14 one of the funds is called Valhalla Fund. He would set up a  
15 Valhalla Fund d/b/a Arthur Nadel. And that way he was able to  
16 take funds from the investment accounts or corporate monies of  
17 the Valhalla Fund and deposit it into an account that he  
18 controlled personally, and these accounts were concealed,  
19 apparently, from the others who worked in the -- in the offices  
20 there. With respect to that, the accountants have looked at  
21 those accounts and have traced -- and are in the process of  
22 tracing down every transfer out of those accounts as \$100,000  
23 or more. We don't know yet with those. That hasn't been  
24 completed. The total though is \$13 million.

25 With respect to all of these various corporations and  
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1 funds that passed through there, we are not sure where all  
2 those funds went. In a number of circumstances, a company or  
3 an asset would be purchased and to some extent developed with  
4 funds that would come directly out of or indirectly but  
5 directly traceable back to investor funds, a business would be  
6 created and then significant loans would be placed on those,  
7 and those funds would then go somewhere else. And once again,  
8 it's another tracing situation.

9 Recently -- I think Mr. Brodsky mentioned accounts in  
10 the Cayman Islands. There were established hedge funds that  
11 were operated out of the Cayman Islands for a period of time.  
12 There was -- the numbers that I initially gave him were  
13 inaccurate. It was \$15 million. \$10 million has not been  
14 traced that was in a company called Viking International, and  
15 \$5 million was traced back from that operation back into funds  
16 in the United States. And we're not clear what happened to  
17 those monies. You know, I say I'm not clear on that. We are  
18 still working to try to detail where that money went, and we  
19 can't -- we can't to this point document the distribution of  
20 it. I don't mean to say that that money was taken, but it's  
21 money that's out there and we know it existed and it didn't --  
22 there is no records available yet to find that.

23 In addition, one of the numbers that has been bandied  
24 around is \$28 million. That number is derived and I think it  
25 was included by the -- my letter to the Court previously --

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1 THE COURT: Yes, it was.

2 THE WITNESS: -- as an example of funds that were  
3 missing, and what that is, if we take the hard -- the hard  
4 bookkeeping records of the distributions, the actual accounting  
5 records and Quick -- it's in QuickBooks, and then compare that  
6 to the investment fund accounting records, we can trace most of  
7 that, but there's \$28 million that's just missing. And the  
8 accountants are working to try to justify where that money  
9 went, but that is money that is just -- the distribution of it  
10 is just unknown. It could have been losses, it could have been  
11 fictitious accounting, but -- and I checked back with the  
12 accountant this morning, and he believes that there's  
13 \$28 million there that's just missing.

14 THE COURT: That 28 million was listed in both of your  
15 reports as --

16 THE WITNESS: Right.

17 THE COURT: -- unable to account for from the total  
18 investments in the funds.

19 THE WITNESS: Right.

20 THE COURT: I mean, able to account for at least where  
21 everything went in terms of going out, except for 28 million.

22 THE WITNESS: There's 28 million we don't -- we can't  
23 account for. But that doesn't mean that that's the sole  
24 28 million that we don't know where it is now, because we can  
25 account for 95 million going to Mr. Nadel and the other

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1 managers of the fund, and tracing through those monies, you  
2 know, to be able to tell us where all those dollars went, I  
3 can't do that. I mean, that's -- maybe if I revisit it in a  
4 couple years, I'll be able to tell you, but it's going to take  
5 a long time to figure that out.

6 THE COURT: Okay.

7 THE WITNESS: So I hope that clears up the impression  
8 with what's going on with respect to the funds.

9 I know Mr. Gombiner has asked me to specify a  
10 particular account that I know the gentleman has control over.  
11 I don't know of one, and it is true that if I did know of one,  
12 I would go seize it if I could trace the money back to these  
13 investors' funds. However, it's the situation of not knowing  
14 where accounts are and things of that nature that concern me,  
15 and we continue to uncover different accounts and things of  
16 that nature, not certainly on a daily basis, but, you know, as,  
17 you know, the weeks go by, new matters come to our attention on  
18 all the other funds out there.

19 There was one of them with -- I can't remember the  
20 name of the company, that we took over just recently that had  
21 an account out there that had a significant chunk, less than  
22 \$50,000, but a significant amount of money that was --  
23 Mr. Nadel still would have had control over until such time as  
24 we seized it.

25 So to tell you that I can tell this Court that I've  
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1 accounted for everything and I know where all that money is, I  
2 can't do that.

3 THE COURT: Have you sought Mr. Nadel's help in  
4 identifying and tracing money out of the investment funds and  
5 determining where it went?

6 THE WITNESS: I began that very shortly after he was  
7 in custody. He had some -- a couple of lawyers in Florida,  
8 Mr. Cohen and Mr. Foster, who are very good criminal attorneys  
9 in Tampa. They talked to us then about him cooperating. I  
10 reached out to them for that cooperation, and nothing was ever  
11 forthcoming.

12 Upon Mr. Gombiner being appointed or assuming the role  
13 as his counsel, I wrote him a letter and told him that I would  
14 like his cooperation, and there have been various discussions  
15 between Mr. Gombiner and myself about the potential of that. I  
16 think the essence of what that has come down to is is that  
17 Mr. Gombiner has suggested, if I can figure out questions to  
18 ask him that do not involve incriminatory information, if  
19 that's the right word, not -- innocuous information, he'll be  
20 happy to help with that. But if there's information that is  
21 not innocuous, that he's not going -- and he feels that he's  
22 not in a position at this time to tell his client to cooperate  
23 in that regard. That's not something I can really work with  
24 because it would cause me to be able to -- I mean, I'd have to  
25 sit around and try to figure out questions that work and are

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9791nadh Wiand testimony

1 and frankly, I didn't think the help was even helpful at that  
2 point in time, and there are other individuals who are involved  
3 with -- were involved with the entities, other money managers  
4 and had some oversight over this who are actively cooperating  
5 with me and providing full information with what they have, as  
6 far as I can tell, and so they're providing information.

7 So with respect to Mr. Nadel, other than those trading  
8 aspects and things of that nature, I'm not sure exactly where  
9 his help goes, and the essence of what I need to know is how  
10 these -- how these transactions took place, where the flow of  
11 money went, how it got to people and --

12 THE COURT: Well, aren't there two sets of questions?  
13 One set of questions is, how did it happen; and the second set  
14 of questions is, what happened? Money went from the investment  
15 funds to other accounts, which went to other accounts, which  
16 went to other accounts, perhaps. Where are those accounts,  
17 what are those accounts, where are they located, what are the  
18 amounts, if any, in any of those accounts? That's a different  
19 set of questions from who approved the transactions, who knew  
20 about the transactions, isn't that right? I mean, I appreciate  
21 that your charge is a broader charge than simply tracing.

22 THE WITNESS: I agree, Judge. But I think with  
23 respect to those questions that you ask about, a lot of that is  
24 documented and we can trace through it and we are following it.  
25 The essence of things is like, for instance, the cherry

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1 picking. It is very, very time intensive for me to have the  
2 expert who is working with me go in and match trades and go  
3 down and take on a daily basis and show that, here are trades  
4 for all of the different funds and that the investor funds got  
5 very bad prices, his personal funds got very good prices. In  
6 doing that, it's incredibly time intensive. If he could sit  
7 down with me and say, I did this, he would save me and the  
8 receivership estate a lot of money and a lot of time and would  
9 advance the ball. And, you know, if I want his help, I want  
10 him to advance the ball for me.

11 THE COURT: Has he provided any information to you?

12 THE WITNESS: Zero. And Judge Lazzara -- He applied  
13 to get money out of the receivership funds to pay his attorney  
14 before Judge Lazzara in Tampa, and at that point in time, Judge  
15 Lazzara pointed out that he'd been under a court order to come  
16 forward with information from the day this started and there  
17 had been no response to that. And I understand the reason he's  
18 not responding to it is because of his privilege against  
19 self-incrimination. But be that as it may, there has not only  
20 been a request but a court order that he provide this  
21 information.

22 THE COURT: Okay. Thank you, Mr. Wiand.

23 Mr. Brodsky?

24 MR. BRODSKY: Yes, your Honor. Just if I can follow  
25 up on a couple of the items.

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9791nadh Wiand testimony

1 DIRECT EXAMINATION

2 BY MR. BRODSKY:

3 Q. Mr. Wiand, you mentioned \$15 million in the Cayman account.  
4 Did you learn any information with respect to whether Mr. Nadel  
5 had control over that account?

6 A. He did. The documentation of private placement memoranda  
7 indicates that he did, and I think that the tax return for the  
8 5 million -- shows the 5 million that was returned to the  
9 United States also was under his control.

10 Q. And you mentioned that there were --

11 THE COURT: Could I just stop you. The \$5 million  
12 returned to the United States, where did that go?

13 THE WITNESS: It went back in and became part of  
14 something called the Viking Fund, which was one of the funds.

15 THE COURT: And have you been able to trace that?

16 THE WITNESS: It's part of the -- we've traced it into  
17 the fund assets, and then we have a total analysis of all  
18 tracing, we seized the disbursements out of that fund, and that  
19 was 5 of the \$15 million that went to the Caymans.

20 THE COURT: And the 10 million you had said before has  
21 not been traced. So do you know where that is?

22 THE WITNESS: No.

23 THE COURT: At one time it was in the Cayman bank  
24 account.

25 THE WITNESS: Last point that we're aware of was in  
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1 2003, it was in an account in the Caymans, and that it would  
2 appear from the documentation that Mr. Nadel and a fellow named  
3 Ian Moody were the individuals who had control over the  
4 account.

5 THE COURT: And do you have the bank account  
6 statements for the account?

7 THE WITNESS: We do not have any statements for it at  
8 all. We have just -- this is just something that has been  
9 recently identified. There is a -- an administrator called  
10 Admiral in the Caymans that may be able to provide this  
11 information, and the Moodys I think will assist us if they can  
12 demonstrate the authority in getting that information so we can  
13 delve into it.

14 THE COURT: So you just don't know what happened to  
15 the 10 million; you saw it there in 2003 and you know it's not  
16 there now?

17 THE WITNESS: I don't know that, Judge.

18 THE COURT: You don't have any of the current records  
19 of the account?

20 THE WITNESS: No, Judge.

21 THE COURT: Okay. Could Mr. Nadel give you the  
22 authority? Have you asked Mr. Nadel if he has control of the  
23 account? Have you asked Mr. Nadel to authorize you to get the  
24 records to that account?

25 THE WITNESS: I have not, Judge. The timing of this  
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1 has been such that that would not have occurred, and also, I  
2 think with what I anticipate would be the assistance of the  
3 Moodys, I may not need it.

4 THE COURT: The assistance of?

5 THE WITNESS: There were two other individuals, a  
6 father and son --

7 THE COURT: Oh.

8 THE WITNESS: -- named Neil and Chris Moody, who, with  
9 respect to three or four of the funds, were managers of the --  
10 of those funds, and then Mr. Nadel's operation was a submanager  
11 and actually did the trading for those things, but the other  
12 people had, you know, the authority as managers and managers of  
13 the LLCs that were the funds, so they had the authority to act  
14 on behalf of those entities, and it would appear from the  
15 documentation that I see that they would probably have the  
16 authority to direct Admiral to provide us with the information.  
17 And as I said, Judge, that money may well have been repatriated  
18 and gone back into funds. I just do not know.

19 THE COURT: Is that account in the Caymans, the  
20 \$15 million account, the only foreign account that you've been  
21 able to identify over which you think that Mr. Nadel had  
22 control?

23 THE WITNESS: I'm not certain. I believe that's  
24 correct. There are no other significant ones that come to  
25 mind, but there are not others in the Caymans.

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1 THE COURT: Okay. Go ahead, Mr. Brodsky.

2 BY MR. BRODSKY:

3 Q. To follow up on the Court's question, with respect to the  
4 foreign account, have you been able to identify who controls  
5 each and every one of the foreign accounts?

6 A. Not totally. Some of them, yes, but not all of them, and  
7 these are the foreign investor accounts you're referring to.

8 Q. Correct.

9 A. Yeah, not totally. Some of them we have, and -- and  
10 things -- I mean, there continues to be a process of trying to  
11 identify these as we speak. I mean, we are working with the  
12 SEC and a major Swiss bank right now trying to identify one.

13 Q. You mentioned earlier the approximately \$95 million in fees  
14 that Mr. Nadel and his partners received as a result -- from  
15 the fictitious accounts, the falsely inflated accounts. Do you  
16 remember talking about that?

17 A. These were management fees and profit fees out of the fund  
18 accounts that purportedly they were receiving according to  
19 their agreements, but because their -- because the amount of  
20 money that the management fee was charged on was fictitious and  
21 the amount of profits that were represented and that it was  
22 computed on was totally fictitious, it was just scooping money  
23 out of it.

24 THE COURT: Just so that I understand, the total  
25 investments in the funds were approximately 397 million.

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1 THE WITNESS: Right, right about 400 million.

2 THE COURT: And approximately 95 million went from the  
3 funds, by various means, to Mr. Nadel and other managers, the  
4 Moodys, is that fair?

5 THE WITNESS: Right.

6 THE COURT: And how much of the 95 million  
7 approximately went to Mr. Nadel, how much to the Moodys? Do  
8 you have any approximation?

9 THE WITNESS: I'm sorry, Judge, I don't want to guess  
10 on that figure. I think it's 67, but I'm not sure.

11 THE COURT: Okay.

12 BY MR. BRODSKY:

13 Q. Would it be fair to say, Mr. Wiand, that without giving a  
14 specific number, that at least half of the \$95 million in  
15 performance and incentive and in management fees that we're  
16 talking about went to Mr. Nadel?

17 A. I believe it was more than that.

18 Q. And have you, after -- with respect to that amount of  
19 money, the more than half of the \$95 million that went to  
20 Mr. Nadel that we're talking about, have you been able to  
21 account for each and every dollar of that amount as to where it  
22 eventually ended up?

23 A. No, sir.

24 Q. Of the approximately more than half of the \$95 million that  
25 you are able to identify as Mr. Nadel receiving in terms of

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1 fees from these accounts, have you been able to identify where  
2 any portion of that amount of money ended up?

3 A. Certainly. There are specific amounts of money that we  
4 have traced. For instance, the Venice Jet Center, which is the  
5 bane of my existence, he purchased that with some of those  
6 funds. With respect to -- there's a company called Homefront  
7 Homes that he put a great deal of money in. There's real  
8 estate developments that he put money into. And of course we  
9 have traced those.

10 Q. Would you be able to estimate, of the more than half of the  
11 \$95 million, how much of that that you've attributed to  
12 Mr. Nadel receiving, you've been able to identify accounts for?

13 A. I can't give you that number. It is a -- it is a  
14 percentage of less than half, I would think.

15 Q. With respect to the \$13 million that you mentioned in what  
16 you called the shadow accounts, have you been able to trace  
17 where the \$13 million went?

18 A. Just before Mr. Nadel departed, he closed a real estate  
19 transaction and sold a bank building that was owned by one of  
20 the funds in St. Petersburg, Florida, and he sold it for about  
21 a million and a half dollars. That money was diverted into  
22 those accounts, and that was the money that he -- he took that  
23 money and he sent checks to his family members, had money  
24 assigned to pay for credit for a credit card that could be  
25 used, transferred money to his wife and things of that nature,

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1 immediately before his departure. And we had been able to  
2 trace that 1 million through the bank, through the Wachovia  
3 account, and we know where every dollar of that transaction  
4 went. But with respect to the other ones, the determination of  
5 what happened with those other accounts is still ongoing  
6 because there were no records of those accounts at the Scoop  
7 offices and there were no records in his personal belongings  
8 that we found, and we have had to retrieve the bank records for  
9 the six accounts or something -- it's a significant number of  
10 accounts -- from Wachovia over a number of years dating back to  
11 2002, in some cases, and are now tracing -- the process now  
12 goes on of taking every item that's in excess of \$100,000 and  
13 trying to pull those in and see where it went. That is where  
14 we are now is following those \$100,000 items. So the answer  
15 is, with respect to all of it, I don't know. A million and a  
16 half, I'm confident I know where every dime went.

17 Q. Do you have a ballpark estimate of the amount that you do  
18 not know when we're talking about these particular shadow  
19 accounts?

20 A. I haven't reviewed this stuff myself. I talked with  
21 Mr. Price, the accountant who is working on it. He told me the  
22 total dollar amount that was going out was 13 million, and so  
23 if you take a million and a half out of it, it would be 11  
24 million.

25 Q. You mentioned a recent account that you just found and

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1 seized that was -- had less than approximately \$50,000 in it.  
2 How long ago did you recently find that account, approximately?

3 A. I'm having a mental block right at the moment. We -- it  
4 was one of -- something that we just seized that had a company  
5 account along with the property that we seized. And the  
6 account was something that I think when we did it, we found out  
7 about it as we were -- as we were taking control of it. And  
8 that's been within the last month.

9 Q. Within the last month?

10 A. Yeah.

11 Q. And with respect to that account, was Mr. Nadel the one who  
12 had control over that account?

13 A. Yes.

14 MR. BRODSKY: No further questions, your Honor.

15 THE COURT: All right. Mr. Gombiner?

16 CROSS-EXAMINATION

17 BY MR. GOMBINER:

18 Q. Mr. Wiand, we've talked on a number of occasions, haven't  
19 we?

20 A. Several, yes, three or four.

21 Q. And you've also spoken to Colleen Cassidy, another attorney  
22 from my office?

23 A. I don't recall Mr. Cassidy. I recall --

24 Q. Ms. Cassidy.

25 A. Ms. Cassidy, yes, I have.

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1 THE COURT: By the way, Mr. Gombiner, if it would be  
2 more convenient to turn the podium around, it's just there  
3 because --

4 MR. GOMBINER: Probably would. Thank you, your Honor.

5 Q. And Mr. Wiand, fair to say then each occasion we've spoken  
6 to you, we've specifically asked you, is there any particular  
7 account or transaction that Mr. Nadel could provide you with  
8 some assistance on? That's true, isn't it?

9 A. I think that you have asked me if there is any specific  
10 information that he could provide, and I think I sent you a  
11 letter at one point and indicated a number of different things  
12 that I would like to have him help on. Our discussion devolved  
13 at some point in time to talking about foreign accounts, and I  
14 think I've already described what transpired with respect to  
15 that.

16 Q. And it's fair to say you've never asked us about any --  
17 you've never made any request about any specific transaction or  
18 account, you've never asked us to help you with that, is that  
19 fair to say?

20 A. I think, yeah, I have not -- I have not specified  
21 particular specific transactions that I wanted help with, but I  
22 have given you categories of information that he could be  
23 assisted -- that would be of assistance to me.

24 Q. For example, you've told us you'd like -- you believe that  
25 Mr. Nadel was involved in a cherry picking scheme, is that

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1 right?

2 A. I believe that.

3 Q. And you're aware that that isn't part of the indictment in  
4 this case.

5 A. Frankly, I don't know that I've read the indictment.

6 Q. Okay. Well, you know cherry picking could be considered a  
7 crime, right?

8 A. I do know that.

9 Q. And I told you that -- Isn't it fair to say I told you that  
10 Mr. Nadel was not going to waive his Fifth Amendment privilege  
11 with respect to your allegations of suggested criminal  
12 activity? In substance I told you that, right?

13 A. I think we had a -- we had a pretty open and friendly  
14 conversation about the -- his predicament of wanting to be able  
15 to provide certain information but not wanting to provide  
16 information that would be incriminatory and talking about that  
17 problem, and absolutely, you told me that with respect to the  
18 cherry picking, that was something that would probably not be  
19 in his interests to talk to me about.

20 Q. For example, we just spoke last Monday about -- last  
21 Monday, didn't we?

22 A. We spoke --

23 Q. Very recently.

24 A. Yeah, in the last few days, yes.

25 THE COURT: Actually, Mr. Wiand, could you bring the  
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1 mic a little closer.

2 A. I'm sorry. Yes, in the last few days, yes, we have spoken.

3 Q. And during that conversation you did not say, can you help  
4 us shed some light on a Cayman Islands account, you didn't make  
5 that request of me, you didn't mention that, did you?

6 A. I did not.

7 Q. Now with respect to those Cayman Islands accounts, some of  
8 the money went to Viking International, is that right?

9 A. Yes, sir.

10 Q. And that was -- that was a fund controlled by Neil Moody,  
11 correct?

12 A. It would appear that Neil Moody was -- I haven't come up  
13 very -- with terms very effectively on this, but Neil Moody,  
14 there was an LLC that -- that was the fund, there was an LLC  
15 that was the manager of the fund, and there was another company  
16 that was the submanager of the fund that operated it.

17 Mr. Moody was the control person of the entity that was the  
18 fund, he was the control person of the entity that was the  
19 manager, Mr. Nadel was the individual who managed the fund and  
20 conducted its operations. And I think those are called like  
21 Viking Fund, LLC or Viking Fund -- it could be a partnership,  
22 Viking Fund, and then Viking Management, and then Scoop  
23 Management I think was the one that actually managed the fund.

24 Q. But the way you've understood things, for example, with  
25 respect to Viking, Mr. Moody was the one who received the

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- 1 profits and incentive fees for Viking, right, the money in  
2 Viking, isn't that right?  
3 A. No. They were divided between the two.  
4 Q. There were six funds -- Well --  
5 A. Right.  
6 Q. -- this may be going too far. Let's just focus on the  
7 Cayman Islands account for a moment. You believe that there  
8 was \$15 million that went into that account?  
9 A. That's what I have been advised.  
10 Q. When you say -- Who advised you?  
11 A. William Price, the CPA who works for me in connection with  
12 this project.  
13 Q. Okay. And you say that \$5 million went out of that back to  
14 Viking?  
15 A. Mr. Price advised me that \$5 million was traced back to  
16 Viking Fund and that \$15 million, there is no evidence of it  
17 ever departing -- that he has at this point, of it departing  
18 the Cayman Islands, control of the entities there.  
19 Q. And you haven't asked our assistance to help find out where  
20 that money is, is that right?  
21 A. I have not yet, no.  
22 THE COURT: Yet?  
23 Q. Do you intend to?  
24 A. Well, first I'm going ask Mr. Moody if he can tell me, and  
25 if Mr. Moody can't tell me, then I'll come back to Mr. Nadel
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1 and ask him again, but I have -- I have done --

2 Q. You haven't asked us yet, have you?

3 A. That's what I said, I haven't done it yet.

4 Q. But you said "again," so --

5 A. What?

6 Q. You said, "I'll ask him again," but you haven't asked us at  
7 all, right?

8 A. I've asked for his overall cooperation with respect to  
9 assisting in this, and I've indicated to you that I'm not going  
10 to try to find out particular transactions that are -- that are  
11 not problematical. If I -- if I call up and ask for assistance  
12 on something, it would be helpful at times, but so far it  
13 hasn't worked.

14 THE COURT: Let me ask you, I realize that you're  
15 getting cooperation from others. Have you ever asked Mr. Nadel  
16 whether, putting aside this Caymans account, whether there are  
17 any other foreign accounts over which he had or the Moodys had  
18 any control over during the period of time that is at issue  
19 and, if so, what are they, what are the details of them, so  
20 that you could, you know, trace, see what's happened to them?  
21 I appreciate that, you know, there could be records that you  
22 need to know the accounts before you can get the records, and  
23 I'm just wondering whether that inquiry has ever been made to  
24 Mr. Nadel, just the existence of the foreign accounts.

25 THE WITNESS: Judge Lazzara ordered him to provide a  
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1 list of every account, specifying all kinds of specific  
2 information with respect to all of those things on two  
3 different occasions. Have I gone back and said, are you going  
4 to comply with the judge's order? No, I haven't.

5 THE COURT: But the order has not been complied with  
6 and -- is that right?

7 THE WITNESS: Not to my knowledge, and I know that  
8 when we had the hearing before Judge Lazzara on the fees, it  
9 had not been at that time, and his counsel acknowledged that.

10 THE COURT: And would this account in the Caymans have  
11 been an account that would have been responsive to the order to  
12 produce information about such accounts?

13 THE WITNESS: Absolutely.

14 THE COURT: Okay.

15 Thank you.

16 BY MR. GOMBINER:

17 Q. Now with respect to these, there's some d/b/a accounts at  
18 Wachovia Bank?

19 A. Yes, sir.

20 Q. And you said there's about \$13 million transferred out of  
21 those accounts?

22 A. I checked with Mr. Price today to ask him about the amount  
23 of funds that had been transferred out of those accounts, and  
24 that was the number he gave me this morning.

25 Q. And those transfers, do they all -- do they all occur in

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1 2008?

2 A. No, sir. No, sir. These accounts have been open since  
3 2002.

4 Q. No, I'm not asking how long the accounts have been open.  
5 The transfers out of the accounts, when did those occur, do you  
6 know?

7 A. From 2002 forward.

8 Q. 2002 to 2004?

9 A. 2002 forward. You know, I don't know when the last one  
10 was. I mean, the last ones I saw were in January of 2009.

11 Q. Okay.

12 A. But as far as the other accounts, I haven't seen anything  
13 specific with that, and I can't tell you that except in my  
14 conversation with Mr. Price, he gave me the number \$13 million  
15 and said there were a number of accounts, the earliest was --  
16 the earliest ones were open in 2002, and that they had been  
17 operating through that period of time.

18 Q. Okay. So you don't know what amount was transferred and  
19 what year or whether the --

20 A. I do not know that.

21 Q. And Mr. Wiand, just to be clear, it's fair to say, you have  
22 not -- during the course of your -- the six months you've been  
23 working on this case, you haven't identified any secret  
24 accounts that Mr. Nadel had, you don't know of any such account  
25 now, is that right? First, let's break it down. First --

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1 A. Do I know of secret accounts? All those Wachovia accounts  
2 would come within that arena. But I know about those. Are you  
3 asking me are there any other accounts that I know of that I  
4 haven't taken any action on to this point in time? And the  
5 answer to that is no.

6 MR. GOMBINER: I'm just trying to think of how to nail  
7 this down a bit. Can I just confer with my co-counsel?

8 THE COURT: Absolutely. Absolutely.  
9 (Defense counsel conferring)

10 Q. I'm not sure this is going to do it, but just getting back  
11 to the Wachovia accounts, those Wachovia d/b/a accounts --

12 A. Right.

13 Q. -- isn't it true that at least the vast majority of the  
14 transfers were back to the Goldman Sachs trading account?

15 A. I can't tell you that. The only ones I have specific  
16 knowledge of are the ones I indicated that took place in 2009  
17 and then there was one other transaction that came up in 2004  
18 or 2005 that has been described to me where money was put back  
19 into one of those accounts in order to make a distribution  
20 because there wasn't sufficient cash there to do it. And that  
21 has been described to me generally, but I have not seen the  
22 checks, nor identified the particular transfer. That's been  
23 told to me by a witness.

24 Q. In fact, haven't you learned that that was the primary  
25 purpose of those Wachovia d/b/a accounts?

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1 A. No.

2 Q. And that's another thing you've never asked us about,  
3 right?

4 A. In general, yes; specifically, no.

5 Q. All right. Mr. Wiand, as you sit here today, do you have  
6 any knowledge of any account in any form, foreign, domestic or  
7 otherwise, that Mr. Nadel currently has access to?

8 A. No.

9 Q. As you sit here today, to the best you've been able to, you  
10 have at this point seized every material asset belonging to  
11 Mr. Nadel; to the extent you've been able to identify, you've  
12 seized it, right?

13 A. That's not correct.

14 Q. Well, what haven't you seized?

15 A. I haven't taken his house yet.

16 Q. Okay. Other than his home, other than his home, you have  
17 seized every material asset that you've been able to identify  
18 that belongs to Mr. Nadel, right?19 A. I don't -- I can't categorically say that's correct. I  
20 think there are other things that we just haven't acted on yet,  
21 but I can't specify what it is. I just -- I know there's been  
22 considerations about doing a blanket -- a blanket asset seizure  
23 and we have determined that that is legally not something  
24 that's in our interests to do, so we're going asset by asset,  
25 and we haven't gotten all of them. And also involved in this

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1 is tracing these funds, but what we're having to do now in  
2 order to be able to have to take -- trace the funds back to the  
3 source of investor funds, in order to be able to grab these  
4 things, and sometimes -- and I probably shouldn't say grab  
5 these things, in order to be able to ask Judge Lazzara to pull  
6 them into the receivership, and that process is ongoing, and  
7 some of the -- some of the earlier activities we don't have  
8 records on, so that's difficult.

9 Q. Okay. Well, as you sit here today, you can't identify any  
10 asset that, other than his home, that Mr. Nadel has that you're  
11 aware of?

12 A. No, I can't specify that for you, no.

13 Q. And you've also, as the receiver, you seized assets  
14 belonging to Mr. Nadel's wife as well, right?

15 A. It's a matter of semantics, but there were -- there were  
16 maybe some jointly owned properties that we had, we acquired,  
17 and there was a -- there was a trust that she had, a revocable  
18 trust that he funded with investor assets that we seized also.

19 Q. Now I think you told Mr. Brodsky that not every -- By the  
20 way, when you were speaking to Judge Koeltl, you seemed to be  
21 refuting the notion that someone had said that you had  
22 accounted for all of the funds. Is that right?

23 A. It had been -- I had the impression that there was an  
24 opinion or it had been put forward that with respect to my  
25 efforts that I had accounted for everything other than an X

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1 amount of dollars that came out of these activities, and that's  
2 just not the case.

3 Q. Okay. And who gave you that impression?

4 A. I think in conversation with you, you had indicated that we  
5 had accounted for other things, for those kind of things. I  
6 think either looking at some of the pleadings or maybe press  
7 reports, I had seen that. And probably in conversations with  
8 some folks from the United States Attorney's Office, I had  
9 gotten that impression. Probably from all of those sources.

10 Q. Okay. Is it fair to say that you never -- you never  
11 yourself actually read the memorandum we submitted in support  
12 of our motion for bail --

13 A. Not in detail, that's for sure.

14 Q. Not in detail.

15 A. Yes.

16 Q. Okay. And when you say that not everything is accounted  
17 for, a lot of what you're talking about is your inability to  
18 match up the hard bookkeeping records with the investment fund  
19 accounting records; is that part of what you mean when you say  
20 not everything is accounted for?

21 A. No. More of what I'm talking about is tracing the  
22 disbursable funds that came out of these investor funds, went  
23 into accounts that were invested, and then there were loans  
24 that came back, and there are any number of different bank  
25 accounts where funds were spent for things and seeing where

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1 they're going. I mean, there's a significant amount of money  
2 that were provided to Mr. Nadel's children in different places.  
3 He funded all kinds of things. And so tracing all of that  
4 money is what I'm talking about.

5 THE COURT: That's part of the 95 million?

6 THE WITNESS: Yes, sir.

7 THE COURT: As I understand it, and you can correct me  
8 if I'm wrong, you've compared the bookkeeping records, and  
9 there's \$28 million that you can't account for from the  
10 397 million that was in the fund.

11 THE WITNESS: Correct.

12 THE COURT: So put the \$28 million aside. You've  
13 determined, from the amounts that went into the funds,  
14 397 million, that approximately 95 million went to Mr. Nadel  
15 and the Moodys.

16 THE WITNESS: Right.

17 THE COURT: And of the amount of money that went to  
18 Mr. Nadel, which was over half of the 95 million, you haven't  
19 been able to determine, trace, other than the fact it went to  
20 Mr. Nadel or his children, actually how those funds were used.  
21 You've said, well, gee, we're able to determine certain hard  
22 investments in Venice Jet and real estate. But over and above  
23 that, there's still a significant amount that you just can't  
24 tell whatever happened to that money other than the fact it  
25 went to Mr. Nadel.

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1 THE WITNESS: At this point in time, that's correct,  
2 Judge. Whether we -- as we go forward, we may be able to do  
3 that, I'm sure we'll get more clarity, but -- and I would  
4 also -- having had some experience with this, it will never all  
5 be, you know, it will never be fully, but we'll get more  
6 clarity out of it.

7 THE COURT: And about how much are we dealing with in  
8 that amount of money, that you can't say, oh, well, here's  
9 money that went to Mr. Nadel but we know that was invested in  
10 Venice Jet and --

11 THE WITNESS: Well, I would much rather have Mr. Price  
12 prepare something, but I'm sure it's more than 10 million  
13 that's out there somewhere that we don't know where it went.

14 THE COURT: Okay. Mr. Price is the accountant who's  
15 working with you?

16 THE WITNESS: That's correct. He's an accountant in  
17 Clearwater, Florida.

18 BY MR. GOMBINER:

19 Q. When you -- By saying you haven't accounted for, you're  
20 certainly not saying that that's money that Mr. Nadel now has  
21 control over or access to, right?

22 A. I hope I've been clear that I don't know whether he does or  
23 doesn't.

24 Q. Right. In fact, that this is money that could have been  
25 spent, right, it could have gone for taxes, right?

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1 A. Could have. The taxes I think we may have seen, but...

2 Q. Okay.

3 A. I -- Your answer is yes, it could have gone for all kinds  
4 of things.

5 Q. Okay.

6 A. Could have gone, you know -- but the panoply of that is not  
7 limited because we don't know where it went.

8 Q. Right. You don't know where it went. In saying -- Just to  
9 be clear, when you're saying you don't know where it went, it's  
10 not -- you're not saying, I know he must have it now somewhere,  
11 we just can't find it. That's not what you're saying.

12 A. No. I think I've made it quite clear, if I knew where the  
13 money was under his control, I would go get it.

14 Q. But all I'm just trying to make clear is, you're not  
15 saying, it's simply a matter of, the money's out there, I just  
16 can't find it; the money may not be there at all, right, at  
17 this point?

18 A. That's possible too.

19 MR. GOMBINER: Judge, I think I don't have any more  
20 questions.

21 THE COURT: Okay. Mr. Brodsky?

22 MR. BRODSKY: No further questions, your Honor.

23 THE COURT: Okay. Mr. Wiand, thank you very much.

24 THE WITNESS: Thank you, Judge.

25 THE COURT: You can step down.

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1 (Witness excused)

2 THE COURT: All right.

3 MR. BRODSKY: Your Honor, should Mr. Wiand return to  
4 Florida or should he stay for the rest of the --

5 THE COURT: No. Unless anyone else needs Mr. Wiand,  
6 we very much appreciate his having come up from Florida.

7 THE WITNESS: Thank you, Judge.

8 THE COURT: All right.

9 MR. BRODSKY: Your Honor, from our perspective, what  
10 Mr. Wiand's testimony demonstrates is there were  
11 representations made, I think, in Mr. Nadel's briefs which  
12 suggested, and even stated that only fantasy or only in a world  
13 of illusion is there the possibility that there are monies out  
14 there available to Mr. Nadel that hasn't been accounted for.  
15 Examples of that appear, for example, on page 13 of the brief,  
16 in which it is stated that the receiver's May 28th, 2009  
17 letter reported that out of the entire approximately  
18 \$400 million in investor funds that were raised, he had  
19 accounted for all but \$28 million. I think Mr. Wiand's  
20 testimony has demonstrated that that's just not true, that what  
21 has been demonstrated by Mr. Wiand's testimony is, A, there is  
22 a substantial sum of money that has not been accounted for that  
23 was at one time in the possession and control of Mr. Nadel.  
24 Good example of that is the over \$47.5 million in incentive  
25 fees and performance fees that Mr. Nadel received, which

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