

**CONFIDENTIAL SETTLEMENT COMMUNICATIONS**

November 29, 2018

**Via E-Mail**

Niall McLachlan  
Carlton Fields Jordan Burt, P.A.  
Miami Tower  
100 S.E. Second Street, Suite 4200  
Miami, FL 33131-2113

**Via E-Mail**

Joseph Ianno, Jr.  
Carlton Fields  
525 Okeechobee Blvd.  
Suite 1200  
West Palm Beach, FL 33401

**Re: *Jeffrey Epstein v. Scott Rothstein and Bradley J. Edwards*  
15<sup>th</sup> Judicial Circuit Case No. 50-2009-CA-040800XXXXMBAG**

***In re Rothstein Rosenfeldt Adler, P.A.*  
U.S. Bankruptcy Court, Southern District of Florida, Case No. 09-34791-RBR**

Dear Niall and Joe:

I am writing on behalf of my client, Jeffrey Epstein, in response to your November 27, 2018, e-mail to outline Mr. Epstein's potential claims relating to Fowler White's representation of him in the above-referenced matters during the period of June 2010 through May 2012. We are hopeful to put this matter to rest once and for all.

**A. Negligent Retention of Disc**

During its representation, Fowler White pursued production from the Rothstein Rosenfeldt Adler firm's ("RRA") Bankruptcy Trustee in response to a Subpoena served by the Burman Critton firm. The Trustee assembled approximately 27,000 pages of e-mails in response to the Subpoena and the Bankruptcy Court appointed a Special Master to oversee that discovery. Neither the Trustee nor the Special Master, however, felt comfortable asserting privilege claims on behalf of Bradley Edwards' clients and the task was assigned to Farmer Jaffe (where Mr. Edwards was a partner). In order to conduct the review, Farmer Jaffe wanted the 27,000 pages printed and Bates stamped so it could segregate out alleged privileged and unresponsive documents. Farmer Jaffe, however, did not want to incur the cost of reproducing the documents. Mr. Epstein agreed to pay the cost. Because Fowler White had the copying capabilities in-house, Fowler White suggested that it Bates stamp and print the documents. The parties' agreement was memorialized in an Agreed Order that was entered by the Bankruptcy Court on November 30, 2010. The November 2010 Agreed Order provides, in pertinent part:

The law firm of Fowler White Burnett, P.A., will print a hard copy of all of the documents contained on the discs with Bates numbers added, and

will provide a set of copied, stamped documents to the Special Master and an identical set to Farmer, who will use same to create its privilege log. ... Fowler White will not retain any copies of the documents contained on the discs provided to it, nor shall any images or copies of said documents be retained in the memory of Fowler White's copiers. Should it be determined that Fowler White or Epstein retained images or copies of the subject documents on its computer or otherwise, the Court retains jurisdiction to award sanctions in favor of Farmer, Brad Edwards or his client [L.M.].

As has been documented, during our review of Fowler White's files in January 2018, we found a disc labeled "Epstein Bate Stamp." During the show cause proceedings, Fowler White disclosed that there were approximately 30 documents included in the file with the disc, some of which were contained on Farmer Jaffe's privilege log and contained handwriting from what appears to be a Fowler White employee. Mr. Edwards and Farmer Jaffe asserted that the disc was a duplicate of what was delivered to the Special Master and Farmer Jaffe pursuant to the November 2010 Agreed Order. Mr. Edwards and Farmer Jaffe also took the position that the disc and the printed documents should not have been retained in Fowler White's files. While Fowler White was unable to determine how, why or from where it received the disc or why some of the alleged privileged documents had been printed and written on (and apparently then reviewed), it is undisputed that Mr. Epstein never directed Fowler White to retain a copy of the disc and he was not aware that Fowler White did so until February 2018, after we found the disc in Fowler White's files.

Fowler White's retention of the disc and the alleged privileged documents subjected Mr. Epstein to the Bankruptcy Court show cause proceedings. Although the claims against Mr. Epstein were dismissed without prejudice, Mr. Epstein incurred substantial attorneys' fees and costs in his defense of those claims.

In addition, when we identified several key case-ending e-mails from the disc as trial exhibits, Judge Hafele struck those exhibits as untimely. Furthermore, Judge Hafele did not want to make any rulings in derogation of the Bankruptcy Court's Order if Fowler White retained the disc inappropriately. Having made a cursory review of the e-mails, Judge Hafele did acknowledge that they were detrimental to Mr. Edwards' case and beneficial to Mr. Epstein's case. Importantly, Judge Hafele found that Link & Rockenbach did nothing wrong. Judge Hafele made clear, however, that the discovery of the e-mails was too late in the game and that **Fowler White** should have addressed the issue years ago. Specifically, the Court found:

... there was nothing that I knew of despite again what appears to be brief recalcitrance on the part of Fowler White to turn over the materials themselves, this could have been done six months ago, a year ago, two years ago, three years ago, four years ago, five years ago, six years ago, and it should have been done then. ... (50:16-22.)

Now, if this was newly-discovered evidence that was not in the hands of Mr. Epstein's lawyers since 2009, whenever this all came to fruition, then I would say we'd have to take a different approach. But the very nature of the documents that we're talking about – again, rightly or wrongly held – were in fact held by Fowler White, Epstein's counsel, at an incredible crucial time in this process; and that being in and around 2010, when the Rothstein firm imploded, when these e-mails were apparently confiscated, when somebody made the decision that instead of Farmer paying for the copy costs, they be handed over to Fowler White. ... (50:25-51:13.)

But the fact remains ... that these materials were in the hands of Epstein's attorneys from the inception of the issue itself. And to now come to the Court with not five pages of documents to look at, but 27,000, or whatever that number is – it escapes me because of its sheer mass – is impossible and is not going to be countenanced here. (50:15-22.)

Mr. Ackerman, Fowler White, had these materials ever since day one. I don't know how much more I can make this clear. (56:22-25.)

That's the point that I'm trying to drive home and emphasize. Is not only the issue of timeliness, not only the issue of the privilege has not been tested, but first and foremost is the fact that Fowler White, Epstein's own lawyers, have been sitting on this from day one for seven, eight years. (57:8-14.)

(March 8, 2018, Hearing Transcript, Afternoon Session.)

**B. Failure to Pursue Discovery**

After having reviewed approximately 5,000 of the 27,000 pages on the disc, we found case-ending e-mails that could have resolved this case, either by settlement or summary judgment, years ago. The discovery that Fowler White, in fact, also reviewed some of these e-mails during its representation (as evidenced by the printed set which contained the handwriting of a Fowler White employee) but failed to pursue production of them further solidifies Mr. Epstein's malpractice claims.

While approximately 1,600 documents from the disc were identified on Farmer Jaffe's privilege log, because Farmer Jaffe (1) produced some of the documents on its log, (2) expressly agreed to produce all work-product documents to Fowler White, and (3) produced the entire disc to an adversary – Razorback -- all alleged "work product" documents should have been produced, yet Fowler White failed to pursue that production or an in camera review of the documents.

**C. Potential Malpractice and Breach of Fiduciary Duty Claims Against Fowler White**

But for Fowler White's actions in retaining the disc and the alleged privileged documents, the show cause proceedings would never have been brought against Mr. Epstein. Mr. Epstein expended over \$1 million in attorneys' fees and costs defending himself in the show cause proceedings and in attempting to utilize the late-found documents in the Circuit Court action.

In addition, Fowler White should have pursued an in camera inspection of the alleged privilege documents in 2011. Had Fowler White done so, the alleged privilege claims should have been resolved long ago. Mr. Epstein believes Fowler White should be held accountable for his damages that include payment to Mr. Edwards either by way of settlement or final judgment and Mr. Epstein's attorneys' fees and costs from 2010 to the present. Mr. Epstein has spent millions of dollars in attorneys' fees and costs defending Mr. Edwards' malicious prosecution claim based, in large part, on his not having the case-ending e-mails back in 2011.

It is clear that we are at odds in our interpretation of the release that Mr. Epstein entered into with Fowler White in 2012 to settle a fee dispute. We are confident that potential malpractice claims that were unknown to Mr. Epstein and, importantly, were unaccrued at the time the release was signed, are not covered by the release's plain language. Nevertheless, in light of our disagreement, we plan to file a claim for declaratory relief to ask the Court to make the final determination if, under Florida law, resolution of a fee dispute releases an attorney from breach of fiduciary duty claims that had not accrued at the time of signing the "General Release." We invite Fowler White to join in that request in order to expedite resolution of the dispute. We share below our view of the law and if you have law that you believe is contrary, we ask that you share it with us. If the Court finds in Mr. Epstein's favor, which we feel certain it will, Mr. Epstein will then file a malpractice action seeking more than \$10 million in damages from Fowler White.

**D. Legal Authorities**

The release does not cover unaccrued claims either by the plain language of the release or by law. In Florida, the Third District Court of Appeal found a "general release will ordinarily be regarded as embracing all claims or demands which had matured at the time of its execution but will not bar a claim which had not yet accrued when the release was executed." *Hold v. Manzini*, 736 So. 2d 138, 141 (Fla. 3d DCA 1999). The Third and Fourth Districts found that language barring future claims was not a clear and unambiguous release, specifically to a legal malpractice claim where redressable harm could not have been established at the time of signing. *Id.*; *R.S.B. Ventures, Inc. v. Berlowitz*, 211 So. 3d 259, 263 (Fla. 4th DCA 2017). Even when a release pertains to claims the parties ever had, now have or can have, the Third District found it would only encompass claims that had matured at the time of signing the release. *Sottile v. Gaines Const. Co.*, 281 So. 558, 560-61 (Fla. 3d DCA 1983); *Martinez v. Preferred Care Partners, Inc.* 223 So. 3d 1117, 1118 (Fla. 3d DCA 2017).

In the release between Mr. Epstein and Fowler White, Mr. Epstein waived any cause of action "known and unknown . . . which constitute, concern or otherwise relate to any matter ... from the

beginning of time through” the agreement. By that language, Mr. Epstein is arguably precluded from bringing suit for any mature and accrued cause of action whether known or unknown to him at the time of the signing. A legal malpractice claim that was not mature and had not yet accrued at the time of signing, and would not accrue until the Edwards litigation is final, would not fall within the waiver. As the Third District held in *Hold*, a legal malpractice claim could not have accrued until the existence of redressable harm was established, which here will not occur until years after signing the release.

Even in the highly unlikely event that the Court were somehow to find as a matter of law that a cause of action that is not mature and has yet to accrue is still subject to a six-year-old release, we are confident that there are material issues of fact which will be resolved in Mr. Epstein’s favor to mandate a finding that the release is inapplicable to Mr. Epstein’s claims in this matter. The Florida Supreme Court has applied a fact-specific test to determine if release agreements bar specific claims. *Mazzoni Fars., Inc. v. E.I. DuPont De Nemours and Co.*, 761 So. 2d 306 (Fla. 2000). Enforcements of general releases are “premised upon the assumption that the released claims are those that were contemplated by the agreement.” *Id.*

In the release at issue, the language throughout makes it clear that the release effectuates the resolution of disputed claims over the amount of legal fees, as evidenced by specific language in the release addressing “any invoices or statements issued by FWB,” and additional clarification that by signing the release the parties “inten[d] to extinguish all rights and liability concerning such claims.” Looking at the four corners of the release as a whole shows the intent of the drafter to resolve the dispute of legal fees alone; not to apply to unknown, unaccrued legal malpractice claims.

In the worst-case scenario, the language of the release will be found ambiguous and evidence will need to be presented about the parties’ intent. When there is ambiguity within the contract and an issue of fact is presented as to the parties’ intentions, it “must be construed against the party who chose the language used.” *Delgado v. Gov’t Employees Ins. Co.*, 528 So. 2d 23, 24 (Fla. 3d DCA 1988). Florida courts follow the “well-settled rule of construction” that ambiguities in contracts will be construed against the drafter. *See, e.g., Agile Assur. Group, Ltd. v. Palmer*, 147 So. 3d 1017, 1018 (Fla. 2d DCA 2015) (citing *Am. Boxing & Athletic Ass’n, Inc. v. Young*, 911 So. 2d 862, 866 (Fla. 2d DCA 2005)). Although the release in this case contains a clause purporting to eliminate the construction-against-the-drafter rule, the so-called *contra proferentem* rule exists to remedy a disparity in bargaining power between two contracting parties. *See, e.g., Econ. Premier Assur. Co. v. W. Nat. Mut. Ins. Co.*, 839 N.W.2d 749, 753 (Minn. Ct. App. 2013). In this case, the drafter was a fiduciary and Mr. Epstein’s legal counsel in a continuing litigation where Mr. Epstein was both a plaintiff and counter-defendant, and the fiduciary’s cooperation and assistance was absolutely essential in the transition to new counsel in that litigation. In seeking to resolve the fee dispute with existing counsel in order that the transition to new legal counsel might take place without an adverse impact on the litigation, Mr. Epstein was clearly in an inferior bargaining position. Fowler White, Mr. Epstein’s legal counsel and fiduciary, undeniably had superior bargaining power in drafting the release, which is the exact situation the *contra proferentem* rule seeks to remedy. Thus, the clause seeking to eliminate *contra proferentem* in the release is unenforceable.

**E. Conclusion**

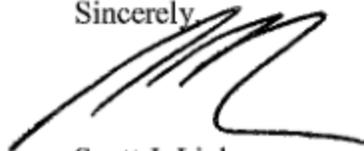
Clearly, Fowler White is responsible for the attorneys' fees and costs Mr. Epstein incurred in the Bankruptcy show cause proceedings. In addition, we are certain the Court will find that the release does not exclude Mr. Epstein's potential breach of fiduciary duty claims against Fowler White. Also, because Fowler White, in fact, reviewed some of the case-ending alleged privileged e-mails in 2011 but did nothing to pursue that discovery, we believe we can present a persuasive argument to a jury of Fowler White's breach of fiduciary duty.

We disagree that Fowler White can hide behind a release that was intended to resolve a fee dispute and avoid yet to be accrued claims for malpractice. In order to put this matter to rest once and for all before both sides incur even more attorneys' fees and costs, however, Mr. Epstein is willing to settle this matter for **\$3 million** in exchange for mutual general releases. This offer will remain open until **Monday, December 3, 2018**. If we are unable to reach an agreement by that date, we will file our Complaint for declaratory relief.

While we have provided a cursory outline of Mr. Epstein's known claims, this information is provided without prejudice to any of such claims and any other claims or causes of action and rights to recover damages against Fowler White and its attorneys, all of which are hereby expressly reserved.

We look forward to hearing from you.

Sincerely,



Scott J. Link

SJL/tlc  
20D3991