

OMG! DAN LOEB SAID WHAT?

Old emails sent by the Third Point hedge fund manager and now coming to light in the Fairfax Financial litigation are coming back to haunt one of the industry's top performers

BY MATTHEW GOLDSTEIN
NEW YORK, MARCH 11

IT WAS THE SUMMER OF 2006 and hedge fund manager Daniel Loeb was having difficulty containing his very harsh feelings towards Fairfax Financial, the Canadian insurance giant, and its CEO, Prem Watsa.

Loeb's New York-based fund, Third Point LLC, had placed a big bet that the shares and bonds of Fairfax and its subsidiaries would tumble. He was looking forward to cashing in his hedge fund's chips, if and when some bad news rocked Fairfax. And he shared that enthusiasm with another hedge fund manager, in a fairly graphic email message that recently surfaced in a five-year-old civil lawsuit filed by Fairfax against Loeb and other prominent hedge fund managers.

"Prem Watsa bend over the hedge funds have something special for you," Loeb wrote in the June 25, 2006 email to Adam Sender, the founder of Exis Capital, whose hedge fund also was "shorting" Fairfax -- that is, looking to profit from a decline in its shares. A little later that day, in an email to a consultant who was doing research for some of the hedge funds wagering on Fairfax's fall, Loeb wrote: "die, Prem Die!"

A month later, Fairfax sued Loeb and Sender, as well as famed short-seller James Chanos and billionaire hedge fund trader Steven Cohen, claiming they had teamed up to "crush" the company's stock. The Toronto-based insurer, which some of the defendants openly had dubbed "the next Enron," contends Loeb, Chanos, Cohen and Sender orchestrated a multi-year campaign to spread disinformation about Fairfax's business model to a number of well-known financial journalists.

The managers argue they did nothing wrong. They say it's normal for bearish stock traders to dig up critical -- even negative -- information about a company that they



REUTERS/PHIL MCCARTEN

suspect is presenting a misleading image in its financial statements.

But now those old emails and others like them are coming back to haunt Loeb, as Fairfax's civil lawsuit creeps along in a Morristown, New Jersey, courtroom and some of 10 million pages of previously sealed documents in the case start coming to light. And while the profane language used by Loeb, a 49-year-old father of three young children, may not shock anyone who works on Wall Street, such crude talk could make some investors queasy -- especially institutional investors who have less of a stomach for negative headlines.

The disclosure of those emails in a recent 800-page court filing by Fairfax's lawyers comes at an especially awkward time for Loeb, who emerged in 2010 as one of the \$1.9 trillion hedge fund industry's star performers and is poised to do so again

this year. The emails, however, are a rude reminder of Loeb's earlier days, when he was perhaps best known for sending caustic letters to the boards of companies his fund had taken a big stake in.

While Loeb still engages in so-called activist investing, it's a less important part of Third Point's strategy, according to the fund's marketing information and people who know Loeb. Indeed, Third Point's nearly 40 percent gain last year was more attributable to placing savvy bets on a rebound in consumer stocks, the rising fortunes of gold and a surge in the value of beaten-down mortgage-backed securities than from agitating for change at a company or even shorting stocks.

Bill Carmody, an attorney for Loeb, said he could not comment on "selected emails" or any part of Fairfax's filing. He said a court order prohibits him from discussing

the case. "It's unfortunate that your readers are going to be viewing this entirely from plaintiff's spin on snippets of dated personal emails of Daniel Loeb's, without the context of actual documents in this case," said Carmody, an attorney with Susman Godfrey.

Reuters reviewed the Fairfax court filing after the New Jersey state judge overseeing the case recently made the papers public. Lawyers for Sender, Cohen and Chanos either declined to comment or did not respond to requests seeking comment.

SPEAK YIDDISH

IN SOME RESPECTS, regardless of the outcome of the litigation in which Fairfax is seeking billions in damages, Loeb may have more to lose than his peers -- especially if more embarrassing emails emerge in the coming months. That's because the tenor of the emails undercut his recent effort to shed his image as simply some Wall Street rabble-rouser.

It's notable that Fairfax's filing does not cite any emails from Cohen and makes only a handful of references to emails written by employees of his \$13 billion SAC Capital Advisors. There are several emails from Chanos excerpted in the complaint, but most are not nearly as colorful as anything penned by Loeb.

Some of the emails composed by Loeb's friend Sender may be the most crude of all -- in one he jokes about how Fairfax's chief executive would set a record for a certain sexual act involving swallowing if he ever went to jail. But Sender's hedge fund is relatively small. With just \$150 million under management, he is better known these days for collecting works of art than his trading.

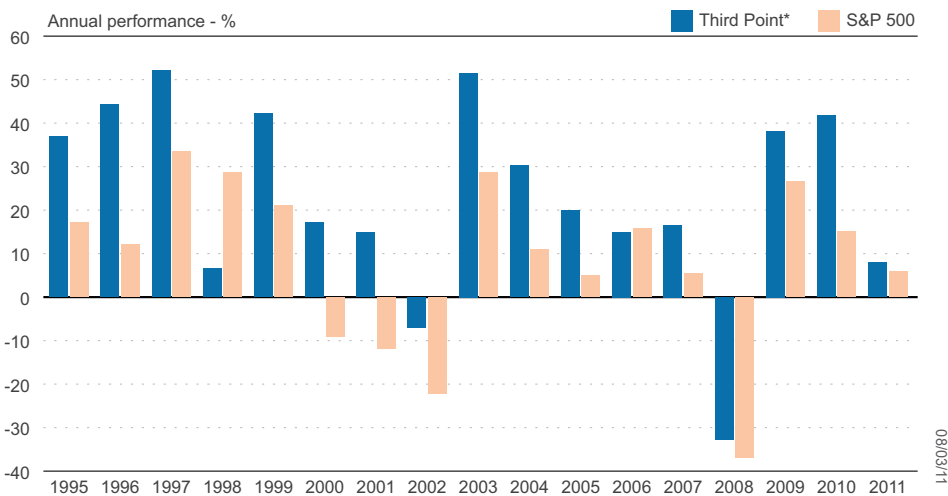
When asked about some of his locker room humor, Sender responded in an email this "seems beneath your organization to write about something so trivial and meaningless."

The emails, however, reveal what the managers thought were private communications at the time. But they also highlight a certain edginess, even belligerence that some say can typify a short-seller's aggressive assault on a company.

In the case of Loeb, the emails show that, if nothing else, he is not one to hide his emotions when he has a lot of money riding on a bet. Despite the calm and collected air hedge fund managers often like to present when they are in public or meeting with investors, the emails show how volatile they can become when a

Dan Loeb's rising tide

Loeb, who launched Third Point with just \$3.3 million in personal and family money, now manages about \$5.7 billion. And while Third Point consistently has beaten the S&P 500 since inception, the fund has really shined the last two years.



Source: Third Point LLC marketing information

*Performance for Third Point Partners funds

**As of Feb. 28, 2011

REUTERS

Reuters graphic/Van Tsui

BLOG

Find more Reuters special reports at our blog The Deep End here:

<http://link.reuters.com/heq72q>

stock doesn't perform as expected.

In May 2003, Loeb compared Fairfax to "Hitler himself" when expressing displeasure to another trader about a rebound in the insurer's share price. Fairfax's lawyer's said Loeb, in the instant message exchange, was upset that the rise in the company's shares was making it more costly for him to maintain his short position, which required him to borrow more stock from a broker.

Fairfax's filing quotes Loeb as saying he

found the situation somewhat ironic because "the odds are much greater of being strung up by a Canadian Jew than a Canadian schwarze." Loeb, who is Jewish, used "schwarze," a derogatory Yiddish word for a black person, to describe Watsa, who is of Indian ancestry.

LITTLE BOYS

JANET TAVAKOLI, a Chicago-based derivatives consultant, who worked for many years on Wall Street before opening her own firm, said the coarse language the managers used to describe their feelings towards Fairfax and Watsa is important for investors to know about. Tavakoli said leaving aside the legal issues in the litigation, profane and pejorative language can tell investors something about a manager's character.

During this attack, the Enterprise Members communicated with each other about how they and their attack on Fairfax were responsible for this panicked market reaction. For example, on June 25, 2006 Defendant Loeb emailed Defendant Sender: "Prem Watsa Bend over the hedge funds have something special for you,"⁴³⁰ followed up with an email acknowledging their objective for Fairfax and its founder "die, Prem Die!!!!"⁴³¹

As the expected negative press and regulatory action, and

POTTY MOUTH: An excerpted email sent by Loeb in summer 2006, as highlighted in a recent Fairfax court filing.

"THIS KIND OF LITTLE BOY SCREAMING AND RANTING SHOULD MAKE A PERSON WONDER ABOUT SOMEONE'S SELF-CONTROL."

"This kind of little boy screaming and ranting should make a person wonder about someone's self-control," said Tavakoli, who said she does not personally know Loeb. "It does speak to your character because words matter and words have consequences."

Indeed, one of the more memorable images from a high-profile U.S. Senate committee hearing last year into financial crisis, was Sen. Carl Levin repeatedly saying that a Goldman Sachs Group executive had written an email calling one of the investment bank's subprime-mortgage backed securities, "one shitty deal."

All of this may explain why Loeb is fighting harder than some of the other defendants in trying to keep the emails from spilling out into the public. Loeb's lawyers, in a Jan. 7 letter, urged a court-appointed official overseeing the mountain of paper in the case to keep Fairfax's filing sealed "on the grounds that the general public has no interest in viewing such documents."

Fairfax's filing was submitted in response to a motion by the hedge fund defendants to dismiss some aspects of the lawsuit. The defendants withdrew the motion late last year.

Loeb's lawyers also took the unusual step in February of trying to take depositions of several prominent journalists, who Fairfax claims were duped and cajoled into writing critical articles about the insurer. But Loeb's team also withdrew those subpoenas after the journalists retained lawyers to oppose the request.

All the managers, including Loeb, are trying to keep their own deposition under lock and key, at least until the case goes to trial.

Some people who know Loeb bemoan the fact that these old emails are coming to light now. They say Loeb is a much different manager and person today he was then. His supporters point out that he's a big



SHORT PEOPLE: Jim Chanos of Kynikos Associates speaks during the Ira W. Sohn investment research conference in New York May 27, 2009. **REUTERS/LUCAS JACKSON**

contributor to a nonprofit group called Prep for Prep, which helps get minority students into New York City area prep schools. They also say he is less prone to the angry rant, especially since becoming a father. Loeb and his wife Margaret, now married for nearly seven years, have three children five or younger.

In recent years, Loeb, who grew-up in southern California and is an avid surfer, has become a health food nut and a yoga devotee. His wife is a former yoga instructor.

"He's mellowed," said one person who invests in hedge funds but has no money with Third Point and did not want to be identified.

Whatever the reason for the change, Loeb's new approach has been a smashing success for him and his investors. Third Point's assets under management now tally \$5.7 billion, nearly double the amount it oversaw just a few years ago. He's come a long way from the trader who opened shop in 1995 with just \$3.3 million and operated in borrowed space from David Tepper's Appaloosa Management, a \$16 billion New Jersey-based hedge fund.

LETHAL EMAILS

IT'S POSSIBLE, OF COURSE, that the 800-page filing by Fairfax may represent the most damaging emails uncovered by the insurer's lawyers against Loeb and the other managers. And, as with any litigation filing, the context in which those emails were written can mean everything.

In fact, while emails now play a pivotal role in both civil litigation and criminal prosecutions involving Wall Street traders, it can sometimes be a double-edged sword. In charging two former Bear Stearns hedge fund managers with fraud, federal prosecutors built a good deal of their case around emails, in which the managers appeared bent on keeping information from their investors about the level of subprime debt the funds had invested in.

But at trial, lawyers for Ralph Cioffi and Matthew Tannin, were able to persuade a jury that the emails, when taken in context, weren't as damaging as they appeared. A jury sitting in Brooklyn, N.Y. acquitted Cioffi and Tannin in November 2009 in what still is the only criminal prosecution of Wall Street executives to arise from the financial crisis.

Edward Little, who defended Cioffi during the trial, said while emails can be "lethal" in litigation, a skilled lawyer can take the bite out of a potentially problematic email by putting it into the proper context.

"Everyone now understands that there is a false sense of privacy when sending emails and people sometimes are speaking too graphically," said Little. "Even rough or graphic humor sometimes can be explained away."

Then again, the bigger concern for Loeb isn't necessarily what a jury thinks of Fairfax's allegation. The danger is whether emails from the past undo the steps he's taken to cast himself a new and more polished image. (Edited by Jim Impoco and Claudia Parsons)

COVER PHOTO: Daniel Loeb, CEO, Third Point LLC, participates in the "Financial Firms: Past, Present and Future" panel at the 2010 Milken Institute Global Conference in Beverly Hills, California April 27, 2010. **REUTERS/PHIL MCCARTEN**

FOR MORE INFORMATION CONTACT:

JIM IMPOCO,
ENTERPRISE EDITOR, AMERICAS
+1 646 223 8923
jim.impoco@thomsonreuters.com

CLAUDIA PARSONS,
DEPUTY ENTERPRISE EDITOR
+1 646 223 6282
claudia.parsons@thomsonreuters.com

MATTHEW GOLDSTEIN
+1 646 223 5773
matthew.goldstein@thomsonreuters.com