From: Jeffrey Epstein <jeevacation@gmail.com>
To: David Spicer <[redacted]>
Subject: Fwd: CMA v JE - ATTORNEY WORK PRODUCT
Date: Wed, 15 Apr 2009 20:52:40 +0000

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From: **Martin Weinberg** <[redacted]>
Date: Wed, Apr 15, 2009 at 4:39 PM
Subject: CMA v JE - ATTORNEY WORK PRODUCT
To: "Robert D. Critton Jr." <[redacted]>
Cc: Jeffery Edwards <jeevacation@gmail.com>, [redacted]

Bob
Read the Responsive Memo sent by your office regarding the CMA litigation
Several points for possible consideration:
1. The Memo is saturated with internal conflict where they gravitate from an argument that JE opposition to multiple counts is in conflict with the "clear wording of the statute", Pg 9, and that "the clear wording of the statute" creates a separate cause of action, Pg 3 with its references to policy and history which are only relevant in the event the statute is textually consistent with multiple interpretations, see pg 4 including its cite to Hammers v IRS.
2. The argument that $150,000 in damages is inadequate to deter misconduct ignores the fact that if the misconduct caused actual damages that exceed $150,000 that the actual damages would trump the minimum - thus the parade of horrors listed on pg 5 would result in actual damage recoveries that would moot the applicability of any minimum recovery amount
3. I would posit an alternative hypothetical: what if an assistant to a party made 10 phone calls to "induce" a minor who was days away from their 18th birthday to a meeting, and the party traveled interstate to attend. Assume the minor cancelled. Assume 10 more calls followed by an additional act of interstate travel. The "actual damage" would be indivisible and would relate not to multiple phone calls or multiple trips by the civil defendant but to whatever occurred during a single meeting. Under CMAs theory the minimum damage recovery due to the fortuity of 20 not 1 phone call (each arguably punishable under 2422(b)) and 2 trips is $150,000 X 22 - an irrational windfall.
4. 2255 is to compensate for "actual damages". I would consider correlating it to restitution under 18 USC 3663. The way financial sanctions work in the criminal law is to deter misconduct by fines, forfeitures, and restitution not by "punitive" damages. Punitive damages may be available under various other civil statutes, but not until a Title 18 statute. The TVPA does not talk in terms of "actual damages" and is found in Title 28. Bivens is not a Title 18 cause of action nor is 42 USC 1983 claims. I would turn their argument that Congress knows how to include a punitive damage (or multiple damage award) on its head with reference to the analogous legislative scheme discussed at pg 14 and the legislative history discussed at pg 13
5. To the extent there is any attempt by CMA to rely on a waiver under the NPA, consider:
a) the NPA is inapplicable to anyone pursuing any claim other than 2255 i.e. the state battery claim relinquishes any rights under the NPA
b) the NPA was an agreement that was entered with the USAO and is subject to the rules governing criminal law agreements: clear notice, rule of lenity, and that the Government, as the party with the greatest power, has the obligation to make clear any burden a citizen is undertaking
c) JEs principal negotiating attorney, Jay Lefkowitz, would predictably represent that there was never a meeting of minds on anything other than a single damage recovery
Marty

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