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1 UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

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5 CASE NO.: 09-34791-BKC-RBR

6 In Re:
7 ROTHSTEIN ROSENFELDT ADLER, P.A.,
8 Debtor.

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12 MOTION TO COMPEL PRODUCTION OF DOCUMENTS FROM TRUSTEE
13 PURSUANT TO DOCUMENT PRODUCTION PROTOCOL ESTABLISHED
14 BY DE#672 (807); AMENDED MOTION FOR PROTECTIVE ORDER
15 (819)

16 August 4, 2010

17 The above-entitled cause came on for
18 hearing before the HONORABLE RAYMOND B. RAY,
19 one of the Judges of the UNITED STATES BANKRUPTCY
20 COURT, in and for the SOUTHERN DISTRICT OF FLORIDA,
21 at 299 East Broward Blvd., Fort Lauderdale, Broward
22 County, Florida, on Tuesday, August 4, 2010,
23 commencing at or about 9:30 a.m., and the following
24 proceedings were had:
25 Reported By: Margaret Franzen

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1 APPEARANCES:

2 BERGER SINGERMAN, by
3 CHARLES H. LICHTMAN, ESQUIRE
4 on behalf of the Trustee

5 CONRAD & SCHERER, by
6 WILLIAM R. SCHERER, ESQUIRE
7 on behalf of victims

8 FOWLER WHITE BURNETT, by
9 RONALD G. NEIWIRTH, ESQUIRE
10 LILLY ANN SANCHEZ, ATTORNEY-AT-LAW
11 CHRISTOPHER E. KNIGHT, ESQUIRE
12 JOSEPH L. ACKERMAN, ESQUIRE
13 on behalf of Jeffrey Epstein

14 FARMER JAFFE WEISSING EDWARDS FISTOS & LEHRMAN, by
15 GARY FARMER, ESQUIRE
16 BRAD EDWARDS, ESQUIRE
17 on behalf of LM, Brad Edwards and
18 Farmer Jaffe Weissing Edwards Fistos & Lehrman

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1 THE COURT: Rothstein Rosenfeldt & Adler.
2 All right. May I have appearances, please?
3 MR. LICHTMAN: Good morning, Judge.
4 Chuck Lichtman, Berger Singerman, for the trustee.
5 MR. NEIWIRTH: Good morning, your Honor.
6 Ronald Neiwirth, Fowler White Burnett, on behalf of
7 the movant, Epstein, and with me today are two of my
8 partners, Chris Knight and Lilly Ann Sanchez --
9 MS. SANCHEZ: Good morning, your Honor.
10 MR. KNIGHT: Good morning, your Honor.
11 MR. NEIWIRTH: -- both of whom are more
12 familiar with the State Court angle on this than I
13 am, so they came along to be able to elucidate that
14 end of it.
15 MR. FARMER: Good morning, your Honor.
16 Gary Farmer on behalf of LM, Brad Edwards, and
17 the Farmer Jaffe Weissing law firm. We are an
18 interested party and have filed a motion for
19 protective order as to the subpoena that is at
20 issue here today.
21 THE COURT: All right. Insofar as the
22 TD Bank motion, Docket Entry 780, that has been the
23 subject matter of an agreed order that was submitted
24 to me.
25 MR. LICHTMAN: Correct, Judge.

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1 THE COURT: Mr. Scherer.
2 MR. SCHERER: Yes, sir, your Honor.
3 I'm William Scherer and I'm here on behalf of a
4 number of victims in the State Court action, as
5 well as the chairman of the creditors' committee
6 in the bankruptcy.
7 THE COURT: All right. That leaves us with
8 Docket Entry 807 and 819. 807 is Jeffrey Epstein's
9 motion.
10 MR. NEIWIRTH: Thank you, your Honor, and
11 again, good morning. We represent Jeffrey Epstein.
12 He has a civil claim pending in State Court in
13 Palm Beach County. He had served a subpoena on
14 Mr. Stettin requesting documents from the RRA estate.
15 That was back in April.
16 While this was still in process, in
17 May, under Docket Entry 672, your Honor entered
18 an order standardizing procedures for obtaining
19 discovery from Mr. Stettin and the RRA estate,
20 and at least on the face of it, it takes
21 jurisdiction over all discovery efforts against
22 the trustee. That left us in a quandary.
23 We had a subpoena pending in State
24 Court. We had correspondence from Berger
25 Singerman on behalf of the trustee that they had

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1 identified information and they were processing
 2 it, including vetting for attorney/client
 3 privilege issues, but then in the meantime came
 4 your Honor's order on May 18th, so we had to go
 5 back and reinvent the wheel and go through the
 6 necessary hoops in order to comply with that.
 7 In the meantime, as we sit here now, we
 8 still have no production. We have a trial date
 9 coming up in October, and we have a motion for
 10 protective order coming from a party who's
 11 already settled out, the LM party. They no
 12 longer have anything directly to do with this.
 13 Further, we are advised by the
 14 creditors' committee that in addition to what was
 15 proffered to us, that at some point in time there
 16 had been something like ten boxes of records
 17 pertaining to these particular issues and someone
 18 on behalf of the victims had been given, or
 19 several someones, had been given access to those
 20 ten boxes and had viewed them, which would
 21 vitiate any attorney/client privilege in any
 22 event.
 23 So what we are trying to do is fashion
 24 a mechanism so we can comply with your order,
 25 Docket 672, about standardized means of getting

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1 production from the trustee, allow for the
 2 appropriate vetting of the materials for
 3 attorney/client privilege, and we must bear in
 4 mind that this is one objector, there's a lot
 5 more documents than that.
 6 To the best of our knowledge, the
 7 documents that pertain to the LM party, who is
 8 settled anyway, may be 15 percent of those which
 9 are responsive to the inquiry that we made of the
 10 trustee, but in any event, someone has to vet
 11 them for attorney/client privilege and do a
 12 privilege log.
 13 Now, Mr. Farmer's office on behalf of
 14 LM wants to do that. We don't think that's
 15 appropriate. We think the privilege at this
 16 point, since the case is settled, lies with RRA
 17 and, therefore, the trustee, rather than
 18 Mr. Farmer and his client, because as to them the
 19 case is over.
 20 Furthermore, we don't think there is
 21 any privilege because the boxes have been vetted
 22 before and we'll hear more about that from
 23 Mr. Scherer, I assume, because he was the one
 24 that was aware of that.
 25 And last, but not least, your Honor has

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1 taken jurisdiction over these discovery matters
 2 and attempted to standardize discovery efforts
 3 for the trustee. There's a lot of people that
 4 want things from the trustee.
 5 The trustee is overseeing an estate
 6 which involved somewhere in excess of 70 lawyers
 7 and lots of cases and lots of problems, and
 8 literally millions of documents, and we have
 9 absolutely no problem with the standardized
 10 order, but that means that somehow or other we
 11 have to be able to deal with it in a standardized
 12 manner, instead of Mr. Farmer's suggestion, which
 13 is go back to State Court and deal with it over
 14 there.
 15 THE COURT: What is the status of the State
 16 Court proceeding?
 17 MR. NEIWIRTH: May I defer to my partner,
 18 who is more familiar with that?
 19 MR. KNIGHT: Your Honor, Christopher
 20 Knight, if I may? While we were waiting for the
 21 documents from the Stettin office, we obviously
 22 wanted to go down two tracks because we had an
 23 October trial date. The status of it is we could not
 24 come to an agreement with the other side.
 25 Mr. Ackerman was at the last hearing, in which the

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1 judge said, one, I need a representative of the
 2 trustee here and two, shouldn't this be back before
 3 you, Judge Ray.
 4 THE COURT: You can't proceed against
 5 Rothstein in the State Court, they're here.
 6 MR. KNIGHT: And that is the same thing I
 7 think Judge Crow recognized, and that's why we're
 8 back here, and that's why we had to file the motion.
 9 MR. ACKERMAN: The claim against
 10 Rothstein is against him individually, and it's
 11 against Brad Edwards individually, and it was
 12 against one of the claimants, LM individually.
 13 THE COURT: So it's not against the debtor
 14 estate.
 15 MR. ACKERMAN: That's correct.
 16 MR. KNIGHT: Just to go a little further on
 17 what Mr. Neiwirth was saying. Out of these documents
 18 we've been asking for for a long time, very few of
 19 them would even have privilege on their face because
 20 they have nothing to do with the clients that were
 21 represented, what's been called as LM.
 22 If there's going to be a log, if
 23 there's any need, which I don't think there is
 24 because I think privilege has been waived, it
 25 needs to be a log put together by the trustee,

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1 not anybody else that has some sort of interest
 2 in it.
 3 If there's a problem with payment for
 4 those, et cetera, our client has already offered
 5 to the trustee, to Mr. Lichtman, we will pay for
 6 it, whether it's a special master or whether it's
 7 a contract attorney, if they need to do that, but
 8 I don't think we even need to reach that.
 9 I think these documents are long
 10 overdue. They have been produced to others, they
 11 have been used in depositions for others, they
 12 are out there, and I think the privilege issue is
 13 just being used as a smoke screen to keep our
 14 client from being able to get the documents he
 15 needs to be able to prove his case.
 16 Thank you.
 17 MR. ACKERMAN: Your Honor, one other
 18 matter. Judge Crow expressed a concern about
 19 entering any order against the trustee or his
 20 counsel without them being present.
 21 Initially we had filed a motion to
 22 compel in the State Court, but we didn't realize
 23 at the time or it was unclear, because we had
 24 just taken over the case from another law firm,
 25 that the Court had entered its order.

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1 There was some discussion prior to the
 2 hearing and when we went to the hearing, it was
 3 clear that there was no agreement that had
 4 existed and Judge Crow said, I'm not entering an
 5 order, I'm not doing anything on this motion
 6 until the bankruptcy trustee is represented.
 7 He was concerned because this Court's
 8 order had set up the standardized procedure for
 9 dealing with these arguments and had reserved
 10 jurisdiction relating to any subpoena or request
 11 for documents from the trustee, so that's why
 12 we're here now.
 13 THE COURT: All right.
 14 MR. KNIGHT: Your Honor, just one other
 15 point. We tried to work, and we've been working with
 16 Mr. Lichtman, tried to work out a protective order
 17 between the trustee and Epstein regarding the
 18 subpoena. Mr. Lichtman and Ms. Sanchez agreed to
 19 language on it. I have a copy of it.
 20 Mr. Farmer, with his motion for
 21 protective order, would not agree to that, but if
 22 the Court would like to have a copy of what the
 23 draft was, I will approach your clerk, but if you
 24 do not want that, I also ---
 25 THE COURT: Well, let me hear from

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1 everybody first.
 2 MR. KNIGHT: Okay.
 3 MR. FARMER: Thank you, your Honor, may it
 4 please the Court. Again, Gary Farmer on behalf of
 5 the interested party, LM, also on behalf of
 6 Brad Edwards and I'm sorry, your Honor, Mr. Edwards
 7 is here with me. I neglected to introduce him to the
 8 Court earlier.
 9 MR. EDWARDS: Good morning, your Honor.
 10 MR. FARMER: There has been a lot of
 11 discussion here about your Honor's standardized
 12 production order and I think that you need to
 13 understand that this particular matter, which is
 14 before you today, is anything but standard or common
 15 to the matters before this Court.
 16 You need to understand the nature of
 17 the case. Jeffrey Epstein is an admitted
 18 convicted pedophile. He sexually assaulted
 19 dozens and dozens of young girls under the age of
 20 15. He pled guilty to this and he has settled
 21 every civil lawsuit filed against him on this
 22 issue.
 23 Despite all of this, Mr. Epstein has
 24 seen fit to file a lawsuit against LM, who is one
 25 of the plaintiffs against him; against

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1 Brad Edwards, LM's attorney; and against
 2 Mr. Rothstein.
 3 Now, Edwards, myself, and all the
 4 members of our firm were RRA attorneys when
 5 Mr. Rothstein took his ill-fated trip to Morocco
 6 and did the things which are now so well known,
 7 but the fact of the matter is that this discovery
 8 request is a blatant attempt to obtain clearly
 9 privileged documents related to the
 10 representation of LM and many other victims, by
 11 the way.
 12 And if I can show your Honor a copy of
 13 the subpoena itself, I don't think that the
 14 breadth of the subpoena has been adequately
 15 represented to the Court. If you peruse this,
 16 you will see they are asking for communications
 17 with private investigators, they're asking for
 18 contingency fee contracts, they're asking for
 19 every communication between any member of the
 20 firm, and they throw Rothstein in just to make it
 21 sexy, about these cases.
 22 Now, your Honor, clearly communication
 23 about the representation of a client falls under
 24 not only the work product, but if the client is
 25 involved in the communication, also the

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1 attorney/client privilege.
 2 Now, most of this stuff we've already
 3 responded and said none, none, none, but for many
 4 of these items, we have asserted the privilege
 5 and we continue to assert the privilege.
 6 Now, the only reason the trustee is
 7 here ---
 8 THE COURT: Wait, there's been a privilege
 9 asserted in the State Court proceeding?
 10 MR. FARMER: Yes, sir.
 11 THE COURT: And there is a privilege log
 12 and the judge has made a ruling?
 13 MR. FARMER: No. The dispute now really is
 14 over who's going to file the privilege log and
 15 respectfully, Judge, what we suggest is that the
 16 trustee has been thrust into this matter simply
 17 because the trustee stands in the shoes of all the
 18 former attorneys at RRA, and the trustee is likewise
 19 bound by the privileges that attach to the cases and
 20 to the lawyers that were at the firm.
 21 The trustee has repeatedly acknowledged
 22 the fact that it is bound by those privileges
 23 and, of course, as your Honor knows, the
 24 privilege belongs to the client, not to any
 25 lawyer or any law firm.

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1 So the trustee is really kind of stuck
 2 in the middle here. You've got the pedophile who
 3 wants documents related to the cases he's already
 4 settled and pled guilty for. Those documents,
 5 the electronic documents, at least, the e-mails,
 6 electronically stored information is how it's
 7 referred to in the discovery request, your Honor,
 8 are not in our possession, they are in the
 9 possession of the trustee because the trustee
 10 took the computer system.
 11 So the trustee doesn't want to incur
 12 the cost and expense of filing a privilege log
 13 and, frankly, I don't know that the trustee has a
 14 full appreciation of the nature and specific
 15 facts of the cases that would enable it to
 16 conduct a complete privilege log.
 17 So my suggestion, your Honor, and it's
 18 been rejected -- I believe it's acceptable to the
 19 trustee, but it's been rejected by Mr. Epstein's
 20 counsel, is the trustee be removed from this
 21 equation. There's no need that we come back
 22 before you.
 23 This case, this Epstein case, is not a
 24 matter which would involve bankruptcy estate
 25 assets going to Mr. Epstein. Unlike

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1 Mr. Scherer's clients, who have claims before
 2 this Court, and hopefully they will get some form
 3 of relief from the Bankruptcy Court, Epstein is
 4 not seeking any bankruptcy assets. He's suing
 5 Brad Edwards and LM personally, and Scott
 6 Rothstein, and it's not an estate claim, it's
 7 against Scott Rothstein personally.
 8 So my suggestion, your Honor, is that
 9 you instruct the trustee to turn this electronic
 10 documentation information over to us. We will
 11 file the appropriate privilege log with the
 12 Circuit Court judge who is presiding over the
 13 case, who is most familiar with the case, who
 14 will be considering the upcoming motion for
 15 summary judgment, and possibly trying the case,
 16 and that way your Honor is not burdened with this
 17 matter, the trustee does not incur fees and
 18 expenses of having to go through all of these
 19 documents, prepare a privilege log and our
 20 clients and Mr. Edwards -- Mr. Edwards is also a
 21 party of that lawsuit. He enjoys his own
 22 privilege, your Honor, over and above, or in
 23 addition to, I should say, the privilege
 24 possessed by our former clients and, of course, I
 25 know counsel knows that the privilege extends

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1 beyond the litigation.
 2 So although Mr. Epstein paid a ton of
 3 money for this claim that is supposedly
 4 frivolous, it has been settled, but the privilege
 5 still extends and it remains in place. So we
 6 simply want to make sure that our investigative
 7 materials, our reports, other documentation
 8 relating to the claims we have and have had
 9 against Jeffrey Epstein are not put into the
 10 hands of Jeffrey Epstein's attorneys.
 11 Now, we just want the chance to review
 12 these documents and prepare the privilege log and
 13 the trustee is kind of stuck in the middle here,
 14 Judge. Remove the trustee from the equation, let
 15 us get the documents, we'll file the privilege
 16 log, and then Mr. Epstein and us can go before
 17 Judge Crow. He can review the privilege log,
 18 review the documents in camera.
 19 All that is going to be pretty time
 20 consuming, but he's much more suited, a better
 21 suited judge because he's more familiar with the
 22 facts to engage in that inquiry.
 23 THE COURT: Thank you.
 24 MR. FARMER: Thank you, your Honor.
 25 THE COURT: Mr. Lichtman, Mr. Scherer, your

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1 input, please.
 2 MR. LICHTMAN: I'm going to let Mr. Scherer
 3 go first.
 4 MR. SCHERER: I think he wants me to go
 5 first.
 6 THE COURT: All right.
 7 MR. SCHERER: Your Honor, in November
 8 we filed a lawsuit in State Court and we alleged
 9 that as a part of Mr. Rothstein and the firm, and
 10 the firm's employees, and maybe some of the
 11 firm's attorneys, conspired to use the Epstein/LM
 12 litigation in order to lure \$13.5 million worth
 13 of my victims, my clients, into making
 14 investments in these phoney settlements.
 15 And as we alleged in that State Court
 16 proceeding, and we've sharpened the allegations
 17 as we've amended a few times, we allege that
 18 sometime in late October, that my clients were
 19 invited into the Rothstein firm with
 20 Mr. Rothstein, and he explained that he had a
 21 litigation going in State Court with Mr. Edwards
 22 representing LM, a victim of Mr. Epstein, and
 23 these are kind of sensational allegations and
 24 it's been printed widely.
 25 And my clients, a number of them and

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1 their lawyer, went into the Rothstein conference
 2 room and Mr. Rothstein brought down -- summoned
 3 the investigators, two of them, two or three of
 4 them, to bring down the Epstein file. And the
 5 lawyer that my clients brought from a national
 6 firm, went through the LM boxes, ten of them that
 7 the investigators brought down, and concluded
 8 that the Epstein case was a real case.
 9 And what Mr. Rothstein did with that
 10 real case, of course, is he told everybody that
 11 not only did he have the LM client of
 12 Mr. Edwards, that there were a number of other
 13 young ladies, that was widely published in the
 14 newspaper, that the firm was representing and
 15 that wanted to settle with Mr. Epstein on a
 16 confidential basis.
 17 So he used the real case in order to
 18 defraud my clients into investing into these
 19 phoney settlements and paid 13 and a half million
 20 dollars. I believe that Mr. Rothstein and others
 21 in the firm also told that story to a lot of
 22 other people, and let a lot of other people
 23 examine those ten boxes of the real case.
 24 In addition, as we have alleged, that
 25 Mr. Edwards and the firm put sensational

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1 allegations in the LM case that they knew were
 2 not true, in order to entice my clients into
 3 believing that Bill Clinton was on the airplane
 4 with Mr. Epstein and these young woman and other
 5 personages, I can't remember who they are, and
 6 all sorts of other allegations that really were
 7 not even related to the LM case.
 8 And to the extent that any lawyers from
 9 the RRA firm, former lawyers, made a ton of money
 10 or however Mr. Farmer talked about it, we're
 11 interested in that ton of money because if they
 12 were involved in this scheme, this fraud, there's
 13 a crime fraud exception, and in addition, I want
 14 to see the ten boxes that they brought down.
 15 The trustee does not have those ten
 16 boxes. Those ten boxes were taken by Mr. Edwards
 17 when he left the law firm, I presume. So we want
 18 the ten boxes, we want all the communications and
 19 we want to look through everything on behalf of
 20 my State Court case, but also on behalf of the
 21 creditors' committee because the creditors'
 22 committee is looking to see if anybody else in
 23 the firm, other than Rothstein, was involved in
 24 this massive fraud that used the Epstein case.
 25 The model of using an existing case and

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1 then spinning off a fraud from it is the same
 2 that was perpetrated on the Morse -- in the Morse
 3 situation, as has been alleged and widely
 4 produced.
 5 I can't conceive that Mr. Edwards and
 6 the predecessor law firm would have any standing
 7 to prepare privilege logs or anything else, given
 8 what I just told the Court. That would be like
 9 having the fox guard the hen house. That Epstein
 10 case is settled, and to the extent it's the ten
 11 boxes of stuff that we looked through, and I'll
 12 have to get the boxes to see if the attorney who
 13 looked through them, and how much time he spent
 14 looking through them --
 15 THE COURT: Where are the ten boxes?
 16 MR. SCHERER: That's a good question.
 17 The trustee does not have the ten boxes. I
 18 presume the ten boxes are residing with the
 19 lawyers who took the case, Mr. Edwards and the
 20 successor law firm. The trustee does not have
 21 them. And then in addition, there's about 6,000
 22 e-mails that the trustee has, and I bet you when
 23 we look at Qtask, there's going to be a boatload
 24 more.
 25 My clients were also advised during

5 (Pages 17 to 20)

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|---|--|
| <p style="text-align: right;">Page 21</p> <p>1 their due diligence, short due diligence to 2 settle these cases with these young ladies -- 3 these putative young ladies who had to get the 4 money and leave town because of whatever the 5 stories were, that there were other members of 6 the firm that told my clients that they, indeed, 7 had even identified more of these victims that 8 Mr. Rothstein didn't even know about at that 9 time. So we know it wasn't just Mr. Rothstein 10 spinning the tale, there were a lot of people in 11 the firm. 12 We've alleged almost all of this in our 13 State Court action that we filed in November, up 14 to where we are right now, but, your Honor, I 15 think your Honor is going to have to deal with 16 these issues in this court and I would urge you 17 to have the trustee get involved and let the 18 trustee do its job with respect to whether there 19 are privileges that need to be protected, work 20 product or attorney/client privileges, given 21 what's going on, and I believe the trustee will 22 be investigating whether the trustee wants to 23 bring any claims on behalf of the estate by 24 virtue of what I've just laid out for you. 25 Thank you.</p> | <p style="text-align: right;">Page 23</p> <p>1 to take those ten boxes to start with. 2 THE COURT: All right. Mr. Lichtman. 3 MR. LICHTMAN: Good morning, Judge. I'm 4 going to try to walk you through sort of 5 chronologically the trustee's perspective of what has 6 happened here. I think that what I've heard from all 7 the parties are comments that are correct, and not 8 necessarily correct, and I'm not suggesting 9 falsehoods. We just have kind of a different 10 perspective of some things and there are some points 11 that ought to be corrected. 12 Mr. Stettin received a subpoena in a 13 Palm Beach State Court action for production of 14 documents, and as we had done in virtually every 15 subpoena, we went to our forensic accountants, 16 the Berkowitz Dick Pollack & Brant firm, and 17 said, okay, we need to produce e-mails and we 18 need to also then, with the staff that we have at 19 Berger Singerman and elsewhere, and look to see 20 if there are any hard documents that we can find, 21 notwithstanding what we'll call the issues as to 22 the RRA hard drive that contain client files. 23 We quickly realized that this is a 24 claim different than all of the other subpoenas. 25 The subpoenas that we had been receiving from</p> |
| <p style="text-align: right;">Page 22</p> <p>1 THE COURT: So your lawsuit in State Court 2 names these people as defendants? 3 MR. SCHERER: It names Rothstein. It 4 does not name Mr. Edwards. It just names 5 Rothstein, not the firm, and lays out the facts 6 and says other people in the firm. We did not 7 name them because we want to see the documents 8 and see whether they had involvement. 9 But the facts that I have alleged for 10 you, your Honor, is pretty much what I've alleged 11 in my first through third amended complaint in 12 State Court. 13 THE COURT: So, in essence, your position 14 in this matter would be to support the motion to 15 compel and deny the motion for protective order? 16 MR. SCHERER: Yes, sir, notwithstanding 17 that Mr. Epstein is a convicted pedophile. I 18 want to put that on the record. You know, he's 19 served his time and whatever, but I support the 20 same position that he -- that he has asked the 21 Court, and that is to have the trustee deal with 22 this, get these documents and deal with it with 23 you, rather than allow the successor law firm to 24 have them. 25 I don't know where they had the right</p> | <p style="text-align: right;">Page 24</p> <p>1 virtually every other party in the case were 2 requests for production of documents related to 3 claims that those moving parties or requesting 4 parties would have as it pertains to them trying 5 to recover some aspect of money as pertained to 6 the Ponzi scheme. 7 Okay. Like Mr. Scherer, who said I 8 need a bunch of documents, can you help us? So 9 we would enter into, on a one by one basis, a 10 protective order that was very, very tightly 11 negotiated. There is no standard form protective 12 order in this case, contrary to what everybody 13 has told you. We have a form that we use, and 14 everybody that has come to us, we said, we need 15 to have a protective order in place -- 16 THE COURT: We have Docket Entry 672, which 17 apparently is the document production protocol. 18 MR. LICHTMAN: We have that, yes, but then 19 we also, as an example, Document 685, have a 20 protective order that was entered with Mr. Scherer's 21 clients. We have, as an example, Document 715 that 22 pertains to MS Capital, and on and on. 23 So, in any event, what we realized is 24 the case with respect to the Epstein vs. Scott 25 Rothstein, Bradley Edwards case, is this is</p> |

6 (Pages 21 to 24)

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1 different. This is not an asset either to the
 2 RRA estate, nor is it really an asset to any
 3 potential creditor of the RRA estate that is
 4 investigating claims that can bring a recovery
 5 that can help in terms of the overall dollars
 6 into either RRA or to a particular creditor on
 7 their individual lawsuits.
 8 The Epstein case, rather, is a lawsuit
 9 between a third party that was being sued by the
 10 Rothstein firm against Rothstein lawyers, and we
 11 had a different privilege issue than we had
 12 focused on with all these other document
 13 productions.
 14 So we get the 6,000 e-mails, and on the
 15 eve of one of my colleagues getting ready to
 16 enter into -- either enter into one of these
 17 protective orders or say, here, take them, like
 18 we've done with everybody else, we looked up and
 19 Mr. Stettin and I said, time out. We have a
 20 legitimate privilege issue here.
 21 And I want to be clear, we don't want
 22 to come anywhere close to stepping in the mess of
 23 waiving attorney/client privilege, unless and
 24 until the Court tells us to, and I want to also
 25 be clear, we wish we weren't here. We would

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1 prefer not to have a fight on any of this stuff
 2 and on one hand, we don't care who does the
 3 privilege log and who gets the documents, and on
 4 the other hand, because of some things that
 5 Mr. Scherer just commented on, that I learned
 6 literally today, and because of the common
 7 interest agreement that everybody knows we have
 8 with Mr. Scherer and the committee, in some
 9 respects, I don't think it prudent for me to
 10 discuss why I would want to look at some of those
 11 documents.
 12 But be that as it may, we found that
 13 there were 6,000 e-mails and this was the one
 14 time that rather than go through the usual
 15 protocol of preparing the stipulated protective
 16 order that is effectively a mirror image of that
 17 which is provided by Federal Rule of Evidence
 18 502, we said there is a need for a real privilege
 19 log here.
 20 There are 6,000 e-mails, give or take,
 21 and we quickly assessed that the time to review
 22 6,000 e-mails, this could not be done by a
 23 paralegal, it would have to be done by a lawyer.
 24 THE COURT: Does this include Qtask or is
 25 this in addition to?

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1 MR. LICHTMAN: Qtask is not part of this
 2 equation as of right now. Now, it may be, and we're
 3 still trying to get that. I'm just talking about
 4 internal e-mails where we would put in a name search,
 5 give it to the Berkowitz firm and say, run an e-mail
 6 search on the following names.
 7 And when we realized the volume of
 8 work, and you can imagine, you know, like from a
 9 ream of paper, 500 sheets of paper, and you
 10 multiply that out and you get to 12 reams of that
 11 paper, it takes up a lot of paper, it takes up a
 12 tremendous amount of time. This is not an asset
 13 of the estate that we can, if we have to, warrant
 14 doing the work, the hard work, as we've done on
 15 many of the other claims, some of which already
 16 are before you for settlement purposes. This is
 17 a liability to the estate and an expensive one.
 18 So we really didn't want to go through
 19 the undertaking of having to protect the
 20 privilege, though we would, and candidly,
 21 Epstein's counsel has said we'll pay you to do
 22 it, but then there's also the manpower issue
 23 because we are pressed very hard to get certain
 24 adversaries moving as quickly as we can and we're
 25 fighting a lot of battles on a lot of different

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1 grounds, we still really don't want to do that,
 2 and also because we don't know the Epstein case
 3 well enough to be able to assess what is
 4 privileged, what is not, and preparing a
 5 privilege log the proper way is really a time
 6 consuming mess.
 7 So I teed it up for both sides and
 8 said, here's what I'm willing to do. Putting
 9 aside the issue as to really whether or not the
 10 Court does have jurisdiction on a State Court
 11 subpoena, which ultimately I leave to you, we
 12 said, we're still willing to enter into a
 13 modified version of the protective order that we
 14 gave to you, which effectively provides the
 15 additional language of no claims can be brought
 16 against Mr. Stettin or the estate if we produce
 17 these documents.
 18 We don't really have a bone to pick in
 19 this mess, we just want to make sure that we
 20 follow all of the ethical boundaries required by
 21 Florida law, by rules of professional conduct.
 22 We don't wish to necessarily waive somebody
 23 else's privilege. We don't think that's
 24 necessarily prudent, but we really don't want to
 25 have a fight in this battle, and we wanted the

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| <p style="text-align: right;">Page 29</p> <p>1 Court to approve -- whatever it is you want us to 2 do, to tell you the truth, we're happy to do. We 3 just want to make sure that Mr. Stettin is 4 personally insulated and that the estate is 5 insulated in whatever it is -- 6 THE COURT: All I see is -- 7 MR. LICHTMAN: -- you direct. 8 THE COURT: -- the potential of a claim 9 against Stettin and the estate for breach of the 10 attorney/client privilege. 11 MR. LICHTMAN: correct. 12 THE COURT: So the basis -- 13 MR. LICHTMAN: And hence the dilemma. 14 THE COURT: -- for the claim is there. 15 MR. LICHTMAN: Yeah, right, hence the 16 dilemma. 17 Now we come to the issue of hard 18 documents because the e-mails are one thing, and 19 I had a number of conversations candidly with 20 Ms. Sanchez, where I think that we had told her 21 originally we had heard there were, as an 22 example, some loan files or transaction files 23 related to Ponzi deals related to Mr. Epstein, 24 because I remember myself even hearing that going 25 back many, many, many months ago.</p> | <p style="text-align: right;">Page 31</p> <p>1 they had been counsel for LM and others in 2 litigation respecting Epstein, and that we 3 assumed that they would have been files they 4 would want; and B, because at the time that this 5 matter on the subpoena came before the State 6 Court judge, we stood outside the courtroom and 7 here's what happened. I was effectively going to 8 tell the State Court judge basically the same 9 story I've told you in complete detail and say, 10 we don't really care. We just want to make sure 11 Mr. Stettin is protected and the estate is 12 protected. 13 And we had reached an agreement that 14 day, which was we were going to turn over the 15 boxes to Mr. Farmer's firm and we were going to 16 give e-mails to them, and they were going to do 17 the privilege log because that would save us a 18 ton of time, important time, and as important, a 19 lot of money to the estate, and we did not wish 20 to burden the creditors of the estate with legal 21 fees for putting together the privilege log, so 22 it was agreed that we would do that. 23 I, personally, reiterated the terms to 24 all the lawyers that were standing outside the 25 courtroom, as to what was to be reflected in a</p> |
| <p style="text-align: right;">Page 30</p> <p>1 Suffice it to say, that I have 2 conducted a very thorough discussion, without 3 waiving our internal privileges or work product, 4 and we can't find those, and it appears as if 5 they really did not exist, that what had occurred 6 is that somehow Epstein was listed on a sheet for 7 a potential deal that never closed. 8 In terms of the ten boxes of documents, 9 one of the functions the trustee served early on 10 in the case was to facilitate transfers of 11 files -- 12 THE COURT: I remember that. 13 MR. LICHTMAN: -- from two attorneys that 14 were handling cases. All right. I had a general 15 understanding that most of the files were picked up 16 by the Farmer firm because they were continuing on 17 with that litigation, and that would have made some 18 sense, but then we had also heard that there were 19 some boxes that were left behind. 20 I believe there are two boxes, I'm not 21 positive of that, two boxes I think that we may 22 still have, and I'm pretty sure we've sent 23 e-mails a couple of times to the Farmer firm 24 saying, come get your documents. 25 Now, why would we do that? A, because</p> | <p style="text-align: right;">Page 32</p> <p>1 written order because I didn't want to leave it 2 to chance as to what was agreed on. 3 Suffice it to say, when the lawyers for 4 Mr. Epstein and the lawyers for Mr. Edwards went 5 back to try to reduce to writing that which was 6 in part agreed upon outside the courtroom, they 7 were unable to do so, and that teed up the filing 8 of the motion before you to compel us to produce 9 the e-mails and the documents. 10 I wish to reiterate, I think that 11 Mr. Scherer has shared something with me that we 12 need to investigate and will, and I was unaware 13 of that literally until I rode up the elevator 14 with him this morning. And I don't wish to spend 15 more time on it than that right now, but I take 16 him at his word because an awful lot of what I've 17 seen him work on so far has borne fruit. 18 I don't care what you want us to do. 19 All I want to know is that at the end I can walk 20 out of court with an order that protects the 21 estate and protects Mr. Stettin. So I have told 22 you the story and leave it to you to fashion what 23 remedy you think appropriate. 24 If I can answer any questions, I'm 25 happy to.</p> |

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| <p style="text-align: right;">Page 33</p> <p>1 THE COURT: Well, the trustee knows what 2 the trustee has, obviously. 3 MR. LICHTMAN: Yes. 4 THE COURT: So the trustee is capable of 5 preparing a log of what he has. 6 MR. LICHTMAN: Meaning we have the 7 following data. 8 THE COURT: Yes. 9 MR. LICHTMAN: Yes, we can do that. 10 THE COURT: Then the parties can then argue 11 whether or not that is subject to privilege. The 12 plaintiff can still get from Mr. Farmer and his 13 clients in the State Court discovery. The discovery 14 being sought here is from the trustee -- 15 MR. LICHTMAN: Correct. 16 THE COURT: -- and would be subject to the 17 trustee's responsibility for the privilege log 18 because of his potential liability. 19 MR. LICHTMAN: Yes, and I think you 20 understand, though, why if we can somehow deflect 21 that responsibility, because of the extreme amount of 22 cost and time to do that, we would be happy to do 23 that because, you know, otherwise, we submit fee 24 petitions that show a tremendous amount of time on 25 something that doesn't produce an asset to the</p> | <p style="text-align: right;">Page 35</p> <p>1 MR. FARMER: Yes, your Honor. Just very 2 briefly. I thank you for the opportunity to address 3 the Court again. I just wanted to clear something 4 up, your Honor. Understand that when this all 5 happened, there were six of us now who are partners, 6 who had dozens and dozens of on-going cases. 7 THE COURT: I remember we held hearings and 8 I authorized the trustee -- 9 MR. FARMER: And you authorized, yes. 10 THE COURT: -- to deliver the information 11 so the lawyers could continue to represent the 12 clients. 13 MR. FARMER: It just seemed to be maybe 14 suggested here today that something untoward occurred 15 as far as the removal of these boxes. These were 16 litigation files, pleadings, investigative reports, 17 all of these things. 18 So we needed to get on with those 19 cases, but I think you've heard now from the 20 trustee that this is not an asset and it is an 21 expense. I still think that we are the party who 22 should prepare this privilege log. We are most 23 familiar -- 24 THE COURT: Well, no, if I appoint a 25 special master, you will have an input into that</p> |
| <p style="text-align: right;">Page 34</p> <p>1 estate, just a liability. 2 THE COURT: Right. This is not an asset of 3 the estate. 4 MR. LICHTMAN: No, it's just a liability. 5 THE COURT: But could be a substantial 6 liability. 7 MR. LICHTMAN: Hence the dilemma. 8 THE COURT: Well, I can appoint a special 9 master to do it at the expense of the movant and not 10 release the information until the special master 11 reports back to me and I authorize the release. 12 What I propose to do by my authorizing 13 the release -- I'm sorry, Stettin, as trustee, to 14 release the information, I would, therefore, be 15 protecting the estate from any claims for the 16 release of that information. 17 MR. LICHTMAN: We would be happy to do 18 that, your Honor, and I note, I don't wish to speak 19 for the Epstein lawyers, they actually offered to pay 20 time for us doing that, and I said, well, you know, 21 that's part of the equation, the other part is --- 22 THE COURT: No, no, no, I can appoint a 23 special master. 24 MR. LICHTMAN: Yes. 25 THE COURT: All right. Mr. Farmer.</p> | <p style="text-align: right;">Page 36</p> <p>1 special master and you'll have an opportunity to be 2 heard before me before I authorize the release of the 3 information, because ultimately the order that's 4 going to authorize the release of the information is 5 going to provide protection to the trustee and the 6 estate. 7 MR. FARMER: And, thank you, Judge, I just 8 wanted to make sure, and I was going to request, that 9 we have an opportunity to review whatever the master 10 does and if we think they've missed a privilege or 11 are wrong in an assertion, that we have an 12 opportunity to address that. 13 THE COURT: There is going to be a hearing 14 before the information gets released. 15 MR. FARMER: Understood. Thank you, your 16 Honor. 17 THE COURT: All right. Mr. Lichtman -- 18 MR. LICHTMAN: Yes. 19 THE COURT: -- I want you to prepare the 20 order. I'm going to continue the hearing on the two 21 motions, Docket Entry 807 and 819, and I'm going to 22 have you draft an order appointing a special master, 23 the expense of which will be borne by the Epstein 24 movants. The special master will meet with both 25 sides, Epstein and Edwards, and then with the</p> |

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| <p style="text-align: right;">Page 37</p> <p>1 trustee, and will prepare a privilege log, the 2 release of which will be noticed for hearing in front 3 of me. 4 MR. LICHTMAN: Do I pick the special master 5 or do you? 6 THE COURT: You can -- if you all can -- I 7 hate to use the word agree, but if you all can agree, 8 that's fine. If you can't agree, give me three names 9 to choose from. 10 MR. LICHTMAN: Okay. 11 THE COURT: You're going to have to check 12 with this, quote, "special master" to make sure they 13 have the time to review the privilege log. 14 MR. LICHTMAN: The documents. 15 THE COURT: And it has to be somebody that 16 doesn't have a conflict of interest. 17 MR. LICHTMAN: Right. Okay. 18 THE COURT: All right. Run the order by 19 Mr. Neiwirth and Mr. Farmer. 20 MR. LICHTMAN: Thank you. 21 MR. FARMER: Thank you, your Honor. 22 MR. NEIWIRTH: Your Honor, may it please 23 the Court? 24 THE COURT: Yes. 25 MR. NEIWIRTH: Can we say something about</p> | <p style="text-align: right;">Page 39</p> <p>1 2 3 CERTIFICATION 4 5 STATE OF FLORIDA: 6 COUNTY OF DADE: 7 8 I, Margaret Franzen, Shorthand Reporter 9 and Notary Public in and for the State of Florida 10 at Large, do hereby certify that the foregoing 11 proceedings were taken before me at the date and 12 place as stated in the caption hereto on Page 1; 13 that the foregoing computer-aided transcription is 14 a true record of my stenographic notes taken at said 15 proceedings. 16 WITNESS my hand this 5th day of 17 August, 2010. 18 19 20 21 Margaret Franzen 22 Court Reporter and Notary Public 23 in and for the State of Florida at Large 24 My Commission Expires: April 14, 2014 25</p> |
| <p style="text-align: right;">Page 38</p> <p>1 the time frame because as we sit here right now we 2 still have a trial coming in October. 3 THE COURT: Well, I understand that, but I 4 probably have between five and 6,000 active cases 5 right now and within the Rothstein case, I don't even 6 know how many adversaries and contested matters are 7 pending. I'll get to it as soon as I can. 8 But you can proceed to obtain the 9 information from Edwards and LM in the State 10 Court proceeding. All I'm governing is what the 11 trustee is going to release from the debtor 12 estate. 13 All right. Mr. Lichtman, see to the 14 order. 15 MR. EDWARDS: Thank you, your Honor. 16 MR. FARMER: Thank you for your time, your 17 Honor. 18 MR. NEIWIRTH: Thank you, Judge. 19 (Thereupon, the hearing was concluded.) 20 21 22 23 24 25</p> | |

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