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VIA EMAIL AND U.S. MAIL

March 16, 2011

Robert B. Carney, Special Master  
2281 Saratoga Lane  
West Palm Beach, FL 33409

Re: Edwards adv. Epstein  
Our File No.: 291874

Dear Judge Carney:

The attached copy of your draft Interim Report of the Special Master reflects by interlineations the changes we propose be made both to correct minor errors and to accurately reflect the current status of the proceedings. A second copy of the report incorporating these changes is also included.

Perhaps because it is so obvious, it has until now escaped my attention that there is a very simple solution to the procedural tangle in which we find ourselves. Your appointment as Special Master was necessitated by the fact that the trustee had exclusive possession of the documents sought in discovery in the state court proceedings. Judge Ray appropriately felt obliged to protect privileged documents from disclosure to third parties and appointed you to carry out that responsibility since no RRA attorney was in a position to protect documents he/she did not possess.

The circumstances that gave rise to the need for your services to the bankruptcy court no longer exist. Former RRA lawyers now have the documents and are now able to fulfill their own obligations. This entire procedural problem ends if Judge Ray simply says that discovery in the bankruptcy proceedings may be sought from the trustee but document discovery in the state court proceedings should be sought from Mr. Edwards who is now in possession of a duplicate copy of documents that are no longer in the exclusive possession of the trustee.

Just a thought for your consideration, particularly since we do not have Mr. Epstein's consent to your appointment as Special Master in the state court proceedings.



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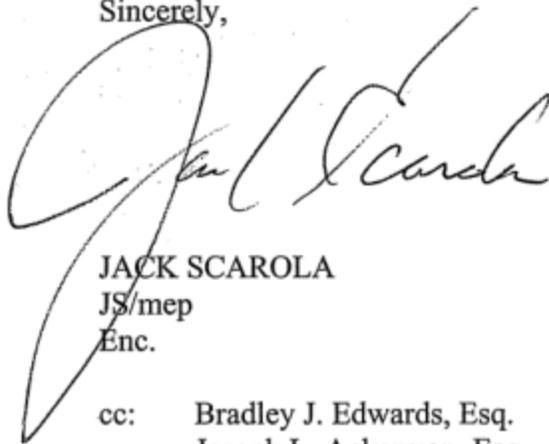
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Thank you again for the significant time and effort you have devoted to this matter.

Sincerely,



JACK SCAROLA  
JS/mep  
Enc.

cc: Bradley J. Edwards, Esq.  
Joseph L. Ackerman, Esq.  
Christopher Knight, Esq.



## Interim Report of the Special Master

Robert B. Carney, your Special Master, files this his Interim Report. The purpose of the Report is to keep the court advised regarding the progress made so far and to make some recommendations for future action.

The most recent Order of this court required the Defendants to produce ~~of~~ a Privilege Log by January 31, 2001. While a Privilege Log was presented timely, Plaintiff objected that it was not in compliance with Tig Ins. Corp. v. Johnson, 799 So.2d 339 (Fla. 4<sup>th</sup> DCA 2001). The Parties met with your Special Master <sup>on</sup> in February <sup>16, 2001</sup> and came to an agreement for production of a more Tig compliant Privilege Log. This second log was produced and the Plaintiff again objected to its form. Again, the parties and the Special Master met, this time on March 15, 2011. At this second meeting, the Plaintiff requested that the Special Master recommend sanctions to and including a determination of a waiver of privilege.

As of this interim report a rather extensive list of documents has been pared from approximately ~~sixteen~~ <sup>TWENTYEIGHT</sup> thousand <sup>28</sup> (~~16,000~~) documents to approximately ~~two thousand~~ <sup>FIFTEEN HUNDRED</sup> (~~2,000~~) <sup>1,500</sup> documents. All documents other than the ~~two thousand~~ <sup>1,500</sup> (~~2,000~~) have been released to the Plaintiff. The remaining documents are emails, many of which have multiple recipients and include 'strings' of other emails. Your Special Master determined that the nature of the documents make very difficult the production of a Privilege Log for which there cannot be an objection raised. Continuing with production and objection was, in your Special Master's view, going to be counterproductive both in time and efficiency.

After discussion of this with the parties your Special Master has directed the following: 1. Defendant will produce to Plaintiff a master list of the names contained in the privilege log describing who they are. This

production shall be done not later than March 22, 2011. This will provide the Plaintiff with a better ability to determine if there is any third party disclosure. 2. On April 6, 2011, the parties will be present while your Special Master conducts ~~and~~ in camera inspection of the documents. The purpose of the in camera inspection is to cull the documents further and provide Plaintiff with further information regarding the specifics of the privilege asserted.

Following this in camera inspection, the parties will schedule an evidentiary hearing for a final resolution of the privilege issue with the Report of the Special Master to follow shortly thereafter.

#### Additional Recommendations

This matter came before this court because this court, through the trustee, had possession of the documents that Mr. Epstein sought in his state court action. Judge Crow, the state court judge has deferred to the procedures in place in the bankruptcy court while at the same time noting that he is not bound by the decisions of the bankruptcy court as it pertains to state court procedural and evidentiary rulings.

This leaves open the potential for conflicting court orders. While others before the bankruptcy court may have an interest in these documents, too, the fact remains that they are not party to the state court action, and Mr. Epstein is not party to any bankruptcy court action. Nor are they involved in any hearings before your Special Master. Mr. Epstein's rights derive solely as a result of his state court action, and Judge Crow is correct that he is, indeed, the presiding judge for procedural and evidentiary matters in that action.

My recommendations are as follows:

1. ~~The parties approach~~ Judge Crow regarding appointing your Special

Master as a Special Master also in the state court action. MR. EPSTEIN'S CONSENT IS NECESSARY IN ORDER FOR THAT APPOINTMENT TO BE MADE, AND MR. EPSTEIN HAS THUS FAR DECLINED TO CONSENT.

AND MR. EPSTEIN

2. If Judge Crow<sup>^</sup> agrees to such appointment, and if this court agrees, then the final report of the Special Master would be provided to both the bankruptcy judge and the state court judge, and objections, while presented to both, would be directed to Judge Crow. If there is an order adopting the Recommendations of the Special Master it would come from Judge Crow. Likewise if any objections are sustained, that order, too, would come from Judge Crow.
3. By taking this approach, the potential of conflicting orders is eliminated. Implementation of any order entered by Judge Crow regarding documents in the possession of the trustee would be by order of this court, which leaves this court properly in control of documents in its possession. At the same time, this procedure relieves this court of having to resolve state court evidentiary issues <sup>AS TO</sup> ~~for~~ which this court has no interest.
4. If both Judge Crow and Judge Ray are amenable to this procedure, then each court's Orders<sup>^</sup> <sup>SHOULD</sup> be entered or amended accordingly.

The parties have agreed that Judge Crow needs to be involved in this process. As Mr. Ackerman noted in his February 11, 2011, letter to me: "We do not object to Judge Crow being presented with your report and ruling on any objections to it, provided Judge Ray agrees." Likewise, the Defendant has repeatedly requested that Judge Crow be the one to rule on any objections or be the one to adopt the Recommendations of the Special Master.

Your Special Master makes this his recommendation since as of yet, the parties, while agreeing in principal, have <sup>NOT</sup> ~~neither~~ ~~approached~~ Judge Crow ~~regarding the appointment in state court~~ nor approached Your Honor to see if this court is amenable to that suggestion. If this

recommendation does not itself provide that nudge, then perhaps this court can.

Respectfully submitted this     day of March 2011.

Robert B. Carney  
Special Master

## Interim Report of the Special Master

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As of this interim report, a rather extensive list of documents has been pared from approximately twenty eight thousand (28,000) documents to approximately fifteen hundred (1,500) documents. All documents other than the 1,500 have been released to the Plaintiff. The remaining documents are emails, many of which have multiple recipients and include 'strings' of other emails. Your Special Master determined that the nature of the documents make very difficult the production of a

Privilege Log for which there cannot be an objection raised. Continuing with production and objection was, in your Special Master's view, going to be counterproductive both in time and efficiency.

After discussion of this with the parties your Special Master has directed the following: 1. Defendant will produce to Plaintiff a master list of the names contained in the privilege log describing who they are. This production shall be done not later than March 22, 2011. This will provide the Plaintiff with a better ability to determine if there is any third party disclosure. 2. On April 6, 2011, the parties will be present while your Special Master conducts an in-camera inspection of the documents. The purpose of the in-camera inspection is to cull the documents further and provide Plaintiff with further information regarding the specifics of the privilege asserted.

Following this in-camera inspection, the parties will schedule an evidentiary hearing for a final resolution of the privilege issue with the Report of the Special Master to follow shortly thereafter.

#### Additional Recommendations

This matter came before this court because this court, through the trustee, had possession of the documents that Mr. Epstein sought in his state court action. Judge Crow, the state court judge has deferred to the procedures in place in the

bankruptcy court while at the same time noting that he is not bound by the decisions of the bankruptcy court as it pertains to state court procedural and evidentiary rulings. It is Judge Crow's stated intention to make the determination himself of the proper scope of discovery in the state court action pending before him.

This leaves open the potential for conflicting court orders. While others before the bankruptcy court may have an interest in these documents, too, the fact remains that they are not party to the state court action, and Mr. Epstein is not party to any bankruptcy court action. Nor are they involved in any hearings before your Special Master. Mr. Epstein's rights derive solely as a result of his having issued a subpoena duces tecum to the bankruptcy trustee to obtain discovery in the state court action, and Judge Crow is correct that he is, indeed, the presiding judge for procedural and evidentiary matters in that action.

My recommendations are as follows:

1. Mr. Edwards has requested that Judge Crow appoint your Special Master as a Special Master also in the state court action. Mr. Epstein's consent is necessary in order for that appointment to be made, and Mr. Epstein has thus far declined to consent.

2. If Judge Crow and Mr. Epstein agree to such appointment, and if this court agrees, then the final report of the Special Master would be provided to both the bankruptcy judge and the state court judge, and objections, while presented to both, would be directed to Judge Crow. If there is an order adopting the Recommendations of the Special Master it would come from Judge Crow. Likewise, if any objections are sustained, that order, too, would come from Judge Crow.

3. By taking this approach, the potential of conflicting orders is eliminated. Implementation of any order entered by Judge Crow regarding documents in the possession of the trustee would be by order of this court, which leaves this court properly in control of documents in its possession. At the same time, this procedure relieves this court of having to resolve state court evidentiary issues as to which this court has no interest.

4. If both Judge Crow and Judge Ray are amenable to this procedure, then each court's orders should be entered or amended accordingly.

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repeatedly requested that Judge Crow be the one to rule on any objections or be the one to adopt the Recommendations of the Special Master.

Your Special Master makes this his recommendation since as of yet, the parties, while agreeing in principal, have not approached Your Honor to see if this court is amenable to that suggestion. If this recommendation does not itself provide that nudge, then perhaps this court can.

Respectfully submitted this \_\_\_\_\_ day of March, 2011.

Robert B. Carney  
Special Master