

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA
CASE NO: 09-062943 07

RAZORBACK FUNDING, LLC, et al,

Plaintiffs,

vs.

SCOTT W. ROTHSTEIN, et al,

Defendants.

DAY 8 - AFTERNOON SESSION
DEPOSITION OF SCOTT W. ROTHSTEIN

DATE TAKEN: Wednesday, December 21, 2011
TIME: 1:00 p.m. - 5:00 p.m.
PLACE: James Lawrence King Federal
Justice Building
99 Northeast Fourth Street
Miami, Florida 33124

Examination of the witness taken before:

Terri Wright
United Reporting, Inc.
1218 Southeast Third Avenue
Fort Lauderdale, Florida 33316
(954) 525-2221

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1 Q Does Mr. Nurik have other lawyers working with
2 him on your matter?

3 MR. LAUER: That's privileged, too?

4 THE WITNESS: No, they're joking around.

5 No, he does not.

6 BY MR. LAUER:

7 Q Are you permitted to call Mr. Nurik from
8 prison?

9 MR. KAPLAN: Again, object, privilege.

10 MR. LAUER: My job is to ask the questions. I
11 don't mean to --

12 MR. KAPLAN: I appreciate that.

13 MR. LAUER: I don't mean to take on the United
14 States Government, not in this case.

15 BY MR. LAUER:

16 Q You testified that you thought A.J. Discala did
17 a reasonably good job in his due diligence.

18 A Through his people, yes. He was more of like
19 the salesman type, but he was surrounded by good people
20 that seemed quite diligent. Yes, sir.

21 Q So A.J. came on the scene and he was going to
22 create sort of this new feeder fund under the Clockwork
23 umbrella, right?

24 A Correct.

25 Q And he ended up doing two transactions, one

1 known now as Razorback, right?

2 A I recall that. Yes, sir.

3 Q And the other one was D-3 Capital?

4 A I recall that as well.

5 Q Do you recall that Razorback was sort of a next
6 generation version of the Banyon Income Fund that
7 Bekkedam had brought Von Allmen into?

8 A I don't recall.

9 Q That basically Razorback was lending -- that
10 A.J.'s group lent money to a Banyon entity for a fixed
11 rate of interest plus a small percentage of the equity
12 piece.

13 A Now I understand what you're asking me. My
14 understanding of Razorback was indeed that, that money
15 was put in by various investors into the Razorback fund,
16 so to speak.

17 Those people were then paid a specific interest
18 rate by that Fund, and then the Fund made the investment
19 with me and kept the difference between what they paid
20 out and the total proceeds.

21 Q You're talking in the past tense, but would it
22 be fair to correct you to say this is what was intended?

23 A I can only tell what you actually happened. I
24 didn't -- What was going on in the setup and what they
25 intended to do, I can't tell you. That wasn't something

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1 I was involved in. I was only concerned about how much
2 money we'd be getting and what day we're getting it on.

3 Q What I meant is the so-called Razorback group
4 invested in an entity called Banyon USV1. Do you
5 remember that?

6 A Yes.

7 Q And that investment was made in early October
8 2009?

9 A I don't recall the date, but that sounds about
10 correct.

11 Q And the D-3 Capital investment was a direct
12 investment by Discala's group; do you remember that?

13 A I do remember that. Yes, sir.

14 Q So here instead of lending money to a Banyon
15 entity for a fixed rate of interest plus, the D-3 Capital
16 group was dealing directly through you with one of your
17 clients?

18 A That's correct. But I learned that information
19 secondhand as to the Banyon USV1, II. I learned that
20 secondhand. And sometime later when I wasn't involved in
21 the particulars of negotiating interest rates and that
22 type of stuff.

23 Q When you say --

24 A I mean interest rates between, for example, the
25 Banyon entities and the Razorback investors.

1 Q Just to clarify, learning secondhand, you mean
2 you didn't know the exact terms of what the Banyon USV1
3 was agreeing to with the Razorback investors, but you had
4 firsthand knowledge of the money that was coming in that
5 has been known as the Razorback investment, right?

6 A I had firsthand knowledge of the money coming
7 in. The behind the scenes things, what was going on
8 between the investors, who was being paid what interest
9 rate, what the terms were, that was not something I was
10 involved in.

11 Q But in that first investment, that is, the
12 so-called Razorback Banyon USV1 investment, the
13 settlement that was purchased from one of your Plaintiff
14 clients was purchased by Banyon USV1 and not by an entity
15 called Razorback?

16 A The paperwork was done in the name of Banyon
17 USV1, correct.

18 Q D-3 Capital was the first direct investment by
19 Discala's group with one of your Plaintiff clients,
20 correct?

21 A I don't recall which came first, but it was a
22 direct investment.

23 Q Do you recall that the direct investment was
24 originally to be an \$18 million purchase of a \$30 million
25 settlement of an underage woman who had settled the claim

1 against Mr. Epstein?

2 A I don't recall specifically. But if you show me
3 the paperwork, it will refresh my recollection. I just
4 don't recall the terms of that particular deal.

5 Q I'll get to that in a minute.

6 A Sure.

7 Q The second deal, though, the direct deal, do you
8 recall that that came up in mid October, around October
9 14, 15, 2009?

10 A That sounds approximately correct, but the
11 paperwork would say exactly when it came up.

12 Q Okay. Now, in connection with the so-called due
13 diligence by Mr. Discala and his advisors and colleagues
14 and investors, other than looking at the 13 boxes that
15 somebody brought down to your office, can you tell me
16 what specifically all these guys did that you refer to as
17 their due diligence on the D-3 Capital or Razorback
18 investments?

19 A To the best of my recollection, and this is in
20 no particular order, several members of what I'll call
21 the Discala team sat and met with me in my office for
22 several hours. That was at one time when Thane Ritchie
23 was there and one of his partners. They asked me
24 questions about the transactions, how they worked, a lot
25 of information about me and the law firm, background.

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1 There were at least two or three other meetings
2 that I recall where I met both with Mr. Discala and
3 members of his team, various members, sometimes on the
4 phone, sometimes in person, sometimes some were in person
5 and on the phone, where they asked what I considered to
6 be good questions, good due diligence questions of me for
7 a longer period of time than what I was used to dealing
8 with with some of the other investors.

9 I received e-mails from a number of the
10 different people and remember Mr. Legamaro writing to
11 me. I remember Mr. Podaras writing to me. I remember
12 Mr. Von Allmen writing to me. I remember meeting with
13 Mr. Von Allmen on various occasions where he asked me a
14 lot of questions.

15 I remember actually having dinner with
16 Mr. Von Allmen out at some private club that he had where
17 he actually pulled me aside and we went to the bar and
18 shared a glass of wine, and he was asking me questions
19 about the investment.

20 They had me speak to two different groups of
21 lawyers. I remember speaking to people from two firms.
22 I seem to remember Morgan Lewis at one point in time.

23 Q Clifford Chance?

24 A Clifford Chance. I don't remember who Gersten
25 Savage was attached to. Different groups of lawyers, I'd

1 get questions and have to answer things.

2 Then on top of that there was questions being
3 asked of me through Mr. Preve. Somebody would contact
4 him from the group, one of these people. And then Preve
5 would say, the Clockwork group wants to know this, the
6 whatever he's calling it, the Von Allmen group, whatever
7 he was referring to.

8 So, there was a -- you know, compared to what I
9 was used to dealing with in the years prior, to me it was
10 fairly significant due diligence, and they kept prodding
11 and pushing. They kept us on our toes, that's for
12 certain.

13 Q Could you specify the subject matter of any of
14 the specific questions? You've testified that they asked
15 questions, they e-mailed questions, other people asked
16 questions, you had conversations. And I recognize it's
17 two years and you may not be able to do this with any
18 specificity and may not be able to connect questions with
19 the people. But to the extent that you can, if you can,
20 I would ask you to tell me what exactly it is these
21 Discala, Von Allmen people were asking you in connection
22 with the Razorback and D-3 Capital investments, that is,
23 in October of 2009?

24 A Sure. To the best of my recollection, all
25 right? The first place you want to go, obviously, you

1 don't need me for this, is to look at the e-mail
2 questions that were e-mailed to me.

3 Q That's right.

4 A You can look at that. There were lengthy
5 questionnaires sent to me.

6 Q Um-hmm.

7 A Other than that, I remember discussing how, they
8 were asking me how I got my cases. I remember Thane
9 Ritchie in that meeting with Mr. Discala, that was one of
10 the areas he seemed most interested to me. How did I get
11 this possible pipeline of cases? How did a local firm
12 possibly get this?

13 I recall being asked by several of them to
14 explain the banking relationship. That was more
15 Mr. Podaras and Mr. Legamaro, actually more Mr. Podaras
16 than anyone. He was very interested in the banking,
17 wanted to know how the money flowed, how I set up the
18 accounts, who my contacts were at the bank.

19 They spent time asking me about the lock letters
20 at the point in time we were utilizing them and the
21 mechanics, and I had to refer them to Mr. Spinoso to
22 answer that question.

23 They asked me about my history with other
24 investors, Thane Ritchie. I don't remember, again,
25 whether it was Legamaro or Podaras, one or both of them

1 asked me about prior investor experience.

2 Mr. Von Allmen asked me fairly extensively about
3 how I came up with the idea to do this, how it was
4 created, what made me think of doing this, which is one
5 of the things that most people never really got into with
6 me. It was usually a very brief conversation in that
7 regard.

8 I remember it was either Podaras or Legamaro
9 inquired of me as to how long my employees had been with
10 me and whether I trusted them, specifically my CFO, Irene
11 Stay.

12 Many of them asked questions of Ms. Villegas
13 because she was represented to have been with me for over
14 two decades and my COO and worked her way up from
15 secretary, and they inquired about my relationship with
16 her.

17 They inquired about other businesses that I
18 owned. Mr. Von Allmen asked me about my other business
19 interests. And, again, I get Legamaro and Podaras
20 confused, one of them asked about my business interests
21 and successes and failures.

22 I was asked at one point in time to provide a
23 client list of the law firm. I don't remember who asked
24 me that, one of those gentlemen.

25 We talked about transparency. And this was - to

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1 Q And yet I gather nobody from Discala or
2 Von Allmen's group ever asked to be introduced to
3 referring attorneys?

4 A I don't recall them asking to be introduced to
5 referring attorneys. I substantiated things in other
6 ways this them as best as I could.

7 If you read the e-mails -- this just goes to
8 your question. If you read through the e-mails you'll
9 get a pretty good idea of the type of follow-up and the
10 like they were doing. They would ask questions. I would
11 give answers, and then there was follow-up to it.

12 Q I understand.

13 A I just want to be helpful so you know where to
14 look.

15 Q Since time is limited I'm trying to avoid having
16 you read too many e-mails. We'll get to some e-mails

17 A Understood.

18 Q I just need to clarify what's not in the e-mails
19 and what never happened, which is, I think you've said
20 this, none of the Von Allmen, Discala people ever asked
21 to be introduced to referring attorneys?

22 A I don't recall them ever asking that, sir.

23 Q By the way, while they did some independent
24 verification by looking at the 13 boxes in connection
25 with D-3 Capital, before that who were they relying on in

1 the Razorback deal or the earlier deals for verification
2 that the settlements were real?

3 A Me, Mr. Szafranski, and Mr. Preve.

4 Q And who were they relying on for verification
5 that the defendants were actually wiring the settlement
6 money into the escrow accounts?

7 A Me, Mr. Szafranski, and Mr. Preve, and to a
8 limited extent the bankers.

9 Q Had they known Mr. Szafranski prior to being
10 introduced to you and the investments?

11 A To my knowledge, no.

12 Q So for all they knew Szafranski was on your
13 payroll, right?

14 MR. SCHERER: Objection, form.

15 THE WITNESS: I'd be guessing what they knew,
16 but they -- they did their own research from what
17 Mr. Preve and Mr. Szafranski told me.

18 As a matter of fact, as part of their due
19 diligence, I remember because this took place in the
20 conference room on our other floor, on 15 -- this
21 goes to the question you asked me before.

22 BY MR. LAUER:

23 Q But I'm asking you now --

24 MR. SCHERER: Let him answer the question,
25 Counsel.

1 MR. LAUER: Mr. Scherer, with all due respect
2 because time is limited I'm focusing on Szafranski.

3 THE WITNESS: This is Szafranski dead on.

4 BY MR. LAUER:

5 Q All right.

6 A They had a very specific lengthy meeting and did
7 separate due diligence with Mr. Szafranski. It took
8 place on our next floor down. I believe it was our 15th
9 floor conference room, maybe up on 22, but not on my
10 floor. They met. They had a bunch of their attorneys
11 and some other people, and they met actually for several
12 hours with Mr. Szafranski, took him through the whole
13 thing.

14 Q They met him through you?

15 A Yes, through me and through the Banyon group,
16 sure.

17 Q Clifford Chance, that was the law firm that
18 Discala brought down prior to Morgan Lewis. Do you
19 remember that?

20 A I do.

21 Q What is it that you told the Clifford Chance
22 people?

23 A I don't recall specifically. You'd have to take
24 a look at the e-mails. They asked what I'll refer to as
25 the standard questions. I answered them. The rest you

1 could meet with Mr. Rosenfeldt as did other investors,
2 and my recollection is he was referring to Mr. Scherer's
3 clients. I don't know if that ever - if I actually let
4 Mr. Lifshitz meet with him or not. But I'm pretty sure
5 it's someone from the Von Allmen group.

6 MR. LAUER: Any time you want to take a break is
7 fine with me. If you don't want to take a break --

8 THE WITNESS: That's great. Let's take a quick
9 one, sure.

10 (Thereupon, a short break was taken.)

11 (Whereupon, The Funds' Exhibit No. 261 was
12 marked for identification.)

13 BY MR. LAUER:

14 Q Okay. I am handing you, Mr. Rothstein,
15 Exhibit 261, which is a photostatic copy of Confidential
16 Settlement Agreement and Release. It bears production
17 PRODA 21183 through 21212.

18 MR. SCHERER: What is the number of that
19 exhibit?

20 MR. LAUER: 261.

21 THE WITNESS: Thank you.

22 BY MR. LAUER:

23 Q Do you recognize this as the Confidential
24 Settlement Agreement and Release covering the settlement
25 that was sold to the D-3 Capital Club Group in mid to

1 late October 2009?

2 A Give me one second.

3 Q Take your time.

4 A Yes.

5 (Whereupon, The Funds' Exhibit No. 262 was
6 marked for identification.)

7 BY MR. LAUER:

8 Q Now I'm handing you Exhibit 262, which is a
9 letter from Scott W. Rothstein to D-3 Capital Club, LLC,
10 dated October 14, 2009, bearing counsel's stamp 21218
11 through 21222.

12 Is that a letter that you authored and provided
13 the D-3 Capital Club in or about October 14, 2009,
14 concerning the settlement that is reflected in
15 Exhibit 261?

16 A I am one of the authors of the letter. It has
17 my name at the bottom. It's a forged signature, but I
18 authorized this to be transmitted to D-3 Capital.

19 Q So just to be precise, if you authorize someone
20 to sign your name, it's not a forged signature, is it;
21 it's an authorized signature that someone else is
22 signing?

23 A You're correct.

24 Q So this was an authorized signing by someone
25 else of your name?

1 A Yes. They were authorized -- the language seems
2 strange to me because they were signing fake documents in
3 a fraud. So say it was authorized during the course of
4 the fraud, yes.

5 Q And they were genuinely signing documents with
6 your approval; albeit, the documents they were signing
7 were part of a fraudulent transaction?

8 A Correct.

9 (Whereupon, The Funds' Exhibit No. 263 was
10 marked for identification.)

11 BY MR. LAUER:

12 Q Now I am handing you what we have marked as
13 Exhibit 263, which consists of two pages of e-mails
14 bearing counsel's stamp 46167 and 46168 and what appears
15 to be a photostat of an account summary balance bearing
16 counsel's stamp 46169.

17 I would ask if you can identify Exhibit 263.
18 Are those e-mails that were sent in connection with the
19 D-3 Capital investment?

20 A This all pertains to the D-3 investment. Yes,
21 sir.

22 Q And just to start at the beginning of the
23 e-mail, first it's from Frank Spinoso. Do you see that
24 at bottom of the second page, 46168?

25 A I do.

1 Q Okay. From TD Bank.

2 Is this e-mail purporting to send what purports
3 to be a \$64 million balance in an account at Rosenstein
4 (sic,) Rosenfeldt, Adler escrow account?

5 A Can you ask the question again, please? I'm
6 sorry.

7 (The pending question was read back by the
8 court reporter.)

9 BY MR. LAUER:

10 Q I meant Rothstein.

11 A No.

12 Q What is it?

13 A The exhibit is put together incorrectly. The
14 attachment is one of our phoney balance statements.
15 What should be attached to this is the D-3 lock letter
16 which is being forwarded by Mr. Spinosa to me and then
17 forwarded by me to Mr. Podaras.

18 (Whereupon, The Funds' Exhibit No. 264 was
19 marked for identification.)

20 BY MR. LAUER:

21 Q I'm handing you Exhibit 264. This is a
22 document dated October 15, 2009, bearing a signature of
23 Frank Spinosa on what purports to be TD Bank
24 letterhead.

25 Is this what you have described as the lock

1 letter for the fraudulent account?

2 A Yes.

3 Q I think you mischaracterized it. It's not a
4 phony lock letter. It's a genuine lock letter with
5 respect to a phony account?

6 A Actually I said phony bank statement. It's a
7 lock letter purporting to lock something that's not there
8 that can't be locked.

9 (Whereupon, The Funds' Exhibit No. 265 was
10 marked for identification.)

11 BY MR. LAUER:

12 Q Finally, I am handing you Exhibit 265, which
13 appears to be an e-mail from you dated October 23, 2009,
14 to A.J. at Clockwork and Dean K-r-e-t-s-c with a cc to
15 Frank Preve. Could you identify that e-mail?

16 A I recognize it. It's an e-mail that I sent out
17 to A.J. and to Dean with a copy to Frank trying to force
18 their hand on funding the rest of the deal.

19 Q Now, this deal was one in which A.J. and Dean
20 and Doug Von Allmen had agreed to put in \$18 million?

21 A I don't recall specifically who the money was
22 coming from, but it appears to be Von Allmen because Dean
23 is involved.

24 Q The deal was they put up 18 million to buy a
25 \$30 million settlement?

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1 A That sounds correct, sir.

2 Q And the e-mail is telling them that as of
3 October 23rd they have not come up with the 18 million;
4 is that correct?

5 A It says, "We're \$8 million away from the first
6 18 million and the 5 million I've been promising her for
7 days has not yet appeared.

8 Q Could you explain the numbers? 8 million from
9 18 million means you would have had 10 million?

10 A I would have already had 10 million in-house.
11 That's what it appears to say.

12 Q What does that have to do with the 5 million?

13 A It appears that I was -- as these were being
14 funded I was getting funded piecemeal. And so part of
15 the fraud that we were utilizing was to tell them that
16 I've promised her this amount of money. And if you look
17 in our accounts, that would reflect exactly the amount or
18 close to it that I needed at that moment for the Ponzi
19 scheme to keep it alive.

20 Q So as of October 23rd they had only come up with
21 10 million of the 18 million that they were supposed to
22 come up with?

23 A You'd have to check the bank ledgers to be
24 certain, but that's my recollection.

25 Q And that's what you were telling them in this

1 e-mail on October 23rd?

2 A Yes, sir. That's what it appears to be.

3 Q Now, if you turn back to Exhibit 264, the lock
4 letter, you have that?

5 A I do, sir.

6 Q Okay. So from their perspective, at least what
7 they were telling you is they thought the lock letter was
8 important, right?

9 A Yes, sir.

10 Q They thought that that was a necessary extra
11 precaution for their investment?

12 A My understanding from speaking to them was it
13 was one of the key elements in their funding the deal.

14 Q And this lock letter would from their
15 perspective protect them because it says that the money
16 can only be distributed to them, right? And they are D-3
17 Capital Club, LLC?

18 A Correct.

19 Q Now, if you turn to 263 --

20 A Yes, sir.

21 Q -- the top page, Frank Preve to Chris Podaras,
22 was Podaras part of A.J. and Doug's group?

23 A He was.

24 Q Preve says to Chris, "Did you pick up a balance
25 report from TD Bank yesterday for Razorback and D-3? If

1 so, I need a copy. If not, I will have Szafranski pick
2 one up on Monday."

3 Do you see that?

4 A I do, sir.

5 Q Is the account balance bearing counsel's stamp
6 46169, is that what was purported to be the account
7 containing the Razorback and D-3 funds?

8 A Yes.

9 Q Is it these funds, this \$64 million represented
10 amount, that is locked in by the lock letter,
11 Exhibit 264?

12 A Yes.

13 Q Now, let's go to 261. This is the Confidential
14 Settlement Agreement and General Release, right?

15 A Yes.

16 Q Okay.

17 A And some other papers.

18 Q Right. If you go to the page bearing counsel's
19 stamp 21191, the settlement agreement between the
20 plaintiff and the defendant bears the date October 14,
21 2009, right?

22 A Correct.

23 Q So that's what A.J., Doug and their group were
24 being told was the date that the settlement had been
25 signed?

1 A Correct.

2 Q And at the same time they are being told that
3 the money for this settlement is already in the account?

4 A That it arrived on the 14th.

5 Q Go to the next page, the next document.

6 A I'm sorry. The next page in which one of these
7 documents?

8 Q What?

9 A I have a lot of documents. I don't know which
10 page to turn.

11 Q Within Exhibit 261 --

12 A Right.

13 Q -- the next separate document which is part of
14 the exhibit bears counsel's stamp 21193 and it has a
15 caption, Acknowledgment of Assignment/Purchase of
16 Settlement Proceeds.

17 Do you see that?

18 A I do.

19 Q And this is an acknowledgment where your law
20 firm acknowledges that -- Well, why don't you explain
21 it. What is this acknowledging to D-3 Capital Club,
22 LLC?

23 A It's acknowledging all of the things covered in
24 all these paragraphs. There's a lot of things. The
25 purpose is to say that we've got the money and this is

1 the way we're going to handle it.

2 Q D-3 Capital in this case is the transferee; that
3 is, the entity that will receive the settlement money at
4 the appropriate time?

5 A Yes, sir.

6 Q And in Paragraph 8 you are confirming to D-3
7 Capital that upon receipt of \$18 million you will
8 disburse the plaintiff's wire to plaintiff.

9 What does that mean? Does that mean that as
10 soon as you get the 18 million from D-3 Capital you will
11 send the plaintiff the money that is being used to
12 purchase her rights to this settlement?

13 A It says that once two things occur, one of which
14 is receipt of the \$18 million, that we will disburse the
15 plaintiff's wire to the plaintiff.

16 Q Okay. So the way this was supposed to work is
17 \$18 million comes from D-3 Capital. It goes into an
18 attorney escrow account that you manage. And when
19 appropriate you will then wire the plaintiff this
20 18 million?

21 A Correct.

22 Q And then down the road the way this deal was
23 supposed to work is the 30 million that's in the account
24 will get distributed to D-3 Capital?

25 A Over time, correct.

1 Q Now go to Paragraph 13. Paragraph 13, am I
2 correct, is acknowledging by the law firm, by you on
3 behalf of the law firm, that the \$30 million that is
4 sitting in that account from the defendant will be held
5 exclusively for the beneficiary - I guess it means for
6 the benefit of the transferee and the transferee is that
7 assignee; is that correct?

8 A That the money held in the locked account will
9 be held for their benefit, correct.

10 Q Now, do you agree with me that "beneficiary" is
11 not the correct word, that what this sentence, if written
12 in English would read, Will be held exclusively for the
13 benefit of the transferee?

14 A Yes.

15 Q And was this -- it's informing D-3 Capital that
16 you're acknowledging that the \$30 million will be held
17 for their exclusive benefit?

18 A Correct.

19 Q And it's also acknowledging a letter from the
20 regional VP has been provided to the transferee. And I
21 take it that is a reference to the lock letter to D-3
22 Capital?

23 A Correct.

24 Q Exhibit 264.

25 A Correct.

1 Q Now, the next document bearing counsel's stamp
2 or starting with counsel's stamp 2119A is a Sale and
3 Transfer Agreement. Do you see that?

4 A I do, sir.

5 Q All right. And is this the document by which
6 your purported client is selling and in fact did sell to
7 D-3 Capital Club, LLC her rights to the \$30 million that
8 she is receiving from the defendant?

9 A Correct.

10 Q In paragraph 1 after the whereas clause is in
11 the middle of that paragraph it reflects the transferor,
12 meaning the plaintiff client, agrees to accept payment in
13 the sum of \$18 million from D-3 Capital, right?

14 A I'm sorry. Which paragraph are you looking at?

15 Q It's paragraph numbered 1 on page 21199.

16 A That's correct.

17 Q In the second paragraph of paragraph numbered 1
18 it says that transferee, meaning D-3 Capital, has been
19 informed by RRA that pursuant to the transferor
20 instruments, transferor - meaning the Plaintiff client -
21 has irrevocably named transferee, meaning D-3 Capital, as
22 transferor's designated payee of the settlement proceeds?

23 A Correct.

24 Q That's a further way of confirming what's stated
25 several times here, that \$18 million comes from D-3

1 Capital to the Plaintiff and the rights to the 30 million
2 are sold to D-3 Capital?

3 A Correct.

4 Q Now, it turned out that D-3 Capital was not able
5 to raise the full \$18 million. Do you remember that?

6 A That is my recollection, sir.

7 Q And in fact as you saw as late as October 23rd
8 they had only raised 10 million?

9 A To the best of my recollection you're correct,
10 sir.

11 Q In the end all they could come up with was
12 \$13-and-a-half million?

13 A It was something of that nature. Yes, sir. It
14 was not the full amount.

15 Q Right. And yet they were told that the deal was
16 done, right, that in fact the transaction had been
17 completed, that they had satisfied the transaction with
18 your plaintiff?

19 A I don't recall telling them that.

20 Q Did you tell them that this deal has been
21 breached, that they have not met their obligations?

22 A I think that's what this e-mail is telling them,
23 the other one we looked at, where I'm telling them they
24 haven't funded -- Yes. I'm telling them they haven't
25 done what they said they were going to do, and my client

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1 is going crazy over it. So, yes, I'm telling them that
2 they are in breach.

3 Q And did they say, Well, we can't get the
4 18 million, so return all the money to us?

5 A I don't recall what they said. I have to see
6 the e-mail traffic. I don't recall.

7 Q Now, isn't what happened that you or someone
8 told them that someone else had come up with the extra
9 5-and-a-half million and in fact this deal was funded?

10 A I don't have a specific recollection of that,
11 but that is certainly something I may have told them.
12 I'd have to see the e-mail traffic. It seems more than
13 probable.

14 Q Have you seen any e-mails describing the fact
15 that on this deal where they supposedly are putting
16 \$18 million in, but they only put in 13-and-a-half
17 million, that describes the fact that somebody else or
18 some other entity put in the other 5-and-a-half million?

19 A I don't specifically recall, sir. I'm four or
20 five days away from leaving for Morocco at this moment.
21 And it was probably on the back burner as far as I was
22 concerned. I don't know. I don't recall seeing the
23 e-mail traffic as I sit here today. You'd have to show
24 it to me to know.

25 Q But since you went to Morocco and have come back

1 and have poured over countless documents and interacted
2 with Trustee's counsel and with Mr. Nurik and the like,
3 have you seen any e-mail from anyone to anyone else that
4 reflects that somebody came up with 5-and-a-half million
5 to meet the 18 million that was required for this
6 transaction?

7 A I don't recall, sir.

8 Q Did anyone tell Von Allmen or Discala that
9 Banyon or some Banyon entity had come up with the
10 5-and-a-half million?

11 A I seem to recall someone telling them that they
12 came up with the money, but I don't recall who told them.

13 Q Now, when they were told that someone else had
14 come up with 5-and-a-half million, did they say, Hey,
15 wait a minute. We have an exclusive lock letter. We
16 have an exclusive agreement. The money can only be sent
17 to D-3 Capital. How could anybody in his right mind put
18 in \$5-and-a-half million of real money in this
19 transaction without even contacting us to get a letter
20 agreement that requires us to share our rights under
21 these agreements with them?

22 A I don't recall one way or the other, sir.

23 Q In fact, there is no communication whatsoever to
24 you or anyone else saying, This sounds really fishy that
25 some mysterious donor has come up with 5-and-a-half

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1 associated with D-3 Capital basically questioning how the
2 heck could this be that someone is putting in
3 \$5-and-a-half million and they don't ask us to share in
4 the lock letter?

5 A I don't recall that ever happening, sir, you are
6 correct.

7 Q And there's nothing that you can point to where
8 any of those individuals that supposedly thought this was
9 a legitimate investment in D-3 Capital, where they are
10 saying to you or to Preve or anyone else, How could this
11 be? We need to have some kind of letter agreement with
12 the transferee so that we are included contractually in
13 the rights that the transferee has with the transferor?

14 A As I sit here today I don't have any specific
15 recollection of that. I would need to see the e-mail
16 traffic to be certain.

17 Q Now, A.J. and one of his wizards came to your
18 office to look at boxes, right?

19 A Yes

20 MR. SCHERER: Object to the form.

21 BY MR. LAUER:

22 Q And you had 13 boxes of a real case against
23 Epstein brought down to your office, right?

24 A My recollection is I had some of them already
25 there and that I had some brought in afterwards.

1 Q And you've testified that among the more
2 interesting items were doctored flight manifests where
3 you had inserted prominent people who purportedly would
4 have been on the flight where Epstein supposedly did what
5 he was accused of doing?

6 A That's not correct.

7 Q Go ahead and correct me.

8 A The flight manifests that I showed them were
9 real flight manifests. I told them a story about other
10 flight manifests that I have never showed them.

11 Q How thick were the flight manifests?

12 A I don't recall.

13 Q I'm trying to understand. I'm not going to have
14 you go through all 13 boxes, but I'm trying to get a
15 frame of reference. You're talking about a flight
16 manifest or flight manifests for a private jets, right?

17 A Yes. This is a very small document. It may
18 have been one or two pages. And I had it specifically
19 set aside. I'd either ask Mr. Adler or Mr. Edwards to
20 isolate the flight manifest.

21 Q So other than looking at the flight manifest for
22 Epstein's private jet, what exactly is it that they were
23 looking at in these 13 boxes?

24 A I have no idea. I left them alone to look at
25 the boxes for 20, 30 minutes.

1 Q And how did your office come to have these 13
2 boxes? Did someone in your office actually play a role
3 in representing a real plaintiff against Epstein?

4 A Yes.

5 Q And could you in summary fashion tell us about
6 that.

7 A To the best of my recollection Mr. Edwards and
8 some other individuals from our mass tort group were
9 representing either one or several young ladies who had
10 been molested allegedly by Mr. Epstein.

11 Q And this was an active filed Court litigation?

12 A It was, sir.

13 Q And do you remember the stage at which the case
14 or cases were at the time that Legamaro was left with the
15 13 boxes?

16 A First, I'm not sure it's 13 boxes. I don't know
17 how many boxes it was. It could have been more. It
18 could have been less. I don't recall at all what stage
19 the case was at.

20 Q After Legamaro looked at all these boxes what
21 questions did he ask you?

22 A I don't recall specifically. They questioned me
23 a little bit about the case, but I don't recall
24 specifically what they asked me.

25 Q Did he talk to the lawyer in your firm who was

1 suing Epstein to get a feel for the potential recovery
2 that that lawyer was looking for in that case?

3 A I do not believe so, but I don't have a specific
4 recollection of having him do that one way or the other.

5 Q Did he talk to the lawyer to get a feel from the
6 lawyer as to the nature of the claim in the real case?

7 MR. SCHERER: Object to form.

8 THE WITNESS: I don't have a specific
9 recollection one way or the other, sir.

10 BY MR. LAUER:

11 Q I take it that you recall that the essence of
12 the case against Epstein in the fictitious settlement was
13 this was an underage female?

14 A Correct.

15 Q Other than the allegation that Epstein had
16 violated federal and state law in transporting this
17 underage female for improper purposes, were there any
18 aggravating factors that you represented were included in
19 the case?

20 A I may have, but I don't recall specifically what
21 they were.

22 Q How about the real case? Other than the fact
23 that Epstein was being sued for having sexual relations
24 with an underage female, were there any allegations of a
25 truly aggravating nature beyond the fact that she was

1 underage?

2 A Beyond the fact that he was allegedly molesting
3 underaged girls, I don't know of any other aggravating
4 factors. No, sir.

5 Q What I mean is, were there allegations that he
6 had physically harmed them beyond -- I don't mean to
7 trivialize it, far from it, beyond the fact that he had
8 factually consensual, but legally non-consensual
9 relations with an underage person, were there allegations
10 that he had beaten them or physically harmed them?

11 A I don't remember allegations like that.

12 Q And did anyone from your office who is
13 associated with the real case provide a sense of
14 parameters of what they thought the real case was worth?

15 A I don't recall anyone doing that other than me.

16 Q Did anyone from the real case, so to speak,
17 provide examples of judgments or reported settlements in
18 similar cases involving wealthy individuals who had had
19 sexual relations with underage people?

20 A I don't recall --

21 MR. SCHERER: Object to the form.

22 THE WITNESS: -- one way or the other.

23 BY MR. LAUER:

24 Q Did Legamaro ask your colleagues for any of that
25 information?

1 A I don't recall him speaking to my colleagues.
2 He may have. I don't recall him asking me for that
3 information. I recall him asking me questions about the
4 case, but I don't remember specifics.

5 Q You weren't handling the case, right? Did
6 Legamaro know that the case whose boxes he was examining
7 was not being handled by you as the trial lawyer, but
8 that it was being handled by other trial lawyers in your
9 office?

10 A I led Mr. Legamaro and the others to believe
11 that I had other lawyers in the firm doing all the leg
12 work, but at the end of the day that I would be the one
13 negotiating the settlement.

14 Q Did you appear as counsel in the real cases?

15 A No, sir.

16 Q At any time did Legamaro or anyone with A.J.'s
17 group comment on the fact that you were not listed in the
18 pleadings in that case?

19 A You know, they may have. And the reason I'm
20 saying this is because someone brought it up from that
21 group related to something else. I don't remember
22 whether it was this case or not. And I simply said,
23 Well, everything is in the name of Rothstein Rosenfeldt
24 Adler. That's my name. I'm certain any judge would not
25 have any problem with me showing up at anything given the

1 fact this is my law firm.

2 Q But you're not listed on the top of the other
3 counsel in any of the papers?

4 A I don't recall being, no, sir.

5 Q Now, again, this was a confidential settlement?

6 A It was set up to be, yes.

7 Q And that was the reason Discala and his people
8 were told that the payments were coming over time?

9 A Correct.

10 Q They were told that this was a big ticket
11 because Epstein was the defendant and he's a very wealthy
12 guy, correct?

13 A Correct. And he was associated with other
14 public figures who did not want their names dragged
15 through the mud. That's the way we sold it.

16 Q Now, I'm sure you've noticed this before, but
17 when you turn to the front of Exhibit 261 it actually
18 lists both the plaintiff and the defendant, right?

19 A Yes.

20 Q The plaintiff is Marsha Foreman, correct?

21 A Correct.

22 Q And the defendant is Elite Delivery Systems LLC?

23 A Correct.

24 Q So right off the bat, this is a breach of the
25 confidentiality agreement?

1 A Correct. Assuming that they actually - they
2 actually got this particular document. I don't recall
3 specifically. I do recall them asking me who Elite
4 Delivery Systems were and how that was tied to
5 Mr. Epstein.

6 Q If they asked you that, they must have gotten
7 this documents, don't you think?

8 A Either that or we discussed the defendant's
9 name. I just want the record to be clear. I don't
10 recall whether they actually received this document or a
11 redacted one and then brought the names up.

12 As I've testified over the last many days, there
13 were circumstances where as part of the due diligence to
14 continue to lure investors in and to increase the level
15 of transparency, we would, quote, unquote, disclose
16 certain otherwise confidential information understanding
17 that it would be to no one's benefit to disclose it
18 because then everything they were investing in would
19 explode.

20 Q I understand that. But still you will agree
21 that whether there was a low risk of disclosure by
22 providing the names of the plaintiff and the defendant,
23 you were breaching the confidentiality agreement?

24 A Correct.

25 Q And Von Allmen and Discala and their colleagues

1 were then aware of the fact that you were breaching the
2 confidentiality agreement?

3 A Correct.

4 Q And not only were you breaching an agreement,
5 you as an attorney were breaching your fiduciary
6 obligations to your client by doing so?

7 A Correct.

8 MR. SCHERER: Object to the form.

9 BY MR. LAUER:

10 Q And they, Von Allmen, Discala, and their
11 colleagues, were clearly well aware of the fact that you
12 as attorney in providing them with this information, the
13 names of the plaintiff and the defendant, were breaching
14 your fiduciary duties to your client?

15 MR. SCHERER: Object to the form.

16 THE WITNESS: I would be guessing what was
17 actually going on inside their head. But I can tell
18 you what I was doing, assuming this was real, which
19 is what I've just testified to.

20 BY MR. LAUER:

21 Q It would be a breach of your fiduciary duty?

22 MR. SCHERER: Object to form.

23 THE WITNESS: It would be a breach of the
24 confidentiality agreement.

25 BY MR. LAUER:

1 Q And since you were acting as counsel and that's
2 how you came to this information, putting aside the fact
3 that you're running a massive fraudulent criminal Ponzi
4 scheme, you also, at least in addition, would have been
5 breaching your fiduciary duty to your client?

6 A Correct.

7 Q Now, Elite Delivery System, did they tell you
8 that they had Googled Elite Delivery system and looked
9 them up?

10 A They did not.

11 Q Have you ever Googled Elite Delivery System?

12 A No, sir.

13 Q Have you contacted Elite Delivery System?

14 A I don't know if they even really exist. It's a
15 name we created.

16 Q Maybe someone created it for you before you.

17 (Whereupon, The Funds' Exhibit No. 266 was
18 marked for identification.)

19 BY MR. LAUER:

20 Q I'm showing you Exhibit 266, which is what you
21 get when you Google the defendant's name on Exhibit 261.

22 A Okay.

23 Q Do you see that?

24 A I do.

25 Q Have you seen this before?

1 A I have not.

2 Q Did A.J. or Doug Von Allmen or any of the people
3 that were part of this D-3 Capital Club tell you that
4 they had Googled Elite Delivery Systems?

5 MR. SCHERER: Object to form.

6 A No, but they did ask me what Elite Delivery
7 Systems were if I'm settling a case with Jeff Epstein.

8 Q And presumably you told them it was an Epstein
9 front or something like that?

10 A Correct.

11 Q We've got the idea, but did they tell you they
12 had Googled Elite Delivery Systems?

13 MR. SCHERER: Objection, form. You asked three
14 times, Counsel.

15 Q Withdrawn.

16 Did Discala or Doug Von Allmen or any of the D-3
17 Capital Club people tell you that they had looked up
18 Elite Delivery Systems?

19 A No.

20 Q Did they say they had done diligence concerning
21 Elite Delivery Systems?

22 A They didn't say that one way or the other, sir,
23 no.

24 Q How about Marsha Foreman, did they -- did one of
25 their many participants do any investigative work to

1 determine whether Marsha Foreman, in fact, existed; and
2 if so, did she exist at this address?

3 MR. SCHERER: Object to form.

4 A I don't know whether they did or did not.

5 Q Did they do due diligence to determine whether
6 the Marsha Foreman living at this address was, in fact, a
7 minor?

8 A I do not know what they did with regard to the
9 name Marsha Foreman.

10 Q You testified -- You're free to take a few
11 seconds if you want to look at it.

12 A No, no, I was just flipping through it while you
13 were getting your next question ready.

14 Q We're shifting topics.

15 A Okay.

16 Q You testified at Page 354 -- let me withdraw.

17 You testified at 354 of the transcript that
18 through the period of January '09 - that is from April
19 2008 when my client started to lend money to the Banyon
20 entities who in turn were then buying discounted
21 settlements through you, that from April through
22 January '09 basically no one else was investing in this
23 program, do you remember that testimony?

24 MR. SCHERER: Objection to form.

25 MR. LAUER: What's the objection?

1 Q Okay. Now, go to Page 7. Do you see the second
2 column 4/3/08 to 4/9/09; do you see that?

3 A I do.

4 Q That's covering the period roughly from when the
5 first of the three hedge funds began lending money to the
6 Banyons to roughly the period when the Funds no longer
7 put any money into a Banyon entity; do you see that?

8 A Yes.

9 Q And what Glick reports on this chart is during
10 this same period other RRA investor inflows, meaning
11 individuals or entities not associated with the Funds
12 caused your accounts to receive \$309 million during that
13 period; do you see that?

14 MR. CIMO: Objection to the form, use of the
15 word your.

16 Q RRA investor inflows; do you see that?

17 A I do see that. I'm just trying to figure out
18 what the difference between RRA investors inflows and
19 funding entities inflows are.

20 Q Other RRA investor inflows and other RRA
21 investor outflows, is everyone dealing directly or
22 indirectly with you other than the three funds?

23 A Okay.

24 Q Okay.

25 A Now I understand. Thank you.