

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®AMERICAN
ARBITRATION
ASSOCIATION®**BNP Development LLC****v.****01-24-0008-2505****JDS Principal 9DKB LLC and
JDS Principal Parent et al****AAA Case Administrator: Lyn Pagliarini**

Procedural Order #9

Claimant shall be referred to as “BNP” and Respondents collectively as “JDS.” BNP and JDS shall be collectively referred to as the “Parties.” All capitalized terms in this PO shall have the definitions ascribed to them in the Partial Final Award entered in this matter on April 29, 2025 (the “PFA”).

RECITALS

- A. Paragraphs A-D of the PFA provide that, among other things, JDS shall produce JDS’ and Subsidiaries’ books and records concerning the Project, including, “without limitation, the general ledger of the applicable entity, all contracts and binding agreements of the applicable entity, and all documents recording ‘each and every financial transaction with respect to the operations of the’ applicable entity,” upon 7 days’ written notice from BNP.
- B. Paragraph E of the PFA provides that JDS shall “on or before 12 noon, ET, May 6, 2025, deliver to, or grant BNP access to and permit it to inspect and make copies of, all documents comprising the Assignment-in-Lieu (including, without limitation, the financial and other terms of the Assignment-in-Lieu and those terms of the Assignment-in-Lieu in dispute or not fully determined).”
- C. Paragraph G of the PFA provides that, among other things, “the Parties are ordered to meet and confer and agree upon the terms of a confidentiality agreement applicable to the documents to be disclosed pursuant to this arbitration.”
- D. On April 30, 2025, counsel for BNP sent a request to counsel for JDS to produce within 7 days “all books and records of JDS Principal 9DKB LLC and its subsidiaries requested by BNP and subject to the Partial Final Award.”
- E. On May 5, 2025, counsel for JDS produced a single document, a “Final Term Sheet” dated June 10, 2024 relating to the transaction by and among certain

Subsidiaries and affiliates of Silverstein Capital Partners concerning the assignment of interests in the Project to Silverstein Capital Partners and/or its affiliates (the “AIL Term Sheet”).

- F. On May 6, 2025, JDS’s counsel withdrew from its representation of JDS in this arbitration.
- G. On May 7, 2025, JDS provided BNP with written notice that it was seeking to retain replacement counsel and that it would be making a substantial production shortly thereafter. JDS additionally submitted a written request to the Tribunal for a brief extension of time to comply with the PFA, given the withdrawal of its counsel.
- H. A status hearing was held on May 7, 2025, commencing at 3:00 p.m. ET. The following persons appeared and participated in the hearing:
 - For BNP: Craig Flanders; Andrew M. Kaufman
 - For JDS (solely for the purposes of the status hearing): Jonathan E. Minsker
 - The Administrator: Ms. Lyn Pagliarini
- I. During the May 7, 2025 status hearing, among other things, Mr. Minsker advised that he was appearing as counsel for JDS solely for the purpose of the status conference, and that JDS was actively seeking replacement counsel in this arbitration
- J. Following the May 7, 2025 status conference, the Tribunal entered PO #8 which set a continuation of the status conference for May 13, 2025, at 3:30 p.m., and further ordered -
 - (i) BNP to deliver to the Tribunal, JDS and Mr. Minsker a motion (the “Relief Motion”) setting forth all relief that it seeks following the issuance of the PFA and
 - (ii) JDS to, absent exigent circumstances, appear at the May 13, 2025 hearing with counsel fully advised and prepared to (i) orally respond to the relief sought by BNP in its Relief Motion, and (ii) report on JDS’ compliance with the PFA.
- K. BNP timely provided the Tribunal, JDS, and Mr. Minsker its Relief Motion.
- L. On May 13, 2025, JDS provided BNP with a proposed Confidentiality Agreement, as required by Paragraph G. of the PFA.

M. A status hearing was held on May 13, 2025, commencing at 3:30 p.m. ET.

The following persons appeared and participated in the hearing:

For BNP: Craig Flanders; Andrew M. Kaufman

For JDS: Jonathan E. Minsker

The Administrator: Ms. Lyn Pagliarini

N. During the status hearing, among other things:

- Mr. Minsker advised that he has been retained as counsel by JDS and appeared for JDS.
- Mr. Minsker advised that JDS intends to move to vacate at least part of the PFA.
- Mr. Minsker advised that JDS intends to produce certain documents consisting of contracts and written agreements entered into by JDS and the “Subsidiaries” by Friday, May 16, 2025.
- Mr. Minsker advised that the AIL Term Sheet and the previously produced Assignments are all of the documents “comprising” the Assignment-In-Lieu.
- Mr. Minsker advised that, given the language of Paragraph E of the PFA, JDS believes that it has complied with Paragraph E as written.
- Mr. Minsker advised that, based on JDS’ intent to move to vacate part of the PFA, JDS will not be producing the general ledgers and bank records contemplated by the PFA and requested by BNP in its April 30, 2025 request.
- BNP requested that the Tribunal issue an order clarifying the documents that the Tribunal intended to be included within the scope of Paragraphs D and E of the PFA to include bank records and documents relating to the transaction with Silverstein Capital Partners and its Affiliates other than the documents “comprising” the Assignment-In-Lieu.
- The Tribunal informed all counsel that unless and until the Tribunal no longer has jurisdiction, compliance with all of the Tribunal’s orders including, without limitation, the PFA is expected and non-compliance will be enforced.
- To date, other than the AIL Term Sheet, JDS has not produced any documents pursuant to the Partial Final Award.
- The Tribunal and the Parties discussed the finality and appealability of portions of the PFA.

- O. Following the May 13, 2025 hearing, JDS, in its proposed terms of the instant order, proposed the Tribunal state “the PFA is a Final Award for purposes of NY CPLR §7502.”
- P. Following the May 13, 2025 hearing, BNP requested the Tribunal expressly order that the PFA is intended to include a broad meaning of books and records including, but not limited to, for the time period specified in the Partial Final Award, the following:
- i. The general ledgers of JDS and all Subsidiaries (as that term is defined in paragraph 2.7 of the Ackerman Agreement), in native electronic format;
 - ii. All bank records of JDS and all Subsidiaries (as that term is defined in paragraph 2.7 of the Ackerman Agreement), including but not limited to statements, deposit slips, deposited checks, wire confirmations and wire instructions;
 - iii. All documents and communications concerning the transaction with Silverstein Capital Partners and/or its affiliates (“Silverstein”) by which JDS and its Subsidiaries assigned their interest in the project entities to Silverstein—inclusive both of the assignment of the interests in the project entities and property itself and any related guarantees, releases, payments, or any other side-deals or associated transactions—including but not limited to any executed agreements, draft agreements or term sheets/letters of intent, and communications reflecting negotiations with respect to the transaction with Silverstein..
- Q. On May 14, 2025, BNP advised the Tribunal that the confidentiality agreement memorialized as Procedural Order #3 (the “Confidentiality Agreement”) “adequately addresses the use of any documents produced pursuant to the PFA and no further negotiations between the parties are necessary.” On May 15, JDS provided the Tribunal with proposed revisions to the Confidentiality Agreement.

The Tribunal being fully advised, all Parties having had an opportunity to be heard and fully present their arguments, the Tribunal hereby orders as follows:

Order of the Tribunal

1. JDS is in default of the PFA having failed to fully produce documents pursuant to BNP’s April 30, 2025 request to produce “within 7 days” “all books and records of JDS Principal 9DKB LLC and its subsidiaries requested by BNP and subject to the Partial Final Award.”
2. JDS is also in default of its obligations under Paragraph E of the PFA Dispositive. The Tribunal rejects JDS’ limited reading of par. E and holds that the word “comprising” is expansive and not limiting. As such, it includes all documents relating or pertaining to the subject. In further

support of this holding, the Tribunal finds that the Assignment-in-Lieu is a document subject to the general disclosure obligation set forth in pars. A and B of the PFA Dispositive since it is a “contract” “concerning the Project.”

3. The Tribunal finds that the following specific requests of BNP are consistent with the PFA, and orders JDS to, on or before May 19, 2025, produce or permit BNP, its counsel and/or agents, to inspect and make copies of the following:

- a. The general ledgers of JDS and all Subsidiaries (as that term is defined in paragraph 2.7 of the Ackerman Agreement), in native electronic format;
- b. All bank records of JDS and all Subsidiaries (as that term is defined in paragraph 2.7 of the Ackerman Agreement), including but not limited to statements, deposit slips, deposited checks, wire confirmations and wire instructions;
- c. All documents and communications in the possession or control of JDS or any Subsidiary (as that term is defined in paragraph 2.7 of the Ackerman Agreement) concerning the transaction with Silverstein Capital Partners and/or its affiliates (“Silverstein”) by which JDS’ and the Subsidiaries’ interests in the Project were assigned — inclusive both of the assignment of the interests in the Project entities and property itself and any related guarantees, releases, payments, or any other side-deals or associated transactions—including but not limited to any executed agreements, draft agreements or term sheets/letters of intent, and communications reflecting negotiations with respect to the transaction with Silverstein..

4. A duly authorized representative of JDS and the Subsidiaries shall certify the completeness of the production. If the person certifying completeness is not Michael Silverstein, evidence of the signatory’s authorization and access to the applicable books and records to assure compliance shall be produced concurrent with the certification.

5. Within 7 days of the date of this order, BNP may serve a motion for attorneys’ fees, costs, and expenses.

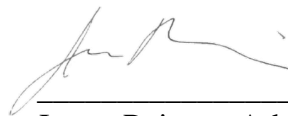
6. Within 14 days of BNP’s motion for attorneys’ fees and costs, JDS shall respond to such motion.

7. The Tribunal declines to expressly hold that the “PFA is a Final Award for purposes of NY CPLR §7502.” The document is what it is and says what it says.

8. The Confidentiality Agreement set forth as an agreement of the Parties and confirmed by the Tribunal as Procedural Order #3 shall remain in full force effect save the person for JDS to receive notices pursuant to the Confidentiality Agreement, such person and his address now being

Jonathan Minsker, 1100 Biscayne Blvd., Miami, FL 33132, (786) 988-1020. In support of this holding the Tribunal finds that the revisions requested by JDS are more restrictive than those agreed originally, and that the Confidentiality Agreement as agreed by JDS' prior counsel adequately protects JDS from any misuse of information produced pursuant to the PFA. Notwithstanding the forgoing, on good cause shown, the Tribunal will re-visit the terms of the Confidentiality Agreement and hear a motion for revision.

So Ordered:

A handwritten signature in black ink, appearing to read 'James Reiman', is written over a horizontal line.

James Reiman, Arbitrator

Date Effective: May 13, 2025