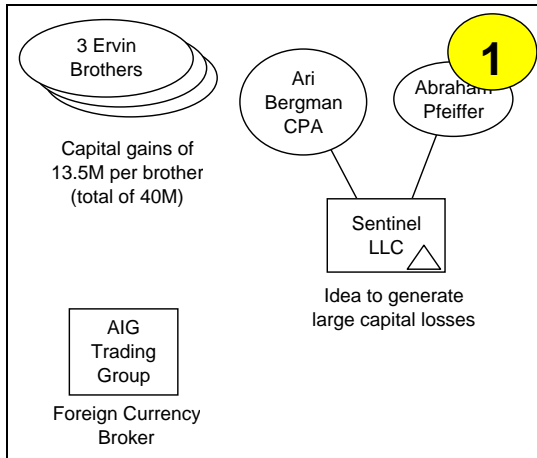


Jade Trading LLC v. United States
___ F. Supp. ___ (Ct. Cl. 2007)

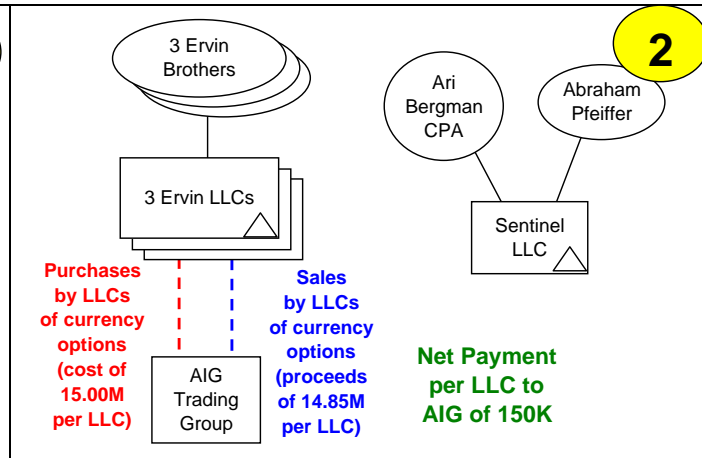
Son of BOSS -- Currency Spread Transaction

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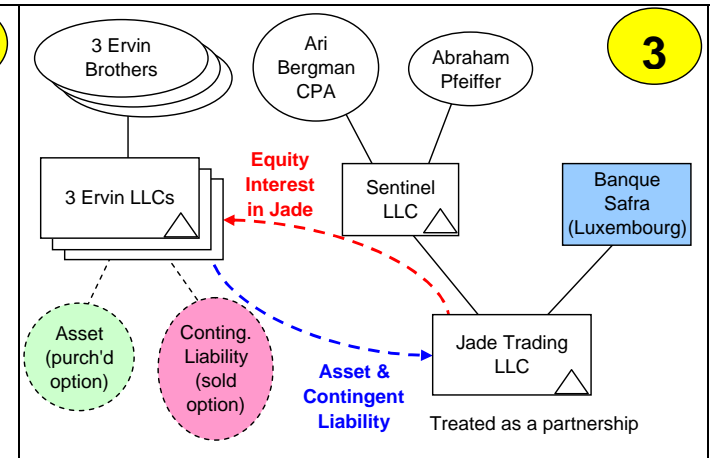
Initial Structure (March 1999)



The Spread Transaction (Sept. 1999)



Contribution to Partnership (Oct. 1999)

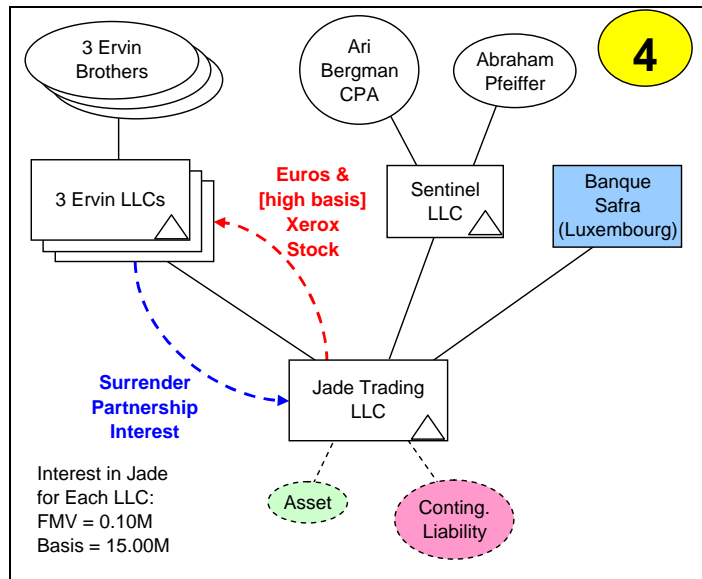


The following is an excerpt from the case:

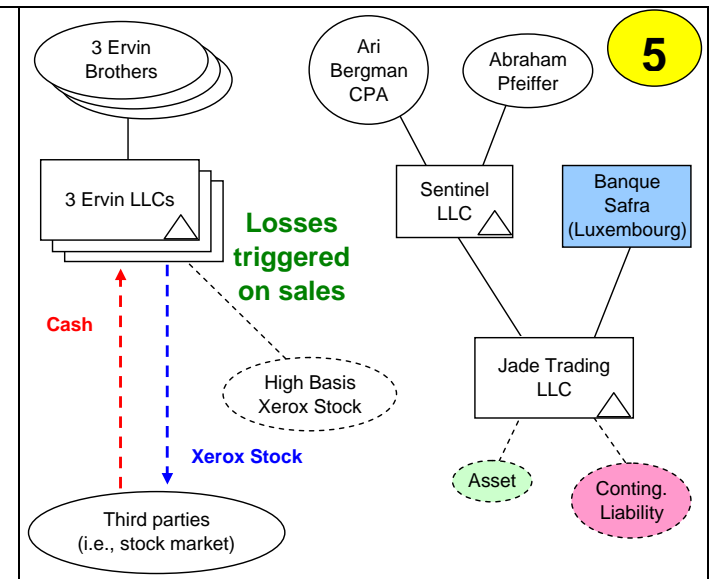
"[Jade's] theory cannot prevail in light of the Federal Circuit's decision in Coltec Industries, Inc. v. United States . . . Coltec teaches that the legitimacy of a transaction for tax purposes is not guaranteed merely because a technical interpretation of the Code would support the tax treatment. . . . Rather, Coltec mandates additional scrutiny of the bona fides of a transaction, requiring independently that the transaction pass muster under the objective economic substance test. . . . Further, the Coltec Court clarified the parameters for applying that test holding that the taxpayer has the burden of proving that the transaction which gave rise to the tax benefit objectively had economic substance, i.e., was a real transaction structured in a particular way to provide a tax benefit as opposed to a transaction created for tax avoidance purposes.

. . .
 In sum, this transaction's fictional loss, inability to realize a profit, lack of investment character, meaningless inclusion in a partnership, and disproportionate tax advantage as compared to the amount invested and potential return, compel a conclusion that the spread transaction objectively lacked economic substance."

Withdrawal from Partnership (Dec. 1999)



Sale of High Basis Xerox Stock (Dec. 1999)



On August 13, 2000, the IRS issued Notice 2000-44 announcing its intention to challenge transactions similar to this spread transaction. In addition, regulations have since been promulgated that would disallow the loss under similar circumstances. See Treasury Regulation §§ 1.752-6 and 1.752-7.