

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-34791-BKC-RBR

In Re:  
ROTHSTEIN ROSENFELDT ADLER, P.A.,  
Debtor.

\_\_\_\_\_ /

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

August 4, 2010

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

Reported By: [REDACTED]

APPEARANCES:

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

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

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

FARMER JAFFE WEISSING EDWARDS FISTOS & LEHRMAN, by  
GARY FARMER, ESQUIRE  
BRAD EDWARDS, ESQUIRE  
on behalf of LM, Brad Edwards and  
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.

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

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

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

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

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,

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.

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

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

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

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.

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

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

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

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

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

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

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

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.

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

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

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

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

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?

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

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

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.

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

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

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.

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

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.

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

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

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

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

CERTIFICATION

STATE OF FLORIDA:

COUNTY OF DADE:

I, [REDACTED], Shorthand Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that the foregoing proceedings were taken before me at the date and place as stated in the caption hereto on Page 1; that the foregoing computer-aided transcription is a true record of my stenographic notes taken at said proceedings.

WITNESS my hand this 5th day of August, 2010.

\_\_\_\_\_  
Margaret Franzen

Court Reporter and Notary Public  
in and for the State of Florida at Large

My Commission Expires: April 14, 2014