

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF FLORIDA

3
4 IN RE: CASE NO. 09-34791-RBR

5 ROTHSTEIN ROSENFELDT ADLER, PA,

6
7 Debtor.
8 _____/

9 ECF #6418, 6421

10 August 17, 2018

11
12 The above-entitled cause came on for hearing
13 before the Honorable RAYMOND B. RAY, one of the Judges in
14 the UNITED STATES BANKRUPTCY COURT, in and for the
15 SOUTHERN DISTRICT OF FLORIDA, at 299 E. Broward Blvd.,
16 Fort Lauderdale, Broward County, Florida on August 17,
17 2018, commencing at or about 10:30 a.m., and the following
18 proceedings were had.

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23 Transcribed from a digital recording by:
24 Cheryl L. Jenkins, RPR, RMR
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APPEARANCES :

**SEARCY DENNY SCAROLA BARNHART & SHIPLEY, by
JACK SCAROLA, Esquire (via telephone)
DAVID VITALE, Esquire (via telephone)
On behalf of Bradley J. Edwards**

**EDWARDS POTTINGER, by
BRITTANY N. HENDERSON, Esquire
On behalf of Farmer Jaffe Weissing**

**LINK & ROCKENBACH, by
SCOTT LINK, Esquire
and
RICE PUGATCH ROBINSON STORFER & COHEN, by
CHAD P. PUGATCH, Esquire
On behalf of Jeffrey Epstein**

**CARLTON FIELDS, BY
NIALL McLACHLAN, Esquire
On behalf of Fowler White Barnett, P.A.**

**PAUL G. CASSELL, Esquire (via telephone)
On behalf of LM, EW and Jane Doe**

ALSO PRESENT

ECRO - Electronic Court Reporting Operator

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1 THE COURT: Good morning. Please be seated.
2 Rothstein Rosenfeldt & Adler.

3 MR. McLACHLAN: Good morning, your Honor.
4 Niall McLachlan of Carlton Fields on behalf of Fowler
5 White Burnett, P.A.

6 MR. PUGATCH: Good morning, your Honor.
7 Chad Pugatch, P-u-g-a-t-c-h, here as co-counsel on behalf
8 of Jeffrey Epstein. Mr. Scott Link, L-i-n-k, my
9 co-counsel is also here in Court.

10 MR. LINK: Good morning, your Honor.

11 MS. HENDERSON: Good morning, your Honor.
12 Brittany Henderson on behalf of Farmer Jaffe Weissing.

13 MR. VITALE: Good morning, your Honor.
14 David Vitale on behalf of Bradley Edwards.

15 MR. SCAROLA: And Jack Scarola by telephone,
16 also on behalf of Bradley Edwards, your Honor. Good
17 morning.

18 MR. CASSELL: And good morning, your Honor.
19 On the telephone this is Paul Cassell for LM, EW and
20 Jane Doe.

21 THE COURT: Hang on. Let me finish my notes
22 here.

23 All right. Motion to reschedule, Docket
24 Entry 6418, motion for protective order, Docket
25 Entry 6421.

1 MR. McLACHLAN: Yes, Judge.

2 THE COURT: All right. State your name for
3 the record before you address the Court.

4 MR. PUGATCH: Judge, if I may? Chad
5 Pugatch.

6 I think that it may depend on which matter
7 you may want to take first.

8 THE COURT: All right. We'll do the motion
9 to reschedule the show cause hearing.

10 MR. PUGATCH: I don't think anybody on our
11 side has opposed that. We expressed -- including
12 Mr. Edwards -- medical issues. We do not oppose a
13 continuance of the matter.

14 THE COURT: What's the status of discovery?

15 MR. PUGATCH: Discovery has really not
16 occurred yet. The depositions have been rescheduled
17 several times for various reasons, and there is an
18 objection on our part, and a motion for protective order
19 on Mr. McLachlan's part to the written discovery that's
20 been requested.

21 THE COURT: Well, that will be heard in a
22 minute.

23 MR. PUGATCH: Yes.

24 THE COURT: How long should I reschedule the
25 show cause hearing out, how far in advance, 60 days?

1 MR. PUGATCH: I think the parties are
2 requesting either late September or early October, Judge,
3 if possible.

4 MR. McLACHLAN: Judge, Niall McLachlan for
5 Fowler White.

6 I think Fowler White would prefer around
7 mid-October, only because our client representative is
8 going to be -- it's going to be very difficult for him to
9 schedule anything during much of September. So we don't
10 want to get up against the date of the hearing and still
11 be having problems with discovery. So we'd prefer
12 mid-October, if that's possible.

13 MR. PUGATCH: On our end, Judge, whatever
14 accommodates --

15 MR. VITALE: Your Honor?

16 MR. PUGATCH: -- the parties.

17 THE COURT: Yes.

18 MR. VITALE: David Vitale. We are also fine
19 with mid-October, your Honor, based on those concerns
20 raised.

21 THE COURT: All right. It will be late
22 October. Mr. McLachlan, get ahold of my staff.

23 THE CLERK: I'll do the order continuing.

24 THE COURT: All right. We'll do the order
25 continuing.

1 MR. McLACHLAN: Thank you, your Honor.

2 THE COURT: All right. Motion for
3 protective order.

4 MR. McLACHLAN: Thank you, Judge.
5 Niall McLachlan again for Fowler White.

6 You'll remember what this case is about,
7 Judge. There was discovery in late December. Fowler
8 White printed the documents, had them Bates numbered
9 pursuant to the agreement of the parties and this Court's
10 order.

11 About seven and a half years later
12 Mr. Epstein's new counsel -- Fowler White had represented
13 Epstein back in 2010, through early 2012. In early 2018
14 Mr. Epstein's new counsel came and said I need to see your
15 files. There were certain documents that were copied, and
16 then Mr. Epstein's new counsel, Link & Rockenbach, said
17 just send us all the documents.

18 Fowler White sent the boxes, and apparently
19 in one of those boxes, according at least to the motion
20 for order to show cause, there was a ---

21 THE COURT: When the boxes were sent, there
22 was no inventory, just 26 boxes?

23 MR. McLACHLAN: I don't think -- no, an
24 inventory I don't believe was taken at the time the boxes
25 were sent.

1 THE COURT: Okay.

2 MR. McLACHLAN: I'm not entirely sure about
3 that, but that's my understanding at this point, Judge.

4 So we appeared before your Honor on the
5 Farmer Jaffe and Edwards, and the intervenor's motion for
6 entry of an order to show cause. They were contending
7 that in one of those boxes was a CD of the documents, and
8 that Fowler White was not supposed to retain an image of
9 the documents on their copier or otherwise.

10 THE COURT: Or a list, and apparently all
11 27,500 pages were copied on the disk.

12 MR. McLACHLAN: Well, yes, Judge, in order
13 to print the documents, and in response to -- as we've
14 said in our response for -- motion for order to show
15 cause, they had to put the documents on to a new disk to
16 put the Bates numbers on them. So that's what was done.

17 THE COURT: And so it was done after the
18 discovery was completed --

19 MR. McLACHLAN: No.

20 THE COURT: -- because it was Bates -- the
21 Bates number was on them.

22 MR. McLACHLAN: Well, the documents were
23 turned over by the trustee to the Special Master. Then
24 Farmer Jaffe and Fowler White agreed that the Special
25 Master would give the disk to Fowler White. Fowler White

1 would then print and Bates number the documents.

2 So in order to do that you have to create
3 the CD that superimposes the Bates number over the
4 documents. They were then printed and sent in seven boxes
5 to Farmer Jaffe two days after we received the CD.

6 There was no -- from what we've seen,
7 certainly no copy of the CD was kept, or was copied after
8 that date.

9 THE COURT: All right.

10 MR. McLACHLAN: So anyway, the contention
11 is, as I'm sure your court -- as your Honor remembers,
12 that Farmer -- that Fowler White somehow had a copy of the
13 CD in its files when it delivered the 17 or 18 boxes to
14 Mr. Epstein's new counsel. The CD was in the box.

15 Now, we appeared before your Honor on
16 April 13th. All of the moving parties, Mr. Edwards,
17 Farmer Jaffe and the intervenors were seeking voluminous
18 paper discovery, and your Honor said, we're not having
19 that, you can have two depositions, you can depose a
20 representative of Fowler White and you can depose
21 Mr. Epstein, and a representative of Link & Rockenbach,
22 Mr. Epstein's new counsel.

23 There was no reference to paper -- there was
24 no -- your Honor basically said we're not having paper
25 discovery. That's certainly the way the transcript reads,

1 and that's what he understood at the hearing.

2 The order to show cause also says their
3 discovery will be depositions of Epstein, Link &
4 Rockenbach and Fowler White concerning the CD. No
5 reference to paper discovery being allowed.

6 What we now have received is this subpoena
7 that's duces tecum that contains an incredibly broad scope
8 of documents.

9 Now, we believe that ---

10 THE COURT: And who issued the subpoena?

11 MR. McLACHLAN: That was issued by Farmer
12 Jaffe, and the document request, which is attached to our
13 motion for protective order, is extraordinarily broad.

14 First, I think it's pretty clear from
15 your Honor's rulings orally and in the order to show
16 cause, this is not a paper discovery case. They get to
17 take the depositions to see if we can say what happened to
18 the disk.

19 If your Honor decides that that is not
20 correct, I think the requests as drafted are incredibly
21 overbroad. I can address that now, or I can hold until
22 your Honor decides the initial issue.

23 THE COURT: Well, the boxes were in storage
24 from May 2012 until March 2018.

25 MR. McLACHLAN: January 2018 when they were

1 pulled from storage for Link & Rockenbach to come and look
2 at them.

3 THE COURT: So is there any evidence, any
4 indication, any claim that during that time period the
5 information contained on the disk was used by anyone?

6 MR. McLACHLAN: Absolutely none, Judge.
7 Absolutely none.

8 THE COURT: Not that I've seen in the case
9 so far.

10 MR. McLACHLAN: Correct.

11 THE COURT: So, the question then comes in,
12 how did the disk get in the box, and what happened to the
13 disk after the boxes were delivered.

14 MR. McLACHLAN: After the boxes were
15 delivered from Fowler White to Link & Rockenbach?

16 THE COURT: Yes.

17 MR. McLACHLAN: Well, yes, Judge, that's
18 kind of ---

19 THE COURT: They were apparently used in the
20 state court litigation, the information was, which was
21 brought to the state court judge's attention and he has
22 dealt with it.

23 MR. McLACHLAN: He is dealing with that,
24 correct. That's correct, Judge, yes.

25 THE COURT: So it's dealt with. So the

1 question that remains in front of me is, was there a
2 violation of the order, my order, was it a knowing and
3 intentional violation and, if so, what damages were
4 arising from it.

5 MR. McLACHLAN: Yes, Judge, I agree with
6 that.

7 THE COURT: Okay. All right. Let me hear
8 from the party requesting the discovery.

9 MR. PUGATCH: Judge, Chad Pugatch, again.
10 If I may just add, so the Court has a complete picture on
11 this.

12 On behalf of Mr. Epstein, we did not move
13 for a protective order, but we got a very similar
14 discovery request, in the form of the notice of taking
15 deposition duces tecum.

16 It was actually issued by Searcy Denny, on
17 behalf of Mr. Edwards, and we made an appropriate written
18 objection. That written objection is at ECF Number 6388.
19 It's not set for hearing today, but it's the exact same
20 issue concerning the exact same discovery, and you
21 specifically in the transcript of the hearing, as the
22 discovery request was sought to be expanded, said I'm not
23 dealing with the state court issues, don't bring the state
24 court issues here. I'm paraphrasing.

25 So, we had the same objection, and your

1 ruling on this would effect us exactly the same way.

2 THE COURT: All right. Let me hear from the
3 party seeking the discovery.

4 MR. VITALE: Good morning, your Honor.
5 David Vitale on behalf of Mr. Edwards.

6 Your Honor, in the show cause order that
7 your Honor issued, you did allow for three depositions,
8 the deposition of Mr. Epstein, the deposition of the
9 corporate representative of both Link & Rockenbach and
10 Fowler White.

11 Your Honor also ordered that the parties are
12 to exchange exhibit binders a week before the show cause
13 hearing. So your Honor's written order does contemplate
14 that there would be discovery taken in the case, but the
15 issue of ---

16 THE COURT: We use the standard evidentiary
17 hearing order. It's the standard order that I use.

18 MR. VITALE: Yes.

19 THE COURT: My question is, is that ---

20 MR. VITALE: Understood.

21 THE COURT: There are claims for damages by
22 the law firm, by Mr. Thompson, is it --

23 MR. McLACHLAN: Edwards, Judge.

24 THE COURT: Edwards.

25 MR. McLACHLAN: Yes, Edwards.

1 MR. VITALE: Edwards.

2 THE COURT: -- and the three Jane Does.

3 MR. VITALE: Yes, sir.

4 THE COURT: So those damages would arise out
5 of the issue of the box, the disk being in the box in the
6 basement for six or seven years, and once the boxes got
7 out of the basement and got into the hands of the current
8 lawyers.

9 MR. VITALE: Two points on that, your Honor.
10 The first one is that the issue of the location of the
11 box, we have not yet taken discovery on that. So we've
12 been told that the chain of custody of the disk, in
13 unverified pleadings, is that the disk was put in a box,
14 kept in storage for eight years, and was not discovered
15 until the Link & Rockenbach law firm received the disk, I
16 believe in February of this year.

17 However, our duces tecum request, in part,
18 your Honor will see Numbers 2, 3 and 4, played out by
19 timeframe whether or not Fowler White exchanged any
20 communications regarding the subject disk, or any
21 documents derived from the subject disk from December
22 of 2010 through today.

23 One of the issues they raised in their
24 motion for protective order is that we are seeking
25 privileged documents because it's attorney/client

1 communication.

2 Well, two issues. The first is we're
3 entitled to a privilege log. The second more important
4 issue, your Honor, is that if there are responsive
5 documents where Fowler White is discussing the disk or the
6 contents of the disk between December 2010 and
7 February 2018, that would suggest that some of the
8 representations being made as to where the location of the
9 disk was for the last eight years are not correct.

10 The second point I would make, your Honor,
11 is that although we are entitled to take the deposition of
12 a corporate representative of Fowler White in this case
13 regarding the chain of custody of the disk, and the
14 documents derived from the disk, we should not be limited
15 to the testimony given. We should have the ability to
16 take limited written discovery to allow us to challenge
17 the credibility of the testimony of Fowler White's
18 corporate representative.

19 So, to just limit discovery (sound cut out)
20 -- ability ---

21 THE COURT: You're not present in the
22 courtroom, so you're fading out and I'm not hearing you.

23 MR. VITALE: I apologize, your Honor. Are
24 you able to hear me a little better now?

25 THE COURT: Yes.

1 MR. VITALE: Thank you, sir.

2 So my second point that I was making, in
3 addition to the fact that if there are (inaudible) they
4 raise an attorney/client privilege objection, that tells
5 me there are documents that are responsive to Requests 2
6 through 4, that would suggest that some of the
7 representations being made regarding the location of the
8 disk in storage in a box for eight years may not be
9 100 percent correct.

10 The second point I was making, your Honor,
11 is that in a show cause evidentiary hearing, where we have
12 the burden of proof, Mr. Edwards, as well as Farmer Jaffe
13 and the interpleaders, should have the ability to take
14 limited document discovery as well so that when a
15 corporate representative of Fowler White is testifying as
16 to the chain of custody, for example, we have the ability
17 to seek documentary evidence that could perhaps impeach or
18 contradict the sworn testimony that we've received.

19 And so from a standpoint of whether or not
20 the discovery for an order to show cause, where
21 Mr. Edwards is going to have the burden of proof in this
22 case, to ---

23 THE COURT: But you haven't taken a
24 deposition yet that tells you where Fowler White is coming
25 from. You haven't taken their depo. Why not take their

1 depo and seek further discovery?

2 MR. VITALE: Well, your Honor, I think that
3 the discovery that we're seeking in regards to the
4 deposition as part of our duces tecum is very limited to
5 the topics that your Honor delineated we are allowed to
6 inquire into during the deposition.

7 Now, the deposition itself, and the answers
8 we receive, as well as the documents that are produced in
9 connection with that limited deposition you're allowing
10 could require us perhaps to come before the Court again to
11 take additional discovery, but as your Honor reviews the
12 four very targeted requests that we have in our duces
13 tecum request, the first one is limited to the chain of
14 custody of the disk, and that is clearly relevant and
15 contemplated based on your Honor's order, and the next
16 three are just broken up by timeframe, did Fowler White
17 exchange any communications to any third parties,
18 Mr. Epstein or Link & Rockenbach, concerning the subject
19 disk or the documents derived (inaudible) eight year
20 period that they say the disk was sitting in a box in
21 storage. If the answer is, yes, there are responsive
22 documents, then your Honor is correct, we may want to take
23 some additional discovery, but we won't know that until we
24 take what we believe is a limited form of discovery
25 consistent with your Honor's show cause order.

1 THE COURT: All right. Mr. Vitale, did you
2 file a written response to the motion for protective
3 order?

4 MR. VITALE: No, your Honor, we did not, and
5 the reason, very briefly, is initially Fowler White's
6 motion for protective order was combined with an objection
7 to the duces tecum request.

8 We reached out to your JA, I believe on
9 Monday, and the JA requested Fowler White to break out
10 those two issues, and Fowler White filed their motion for
11 protective order separately, I believe perhaps on Tuesday,
12 and it was immediately set for hearing, and we did not
13 have time to prepare ---

14 THE COURT: All right. I'm going to
15 continue the hearing on the motion for protective order to
16 give you time to file a written response.

17 MR. VITALE: Yes, sir, and when would you
18 like us to file that by, your Honor?

19 THE COURT: A written response ---

20 MR. VITALE: Yes, sir.

21 THE COURT: Hold on. Ten days, two weeks?

22 MR. VITALE: Ten days is fine, your Honor.

23 THE COURT: And a written reply, if there is
24 going to be one, within ten days, order continuing the
25 hearing for some 30 days.

1 MR. VITALE: Yes, sir.

2 THE COURT: That order by Mr. McLachlan.

3 MR. McLACHLAN: I will prepare and circulate
4 it, Judge.

5 THE COURT: Now, once again, remember it's a
6 narrow issue before me. The question of, was there a
7 knowing breach of the order, and what are the actual
8 damages resulting from that breach. This isn't an open
9 hunting season.

10 MR. VITALE: Yes, sir.

11 THE COURT: All right. See to the orders.

12 MR. McLACHLAN: Thank you, your Honor.

13 MR. PUGATCH: Thank you, Judge. Have a good
14 weekend.

15 MR. VITALE: Thank you very much,
16 your Honor.

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20 (Thereupon, the hearing was concluded.)

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CERTIFICATION

**STATE OF FLORIDA :
COUNTY OF MIAMI-DADE :**

I, Cheryl L. Jenkins, RPR, RMR, Shorthand Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that the foregoing proceedings were transcribed by me from a digital recording held on the date and from the place as stated in the caption hereto on Page 1 to the best of my ability.

WITNESS my hand this 21st day of August, 2018.

CHERYL L. JENKINS, RPR, RMR
Court Reporter and Notary Public
in and for the State of Florida at Large
Commission #GG 138863
December 27, 2021

