

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT, 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 562010CA000161

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, individually,
BRADLEY J. EDWARDS, individually,
And [REDACTED], individually,

Defendants.

* * * * *

HEARING BEFORE: HONORABLE DAVID F. CROW

DATE TAKEN: March 31, 2011

TIME: 8:32 [REDACTED] to 8:53 [REDACTED]

PLACE: Palm Beach County Courthouse
205 N. Dixie Highway, Room 9C
West Palm Beach, Florida 33401

REPORTED BY: Kathleen M. Ames, RPR

A P P E A R A N C E S:

JOSEPH L. ACKERMAN, JR., ESQUIRE

OF: FOWLER, WHITE, BURNETT, ■■■■.
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APPEARING ON BEHALF OF THE PLAINTIFF

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APPEARING ON BEHALF OF DEFENDANT, EDWARDS

P R O C E E D I N G S

* * * *

THE COURT: Good morning.

MR. SCAROLA: Good morning, Your Honor.

MR. ACKERMAN: Good morning, Your Honor.

THE COURT: Okay. Mr. Scarola, this is reconsideration on the discovery orders I entered. I've read the motion. I've looked at the orders and the responses that were filed and the objections that were filed. What I don't have, which was included in the packet and I didn't have time to go back and look for it, is the actual request for the interrogatories themselves. And, although I have read the Alvarez case, obviously, Judge Fine's tire case, could you give me the cite again because it wasn't attached to your --

MR. ACKERMAN: It's 35 Florida Law Weekly D2630.

THE COURT: Thanks.

MR. SCAROLA: I have an extra copy if Your Honor would like that?

THE COURT: That would be fine. I just remember it was contrary to every ruling I've made on tire cases before it came out, so. Go ahead.

MR. SCAROLA: Thank you, Your Honor. Your Honor, the discovery issues that are the subject of this motion for reconsideration arose at a time when, perhaps, the

1 issues in this case had not crystallized in the Court's
2 perception as well as they should have and I don't know
3 that we presented Your Honor with the kind of information
4 necessary for you to make the decisions at the time that
5 you made them. I think that it is, hopefully, now apparent
6 to Your Honor that the claims in this case and the
7 counterclaims present two different sides of the same coin.

8 Mr. Epstein's theory of the claims against
9 Mr. Edwards, as best as I am able to perceive them based
10 upon all that has gone on up to this point in time --

11 THE COURT: Let me ask one question right there.
12 Has there been an amended complaint filed as of yet or not
13 because there was discussion about that?

14 MR. ACKERMAN: Your Honor, I have amended and
15 taken out all the allegations --

16 THE COURT: I just want to know, has there been
17 an amended complaint filed?

18 MR. ACKERMAN: No, but I have amended the present
19 complaint.

20 MR. SCAROLA: There has been an amendment to the
21 complaint filed.

22 THE COURT: I really don't like that. It makes
23 it almost impossible to figure out what the allegations
24 are.

25 MR. ACKERMAN: Well, basically, we deleted

1 allegations.

2 THE COURT: Okay. Well, I thought I -- well,
3 never mind. Go ahead.

4 MR. SCAROLA: What Your Honor will see, when you
5 have a chance to take a look at that amendment to the
6 complaint, is that there has been an effort to try to
7 remove from the complaint any assertion that Mr. Epstein
8 was not guilty of the underlying crimes and torts that
9 resulted in his criminal prosecution and the civil claims
10 against him. However, in spite of that effort - because
11 what they have attempted to state, as they describe it in a
12 very recent submission to Your Honor, the case management
13 report - is an abuse of process claim against Mr. Edwards.
14 And the theory of the abuse of process claim is that
15 Mr. Epstein is an innocent man who was falsely targeted as
16 a serial pedophile who openly victimized young children in
17 the presence of his high profile friends. Falsely
18 targeted, with those allegations, for the sole purpose of
19 attempting to enhance the marketability of Ponzi scheme
20 interests in those claims. That's the Plaintiff's theory.
21 Still hasn't been able to articulate how he is damaged by
22 that because it's not a defamation claim because the last
23 thing they want to do is put Mr. Epstein's reputation in
24 contention in this litigation but that's what they claim.

25 Mr. Edwards' theory of this case is that Mr. Epstein

1 was and is an incorrigible pedophile who victimized scores
2 of children internationally and openly in the presence of
3 his high profile friends. And that among the victims of
4 his RICO activities, because in the underlying case there
5 were RICO claims, among the victims of his RICO activities
6 were the particular individuals that Mr. Edwards was
7 representing before he ever joined the Rothstein Law Firm.
8 And that all of his efforts to investigate and prosecute
9 those underlying claims were good faith efforts conducted
10 in total ignorance of anything that was going on, as far as
11 Mr. Rothstein was concerned. And that the sole purpose of
12 the lawsuit filed against Mr. Edwards and one of his
13 clients, while those cases were still pending, was to
14 intimidate Mr. Edwards to abandon his very vigorous
15 investigation and prosecution of those claims.

16 So whether we look at it from the perspective of the
17 Plaintiff's theory of the case or whether we look at it
18 from the perspective of the Defendant's theory of the case,
19 what Mr. Edwards -- excuse me -- what Mr. Epstein was, in
20 fact, doing is relevant and material. Clearly it's
21 relevant and material from the counterclaim perspective
22 because we allege a motive to cover-up an extensive pattern
23 of international crime. That's why he's trying to scare
24 Mr. Edwards off, intimidating him through this abusive
25 process because he doesn't want the details of his

1 international crimes disclosed.

2 The discovery that has been posed, and to this point
3 denied to us, is discovery that is directly targeted at
4 making the determination as to whether Mr. Epstein was, in
5 fact, engaged in the kind of conduct that we were
6 investigating.

7 We have, through continued and ongoing investigation,
8 a good faith belief that has been substantially reinforced
9 since the time that Mr. Edwards was conducting his
10 investigation, that Mr. Epstein is, in fact, everything
11 that Mr. Edwards believed him to be and we're entitled to
12 continue to pursue that both in defense of the claims that
13 have been made against us and in prosecution of the
14 counterclaim.

15 Now --

16 THE COURT: I need you to -- [REDACTED] really --

17 MR. SCAROLA: Okay. I'll wrap it up just this
18 one way.

19 THE COURT: One more question.

20 MR. SCAROLA: Yes, sir.

21 THE COURT: That is, has to do with some of the
22 objections that he made were, in fact, based upon the Fifth
23 Amendment?

24 MR. SCAROLA: Absolutely, and I want to address
25 that.

1 THE COURT: Okay.

2 MR. SCAROLA: That's the one last point I want to
3 make.

4 THE COURT: Okay.

5 MR. SCAROLA: There very well may be and probably
6 is a legitimate Fifth Amendment basis. What I argued to
7 Your Honor previously, and what I urge you to consider now
8 is, you need to make a determination as to whether there is
9 any other basis besides the Fifth Amendment to object to
10 this discovery. If it is not discoverable for reasons
11 independent of the Fifth Amendment, that has substantial
12 consequences, as far as the sword/shield doctrine is
13 concerned.

14 But if the only protection that Mr. Epstein has, and I
15 suggest that it is, if it hasn't been waived, and that's an
16 issue that we're going to address separately, if the only
17 protection that he has is Fifth Amendment protection, then
18 I have argued to Your Honor and will argue again that he
19 cannot prosecute his claim on the basis of the theory that
20 I have described while continuing to assert his Fifth
21 Amendment privilege. So you need to address that issue.
22 You need to separate out Fifth Amendment objections from
23 other objections and that's the primary purpose of what [REDACTED]
24 asking Your Honor to do today. Thank you, sir.

25 THE COURT: Thank you. Yes, sir. You can stay

1 there, if it's more comfortable. You don't have to move.
2 Whatever is comfortable.

3 MR. ACKERMAN: Okay. Your Honor, first of all, I
4 would like to give the Court two things. One is the
5 Flagler -- the Cline versus Flagler sales clerk case,
6 207 So.2d 709. And also the present, as of today, docket
7 sheet for Alvarez vs. Cooper Tire. And I've given
8 Mr. Scarola a copy of these and I checked one of the head
9 notes as it relates to the case for the purposes of my
10 argument.

11 The -- Mr. Scarola's characterization of our theory in
12 the case management report and our theory in this case is
13 not accurate. The tort of abusive process is based on,
14 one, the claim that there is willful or intentional misuse
15 of process for some wrongful or unlawful object or ulterior
16 purpose not intended by the law. It takes place within the
17 context of those cases. The head note I've checked says
18 it's not essential to show the termination of the
19 proceeding in favor of the person against whom the process
20 was issued.

21 It's my point that there is no issue and the
22 amendments to the pleadings that we've made make it no
23 longer an issue in this case whether Mr. Epstein committed
24 or did not commit the issues for which he was sued in
25 Mr. Edwards' lawsuit.

1 THE COURT: Let me just ask this question, is it
2 not a defense for abuse of process that, in fact, it was
3 for good and intended purpose, i.e. that your client was,
4 in fact, guilty?

5 MR. ACKERMAN: He needs to, to the extent that he
6 needs to be able to establish what he was doing within that
7 case at that time. What we have here, though, is the issue
8 of whether or not he's exposing his genitals. Whether, the
9 number of times he's done it. Whether Galane Maxwell was
10 present for those items. All of those are irrelevant.
11 We're going to go down a rabbit trail as it relates to
12 those.

13 In addition, on the Cooper Tire case, also, it talks
14 about evidence that's reasonably calculated to be
15 admissible. Okay. All of those things that he has asked
16 for in the discovery that I've mentioned, which the Court
17 previously sustained, will not be admitted because of, in
18 my judgment, 9404(b), the prejudicial impact will outweigh
19 whatever relevancy it has.

20 Not only that, Mr. Scarola needs to establish a
21 predicate that by showing what was being done in that case
22 on the RICO claims, which were subsequently dismissed and
23 not allowed to be prosecuted in those underlying cases,
24 he's attempting to bootstrap proof of all other victims
25 that may or may not exist, all other incidents that may or

1 may not exist without showing they were available at the
2 time --

3 THE COURT: Let me just say, your contention is
4 that your lawsuit against Mr. Edwards and, I guess,
5 Rothstein, in this case involved only the cases that
6 Edwards brought?

7 MR. ACKERMAN: Yes.

8 THE COURT: Well, then what -- but how do you
9 separate it from the fact that you're also claiming this
10 was part of a grand conspiracy in order to gain money from
11 other people? That was the purpose of this lawsuit, was to
12 gain money from other people, so how can you separate
13 those, those other claims if, in fact, that's the theory of
14 law?

15 MR. ACKERMAN: Because you have to look at what
16 they did within those lawsuits. What Mr. Scarola is trying
17 to do is go through every possible victim and ask him right
18 now whether or not he did those things. We have not placed
19 in issue, nor, is it an issue in Mr. Scarola's pleading, as
20 to whether or not we did or didn't do these things. What
21 Mr. Edwards needs to show --

22 THE COURT: [REDACTED] sure you didn't mean the word
23 "we", you meant your client, right?

24 MR. ACKERMAN: Yes, [REDACTED] using the Royal "we" and
25 I apologize - inadvertently. But the point [REDACTED] trying to

1 make is --

2 MR. SCAROLA: Royal is not a good word to use in
3 these proceedings.

4 THE COURT: Go ahead. So, here's one of the
5 problems I've had from the beginning of your case,
6 Mr. Ackerman, is, the pleading that was filed, and I
7 realize that you are not the author of the original
8 pleading, to me was so amorphous that I could not, I mean,
9 I have to really sit down and almost play Carnac to figure
10 out what exactly was the theory of law there. And I wanted
11 the amended complaint. You told me you were going to be
12 filing an amended complaint. Now I understand all you have
13 done is remove certain allegations from it.

14 MR. ACKERMAN: Yes, but I need to briefly
15 interrupt.

16 THE COURT: Okay.

17 MR. ACKERMAN: The basis for telling the Court we
18 were going to amend the complaint is that we needed to get
19 discovery from the trustee, which we still have not
20 received.

21 THE COURT: We have to - you know, discovery is
22 based upon your allegations and I need to know what those
23 allegations are and what defenses may be applicable to
24 those.

25 MR. ACKERMAN: The allegations are based on --

1 THE COURT: You keep telling me that but I
2 haven't -- see, I don't like this. And I don't mean this
3 as, it's not a criticism of you or anything else, I have
4 done this in other cases, I do not allow amendments to
5 pleadings when they're thirty pages long. Because to try
6 to figure out what the allegations are and aren't - I want
7 a single document that we can go to trial on. A complaint,
8 an answer, a counterclaim, and an answer to the
9 counterclaim. I don't want all of these things out there
10 that I have to put together in a folder this thick to
11 figure out what, in fact, is being claimed and then go back
12 to the complaint and, well, this is no longer in and this
13 is in and that is not in and I thought that's where we were
14 headed with this.

15 MR. ACKERMAN: Well, we are but the reason that
16 it occurred was that previously told the Court that we
17 intended to amend but the best time to do that is when we
18 have completed some of this other discovery. However,
19 because of these ongoing issues where Mr. Scarola keeps
20 pointing to the present complaint, that we have placed in
21 issue whether or not he did or did not do these acts with
22 other people or within the context of those cases I moved
23 to amend by taking out paragraphs that suggested that those
24 were issues. I thought that was the simplest way of doing
25 it. [REDACTED] happy to amend to redo it. I wasn't

1 aware --

2 THE COURT: Do you have a copy of what you've
3 done with you, by chance?

4 MR. ACKERMAN: No, Your Honor. But I can submit
5 it or, at this point before the Court rules, if it makes it
6 easier, but I would ask for leave to amend to file it
7 without those paragraphs. Because I thought at that time
8 just by removing the paragraphs we would be taking out
9 those matters that Mr. Scarola now claims are an issue.

10 THE COURT: Okay. All we have in the pleadings
11 right now is your original complaint and then an amendment
12 of taking things out?

13 MR. ACKERMAN: Correct.

14 MR. SCAROLA: May I provide the Court with both
15 of those?

16 THE COURT: Yes, please.

17 MR. ACKERMAN: Thank you.

18 THE COURT: I do have to move on so go ahead and
19 give me your last.

20 MR. ACKERMAN: Your Honor, in regard to
21 Mr. Scarola's argument on sword and shield, okay. With
22 regard to the Fifth Amendment, Mr. Scarola has this
23 argument that he believes that the Fifth -- the sword and
24 shield doctrine, which we argued previously in the motion
25 for summary judgment, Mr. Epstein has not taken the Fifth

1 Amendment on issues with regard to our claim. Mr. Scarola
2 wants to put those in issue, those Fifth Amendment type of
3 claims in his counterclaim, which we would be entitled as a
4 defense, a legitimate defense, to assert the Fifth
5 Amendment because we're not asking for affirmative relief
6 in that counterclaim. So to be involved at this point with
7 the sword and shield doctrine would not be appropriate.

8 So what I would ask the Court to do is to go over and
9 look at the requests that they've made. And the requests
10 are flagrant, they're outrageous. They have nothing to do
11 with an abuse of process claim. The issue with regard to
12 abuse of process is what was done and why within the
13 context of that case. Okay. Mr. Edwards can say we
14 believe that he was doing this, this is why we're doing it.
15 The ultimate issue of whether he did it or didn't do it,
16 and did it or didn't do it with all of these other people,
17 or whether Galane Maxwell was doing it is irrelevant and
18 will not lead to discoverable evidence.

19 Now, I don't think this Cooper Tire case changes
20 things except with regard to one thing. First, I gave the
21 Court the docket sheet because it's not final. It's on
22 petition for rehearing and en banc. And I ask the Court to
23 be very cautious about changing what's occurred here based
24 on the over broad language that seems to be there in that
25 case.

1 Now, Judge Farmer does do a couple of things.
2 He's really talking about a piece of evidence that was in
3 the sole possession of Cooper Tire, similar tire test. In
4 this case, that's not the case. Mr. Edwards can come
5 forward and say this is what was in my possession, this is
6 what I was doing, so we don't have that factual element.

7 In addition, Judge Farmer does say what is framed by
8 the pleading is what determines what is relevant evidence.
9 And in this case I've tried to show the Court that we are
10 not putting in issue whether or not he did or didn't do
11 these within the context of these three cases or any other.
12 What we are putting into, what is -- and the case that I
13 gave you on the abuse of process says it is irrelevant and
14 immaterial what actually happened in the case brought.
15 Therefore, Mr. Scarola's argument that these are relevant
16 and will lead to other stuff is irrelevant because the
17 context of the tort is what is done within the context of
18 the litigation and why, and not what the ultimate
19 determination would or wouldn't have been. And that's why
20 I think the scope is too broad.

21 THE COURT: Okay. Thirty seconds, Mr. Scarola,
22 it's your burden.

23 MR. SCAROLA: Yes, Your Honor. Just two points
24 I want to make. Mr. Ackerman keeps talking about three
25 cases. In the context of those three cases, whether these

1 were isolated events or part of a broad pattern, was
2 clearly relevant to the punitive damage claim in those
3 cases.

4 Secondly, there were RICO claims asserted against
5 Mr. Epstein by Mr. Edwards. Whether these were isolated
6 single incidences or part of a broad international criminal
7 scheme in which others were participants was clearly
8 relevant and material. This discovery goes directly to the
9 heart of the claim that has been brought against
10 Mr. Edwards by Mr. Epstein. Thank you, Your Honor.

11 THE COURT: Okay. [REDACTED] going to have to take a
12 look at this, obviously, and I'll get you an order out here
13 shortly.

14 MR. ACKERMAN: Do you need a blank order?

15 THE COURT: Yes, I do need a blank order and
16 envelopes, please.

17 (Court adjourned 8:52 [REDACTED].)
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1 CERTIFICATE

2
3 I, Kathleen M. Ames, RPR, Notary Public, State of
4 Florida, was authorized to and did stenographically report
5 the foregoing proceedings; and that the transcript, pages 3
6 through 17, is a true and accurate record of my
7 stenographic notes.

8 I further certify that I am not a relative, or
9 employee, or attorney, or counsel of any of the parties'
10 attorney or counsel connected with the action, nor am I
11 financially interested in this action.

12
13 Dated this 1st day of April, 2011.

14
15
16 *Kathleen M. Ames*

17
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19 _____
20 KATHLEEN M. AMES, RPR
21
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25

WORD INDEX**< 1 >**

15TH 1:1
17 18:6
1st 18:13

< 2 >

2011 1:13 18:13
205 1:15
207 9:6
2139 2:8

< 3 >

3 18:5
31 1:13
32 1:14
33401 1:16 2:4
33409 2:8
35 3:16

< 5 >

52 17:17
53 1:14
562010CA000161
1:3

< 6 >

6170 2:4

< 7 >

709 9:6
777 2:4

< 8 >

8 1:14, 14 17:17

< 9 >

901 2:3
9404 10:18
9C 1:15

< A >

1:14, 14 17:17
abandon 6:14
able 4:9 5:21 10:6
Absolutely 7:24
abuse 5:13, 14
10:2 15:11, 12
16:13
abusive 6:24 9:13
accurate 9:13 18:6
ACKERMAN 2:2
3:5, 16 4:14, 18, 25
9:3 10:5 11:7, 15,

24 12:6, 14, 17, 25
13:15 14:4, 13, 17,
20 16:24 17:14
action 18:10, 11
activities 6:4, 5
acts 13:21
actual 3:12
addition 10:13 16:7
address 7:24 8:16,
21
adjourned 17:17
admissible 10:15
admitted 10:17
affirmative 15:5
ahead 3:22 5:3
12:4 14:18
allegations 4:15, 23
5:1, 18 12:13, 22,
23, 25 13:6
allege 6:22
allow 13:4
allowed 10:23
Alvarez 3:13 9:7
amend 12:18 13:17,
23, 25 14:6
amended 4:12, 14,
17, 18 12:11, 12
amendment 4:20
5:5 7:23 8:6, 9, 11,
17, 21, 22 14:11, 22
15:1, 2, 5
amendments 9:22
13:4
Ames 1:17 18:3, 19
amorphous 12:8
answer 13:8, 8
apologize 11:25
apparent 4:5
APPEARING 2:5, 9
applicable 12:23
appropriate 15:7
April 18:13
argue 8:18
argued 8:6, 18
14:24
argument 9:10
14:21, 23 16:15
arose 3:25
articulate 5:21
asked 10:15
asking 8:24 15:5
assert 8:20 15:4
asserted 17:4
assertion 5:7

attached 3:15
attempted 5:11
attempting 5:19
10:24
attorney 18:9, 10
author 12:7
authorized 18:4
available 11:1
aware 14:1

< B >

back 3:11 13:11
banc 15:22
BARNHART 2:7
based 4:9 7:22
9:13 12:22, 25
15:23
basically 4:25
basis 8:6, 9, 19
12:17
BEACH 1:2, 15, 16
2:4, 8, 8
beginning 12:5
BEHALF 2:5, 9
belief 7:8
believe 15:14
believed 7:11
believes 14:23
best 4:9 13:17
blank 17:14, 15
bootstrap 10:24
Boulevard 2:8
BRADLEY 1:7
briefly 12:14
broad 15:24 16:20
17:1, 6
brought 11:6 16:14
17:9
burden 16:22
BURNETT 2:3

< C >

calculated 10:14
Carnac 12:9
CASE 1:3 3:13, 14
4:1, 6 5:12, 25 6:4,
17, 18 9:5, 9, 12, 12,
23 10:7, 13, 21
11:5 12:5 15:13,
19, 25 16:4, 4, 9, 12,
14
cases 3:21 6:13
9:17 10:23 11:5
13:4, 22 16:11, 25,

25 17:3
cautious 15:23
certain 12:13
CERTIFICATE 18:1
certify 18:8
chance 5:5 14:3
changes 15:19
changing 15:23
characterization
9:11
checked 9:8, 17
children 5:16 6:2
CIRCUIT 1:1, 1
cite 3:14
civil 5:9
claim 5:13, 14, 22,
24 8:19 9:14 15:1,
11 17:2, 9
claimed 13:11
claiming 11:9
claims 4:6, 8 5:9,
20 6:5, 9, 15 7:12
10:22 11:13 14:9
15:3 17:4
Clearly 6:20 17:2, 7
clerk 9:5
client 10:3 11:23
clients 6:13
Cline 9:5
coin 4:7
come 16:4
comfortable 9:1, 2
commit 9:24
committed 9:23
complaint 4:12, 17,
19, 21 5:6, 7 12:11,
12, 18 13:7, 12, 20
14:11
completed 13:18
concerned 6:11
8:13
conduct 7:5
conducted 6:9
conducting 7:9
connected 18:10
consequences 8:12
consider 8:7
conspiracy 11:10
contention 5:24
11:3
context 9:17 13:22
15:13 16:11, 17, 17,
25
continue 7:12

continued 7:7 continuing 8:20 contrary 3:21 Cooper 9:7 10:13 15:19 16:3 copy 3:18 9:8 14:2 Correct 14:13 counsel 18:9, 10 counterclaim 6:21 7:14 13:8, 9 15:3, 6 counterclaims 4:7 COUNTY 1:2, 15 couple 16:1 COURT 1:1 3:3, 6, 17, 20 4:11, 16, 22 5:2 7:16, 19, 21 8:1, 4, 25 9:4 10:1, 16 11:3, 8, 22 12:4, 16, 17, 21 13:1, 16 14:2, 5, 10, 14, 16, 18 15:8, 21, 22 16:9, 21 17:11, 15, 17 Courthouse 1:15 Court's 4:1 cover 6:22 crime 6:23 crimes 5:8 7:1 criminal 5:9 17:6 criticism 13:3 CROW 1:12 crystallized 4:1 < D > D2630 3:16 damage 17:2 damaged 5:21 DATE 1:13 Dated 18:13 DAVID 1:12 day 18:13 decisions 4:4 defamation 5:22 DEFENDANT 2:9 Defendants 1:9 Defendant's 6:18 defense 7:12 10:2 15:4, 4 defenses 12:23 deleted 4:25 denied 7:3 DENNEY 2:7 describe 5:11 described 8:20 details 6:25	determination 7:4 8:8 16:19 determines 16:8 different 4:7 directly 7:3 17:8 disclosed 7:1 discoverable 8:10 15:18 discovery 3:7, 24 7:2, 3 8:10 10:16 12:19, 21 13:18 17:8 discussion 4:13 dismissed 10:22 Dixie 1:15 docket 9:6 15:21 doctrine 8:12 14:24 15:7 document 13:7 doing 6:20 10:6 13:24 15:14, 14, 17 16:6 Drive 2:4 < E > easier 14:6 EDWARDS 1:7 2:9 4:9 5:13, 25 6:6, 12, 14, 19, 24 7:9, 11 9:25 11:4, 6, 21 15:13 16:4 17:5, 10 effort 5:6, 10 efforts 6:8, 9 element 16:6 employee 18:9 en 15:22 engaged 7:5 enhance 5:19 entered 3:7 entitled 7:11 15:3 envelopes 17:16 EPSTEIN 1:4 5:7, 15, 25 6:19 7:4, 10 8:14 9:23 14:25 17:5, 10 Epstein's 4:8 5:23 ESQUIRE 2:2, 6 essential 9:18 establish 10:6, 20 events 17:1 evidence 10:14 15:18 16:2, 8 exactly 12:10 excuse 6:19	exist 10:25 11:1 exposing 10:8 extensive 6:22 extent 10:5 extra 3:18 < F > fact 6:20 7:5, 10, 22 10:2, 4 11:9, 13 13:11 factual 16:6 faith 6:9 7:8 falsely 5:15, 17 far 6:10 8:12 Farmer 16:1, 7 favor 9:19 Fifth 7:22 8:6, 9, 11, 17, 20, 22 14:22, 23, 25 15:2, 4 figure 4:23 12:9 13:6, 11 file 14:6 filed 3:9, 10 4:12, 17, 21 6:12 12:6 filing 12:12 final 15:21 financially 18:11 fine 3:20 Fine's 3:14 Firm 6:7 first 9:3 15:20 Flagler 2:4 9:5, 5 flagrant 15:10 FLORIDA 1:2, 16 2:4, 8 3:16 18:4 folder 13:10 foregoing 18:5 forward 16:5 FOWLER 2:3 framed 16:7 friends 5:17 6:3 further 18:8 < G > gain 11:10, 12 Galane 10:9 15:17 genitals 10:8 give 3:14 9:4 14:19 given 9:7 go 3:11, 22 5:3 10:11 11:17 12:4 13:7, 11 14:18 15:8 goes 17:8	going 6:10 8:16 10:11 12:11, 18 17:11 Good 3:3, 4, 5 6:9 7:8 10:3 12:2 grand 11:10 guess 11:4 guilty 5:8 10:4 < H > happened 16:14 happy 13:25 head 9:8, 17 headed 13:14 HEARING 1:12 heart 17:9 high 5:17 6:3 Highway 1:15 Honor 3:4, 5, 18, 23, 23 4:3, 6, 14 5:4, 12 8:7, 18, 24 9:3 14:4, 20 16:23 17:10 HONORABLE 1:12 hopefully 4:5 < I > i.e 10:3 ignorance 6:10 immaterial 16:14 impact 10:18 impossible 4:23 inadvertently 11:25 incidences 17:6 incidents 10:25 included 3:10 incorrigible 6:1 independent 8:11 individually 1:7, 7, 8 individuals 6:6 information 4:3 innocent 5:15 intended 9:16 10:3 13:17 intentional 9:14 interested 18:11 interests 5:20 international 6:23 7:1 17:6 internationally 6:2 interrogatories 3:12 interrupt 12:15 intimidate 6:14 intimidating 6:24
--	--	---	---

investigate 6:8 investigating 7:6 investigation 6:15 7:7, 10 involved 11:5 15:6 irrelevant 10:10 15:17 16:13, 16 isolated 17:1, 5 issue 8:16, 21 9:21, 23 10:7 11:19, 19 13:21 14:9 15:2, 11, 15 16:10 issued 9:20 issues 3:24 4:1 9:24 13:19, 24 15:1 items 10:10 < J > JACK 2:6 JEFFREY 1:4 joined 6:7 JOSEPH 2:2 JR 2:2 Judge 3:13 16:1, 7 judgment 10:18 14:25 JUDICIAL 1:1 < K > Kathleen 1:17 18:3, 19 keep 13:1 keeps 13:19 16:24 kind 4:3 7:5 know 4:2, 16 12:21, 22 < L > █ 1:8 Lakes 2:8 language 15:24 Law 3:16 6:7 9:16 11:14 12:10 lawsuit 6:12 9:25 11:4, 11 lawsuits 11:16 lead 15:18 16:16 leave 14:6 legitimate 8:6 15:4 litigation 5:24 16:18 long 13:5 longer 9:23 13:12	look 3:11 5:5 6:16, 17 11:15 15:9 17:12 looked 3:8 < M > making 7:4 man 5:15 management 5:12 9:12 March 1:13 marketability 5:19 material 6:20, 21 17:8 matters 14:9 Maxwell 10:9 15:17 mean 11:22 12:8 13:2 meant 11:23 mentioned 10:16 mind 5:3 misuse 9:14 money 11:10, 12 morning 3:3, 4, 5 motion 3:8, 24 14:24 motive 6:22 move 9:1 14:18 moved 13:22 < N > necessary 4:4 need 7:16 8:8, 21, 22 12:14, 22 17:14, 15 needed 12:18 needs 10:5, 6, 20 11:21 never 5:3 Notary 18:3 note 9:17 notes 9:9 18:7 number 10:9 < O > object 8:9 9:15 objections 3:9 7:22 8:22, 23 obviously 3:13 17:12 occurred 13:16 15:23 Okay 3:6 5:2 7:17 8:1, 4 9:3 10:15	12:16 14:10, 21 15:13 16:21 17:11 ongoing 7:7 13:19 openly 5:16 6:2 order 11:10 17:12, 14, 15 orders 3:7, 8 original 12:7 14:11 outrageous 15:10 outweigh 10:18 < P > █ 2:3 packet 3:10 pages 13:5 18:5 PALM 1:2, 15, 16 2:4, 8, 8 paragraphs 13:23 14:7, 8 part 11:10 17:1, 6 participants 17:7 particular 6:6 parties 18:9 pattern 6:22 17:1 pedophile 5:16 6:1 pending 6:13 people 11:11, 12 13:22 15:16 perceive 4:9 perception 4:2 person 9:19 perspective 6:16, 18, 21 petition 15:22 Phillips 2:3 piece 16:2 PLACE 1:15 9:16 placed 11:18 13:20 Plaintiff 1:5 2:5 Plaintiff's 5:20 6:17 play 12:9 pleading 11:19 12:6, 8 16:8 pleadings 9:22 13:5 14:10 please 14:16 17:16 Point 2:3 4:10 7:2 8:2 9:21 11:25 14:5 15:6 pointing 13:20 points 16:23 Ponzi 5:19 posed 7:2 possession 16:3, 5	possible 11:17 predicate 10:21 prejudicial 10:18 presence 5:17 6:2 present 4:7, 18 9:6 10:10 13:20 presented 4:3 previously 8:7 10:17 13:16 14:24 primary 8:23 privilege 8:21 probably 8:5 problems 12:5 proceeding 9:19 proceedings 12:3 18:5 process 5:13, 14 6:25 9:13, 15, 19 10:2 15:11, 12 16:13 profile 5:17 6:3 proof 10:24 prosecute 6:8 8:19 prosecuted 10:23 prosecution 5:9 6:15 7:13 protection 8:14, 17, 17 provide 14:14 Public 18:3 punitive 17:2 purpose 5:18 6:11 8:23 9:16 10:3 11:11 purposes 9:9 pursue 7:12 put 5:23 13:10 15:2 putting 16:10, 12 < Q > question 4:11 7:19 10:1 < R > rabbit 10:11 read 3:8, 13 realize 12:7 really 4:22 7:16 12:9 16:2 reason 13:15 reasonably 10:14 reasons 8:10 received 12:20
---	--	---	--

reconsideration 3:7, 25 record 18:6 redo 13:25 regard 14:20, 22 15:1, 11, 20 rehearing 15:22 reinforced 7:8 relates 9:9 10:11 relative 18:8 relevancy 10:19 relevant 6:20, 21 16:8, 15 17:2, 8 relief 15:5 remember 3:20 remove 5:7 12:13 removing 14:8 report 5:13 9:12 18:4 REPORTED 1:17 representing 6:7 reputation 5:23 request 3:12 requests 15:9, 9 responses 3:9 resulted 5:9 RICO 6:4, 5, 5 10:22 17:4 right 4:11 11:17, 23 14:11 Room 1:15 ROTHSTEIN 1:7 6:7, 11 11:5 Royal 11:24 12:2 RPR 1:17 18:3, 19 rules 14:5 ruling 3:21 < S > sales 9:5 says 9:17 16:13 scare 6:23 SCAROLA 2:6, 7 3:4, 6, 18, 23 4:20 5:4 7:17, 20, 24 8:2, 5 9:8 10:20 11:16 12:2 13:19 14:9, 14, 22 15:1 16:21, 23 Scarola's 9:11 11:19 14:21 16:15 scheme 5:19 17:7 scope 16:20 scores 6:1	SCOTT 1:7 SEARCY 2:7 Secondly 17:4 seconds 16:21 see 5:4 13:2 separate 8:22 11:9, 12 separately 8:16 serial 5:16 sheet 9:7 15:21 shield 8:12 14:21, 24 15:7 SHIPLEY 2:7 shortly 17:13 show 9:18 11:21 16:9 showing 10:21 11:1 sides 4:7 similar 16:3 simplest 13:24 single 13:7 17:6 sir 7:20 8:24, 25 sit 12:9 So.2d 9:6 sole 5:18 6:11 16:3 spite 5:10 state 5:11 18:3 stay 8:25 stenographic 18:7 stenographically 18:4 stuff 16:16 subject 3:24 submission 5:12 submit 14:4 subsequently 10:22 substantial 8:11 substantially 7:8 sued 9:24 suggest 8:15 suggested 13:23 summary 14:25 sure 11:22 sustained 10:17 sword 8:12 14:21, 23 15:7 < T > take 5:5 17:11 TAKEN 1:13 4:15 14:25 takes 9:16 talking 16:2, 24 talks 10:13	targeted 5:15, 18 7:3 telling 12:17 13:1 termination 9:18 test 16:3 Thank 3:23 8:24, 25 14:17 17:10 Thanks 3:17 theory 4:8 5:14, 20, 25 6:17, 18 8:19 9:11, 12 11:13 12:10 thick 13:10 thing 5:23 15:20 things 9:4 10:15 11:18, 20 13:9 14:12 15:20 16:1 think 4:5 15:19 16:20 thirty 13:5 16:21 thought 5:2 13:13, 24 14:7 three 16:11, 24, 25 TIME 1:14 3:11, 25 4:4, 10 7:9 10:7 11:2 13:17 14:7 times 10:9 tire 3:14, 21 9:7 10:13 15:19 16:3, 3 today 8:24 9:6 told 12:11 13:16 tort 9:13 16:17 torts 5:8 total 6:10 trail 10:11 transcript 18:5 trial 13:7 tried 16:9 true 18:6 trustee 12:19 try 5:6 13:5 trying 6:23 11:16, 25 two 4:7 9:4 16:23 type 15:2 < U > ulterior 9:15 ultimate 15:15 16:18 underlying 5:8 6:4, 9 10:23 understand 12:12 unlawful 9:15	urge 8:7 use 12:2 < V > versus 9:5 victim 11:17 victimized 5:16 6:1 victims 6:3, 5 10:24 vigorous 6:14 vs 1:6 9:7 < W > waived 8:15 want 4:16 5:23 6:25 7:24 8:2 13:6, 9 16:24 wanted 12:10 wants 15:2 way 7:18 13:24 Weekly 3:16 well 4:2, 25 5:2, 2 8:5 11:8 13:12, 15 we're 7:11 8:16 10:11 15:5, 14 West 1:16 2:3, 4, 8 we've 9:22 WHITE 2:3 willful 9:14 word 11:22 12:2 wrap 7:17 wrongful 9:15 < Y > young 5:16
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