

1 IN THE CIRCUIT COURT OF THE
2 FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY, FLORIDA

3 Case No. 502009CA040800XXXXMB

4
5 JEFFREY EPSTEIN,

6 Plaintiff/Counter-Defendant,

7 vs.

8 SCOTT ROTHSTEIN, individually;
9 BRADLEY EDWARDS, individually,

10 Defendants/Counter-Plaintiffs.
_____ /

11
12 TRANSCRIPT OF PROCEEDINGS

13
14 DATE TAKEN: Wednesday, February 28th, 2018
15 TIME: 9:54 a.m. - 11:06 a.m.
16 PLACE 205 N. Dixie Highway, Room 10D
West Palm Beach, Florida
17 BEFORE: Donald Hafele, Presiding Judge

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19
20 This cause came on to be heard at the time and place
21 aforesaid, when and where the following proceedings were
22 reported by:

23 Sonja D. Hall
24 Palm Beach Reporting Service, Inc.
1665 Palm Beach Lakes Boulevard, Suite 1001
25 West Palm Beach, FL 33401
[REDACTED]

PALM BEACH REPORTING SERVICE, INC.
[REDACTED]

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APPEARANCES:

For Plaintiff/Counter-Defendant:

LINK & ROCKENBACH, P.A.
1555 Palm Beach Lakes Boulevard, Suite 301
West Palm Beach, FL 33401
By KARA BERARD ROCKENBACH, ESQUIRE

For Defendant/Counter-Plaintiff:

SEARCY, DENNEY, SCAROLA, BARNHART &
SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
By DAVID P. VITALE JR., ESQUIRE

1 **THE COURT:** I haven't seen this before
2 today. How come this wasn't provided to me,
3 all the materials here?

4 **MS. ROCKENBACH:** I believe it was hand-
5 delivered to Your Honor. I have to check
6 with my office, Your Honor. But I know that
7 a hand-delivery of today's UMC and
8 tomorrow's UMC was delivered to your
9 chambers.

10 **MR. VITALE:** We received the email
11 copy.

12 **THE COURT:** Okay. You have to wait, if
13 you'll like to stick around. I don't have
14 time to read it right now and this will make
15 a moment.

16 **MS. ROCKENBACH:** It's a very
17 significant issue, so take your time.

18 **THE COURT:** It's 11 pages. I can't
19 read it now. I will have some time later.

20 **MS. ROCKENBACH:** Thanks, Your Honor.

21 **THE COURT:** You're more than welcome.

22 (A recess was had 8:55 a.m. - 10:10 a.m.)

23 **THE COURT:** I have had a chance to read
24 the Plaintiff/Counter-Defendant Epstein's
25 Motion for Protective order and in Limine of

1 Unrelated Settlement.

2 Just as a preface to the arguments, I
3 think I largely dealt with this as a result
4 of my three-page order dated 5 January of
5 this year where I ruled -- and I have no
6 real plans to deviate from that ruling --
7 and indicated at that time, in a footnote
8 that I handwrote, because of competing
9 orders that were offered, that I reviewed
10 the hearing transcript at that juncture and
11 found that Epstein shall produce to Edwards
12 the following: The number of claims settled
13 by Epstein regarding individuals who were
14 alleged to be victims of sexual misconduct
15 by Epstein from December 6th, 2007 to
16 December 6th, 2009; the gross settlement
17 amount by Epstein to individuals who are
18 alleged to be victims of sexual misconduct
19 by Epstein from December 6th, 2007 to
20 December 6th, 2009; the number of claims
21 settled by Epstein regarding individuals who
22 were alleged to be victims of sexual
23 misconduct by Epstein from December 7th,
24 2009 to present; the gross settlement amount
25 paid by Epstein to individuals alleged to be

1 victims of sexual misconduct by Epstein from
2 December 7th, 2009 to the present.

3 I further ruled that "The number of
4 claims and amounts shall be produced as
5 confidential, for attorneys' and clients'
6 eyes only, and shall not, directly or
7 indirectly, be disclosed to anyone else or
8 used outside of this litigation.

9 "If a party intends to quote, disclose,
10 rely on or use in this litigation
11 information or documents that have been
12 deemed 'Confidential, for attorney's and
13 clients' eyes only,' whether in papers filed
14 with the Court or verbally, in connection
15 with a motion, hearing, deposition or trial,
16 before any such information is quoted,
17 disclosed, relied upon or used, the party
18 must file a motion to have the information
19 or documents deemed to be no longer
20 confidential, must file the information or
21 documents under seal in accordance with
22 Administrative Code 2.303-9/09 and have the
23 proposed quote, disclosure, reliance or use
24 of such information or documents heard and
25 approved by the Court."

1 I deferred ruling on the admissibility
2 of the number of claims and the gross
3 settlement amount pursuant to this order and
4 the admissibility of the combined settlement
5 amounts of Edwards' three clients for whom
6 Edwards was prosecuting civil cases against
7 Epstein at the time Epstein filed the
8 December 7th, 2009 lawsuit against Edwards.

9 "No production of the underlying
10 settlement agreements with each of Edwards'
11 three clients or with any other alleged
12 victim is required by this order.

13 The Court defers ruling on whether
14 there will be further disclosure of any
15 breakdown of the settlement amounts paid by
16 Epstein."

17 Then, "Epstein shall file a new motion
18 addressing separately the admissibility of
19 the aggregate settlement amounts paid by
20 Edwards'..." strike that. "... paid to
21 Edwards' three clients and the gross
22 settlement amounts disclosed pursuant to
23 this order.

24 "The motion should also address
25 Epstein's position as to the production of

1 any settlement agreements underlying any
2 settlements paid by Epstein and outline the
3 confidentiality provisions governing those
4 agreements.

5 "To the extent that disclosure of any
6 such provision is subject to
7 confidentiality, disclosure shall be made
8 under seal in accordance with ..." that same
9 administrative order.

10 So this is essentially a follow-up to
11 that.

12 **MS. ROCKENBACH:** Thank you, Your Honor.
13 Yes. And I appreciate --

14 **MR. VITALE:** May I have just one
15 clarification, Your Honor?

16 Were you able to review the response in
17 opposition?

18 **THE COURT:** I did.

19 **MR. VITALE:** Thank you, sir.

20 **THE COURT:** Sure.

21 **MS. ROCKENBACH:** Thank you, Your Honor.
22 And I appreciate Your Honor reading the
23 January 5th discovery order.

24 Also, two things have occurred since
25 the January 5th order. One, this Court

1 ruled -- I believe it was last week, with my
2 co-counsel Scott Link present -- that the
3 number of individuals before 2009 and the
4 number of individuals after 2009 are
5 admissible, just the number of claimants,
6 not the amounts. That was the ruling.

7 And there was some discussion about
8 whether amounts were in, not in, there was a
9 request for us to stipulate. And I am sure
10 that my co-counsel was concerned about his
11 appellate counsel being upset about the
12 preservation issue.

13 So we respect what this Court ruled
14 with regard to that particular ruling on the
15 number of claimants pre-2009 and the number
16 of claimants post 2009. We respected and
17 maintained our objection.

18 The reason that Your Honor made that
19 ruling was that Edwards argued to this Court
20 that it was necessary to prove to the jury
21 Edwards' motivation for filing a lawsuit
22 against -- Epstein's motivation for filing a
23 lawsuit against Mr. Edwards. And so that
24 was what prompted Your Honor's ruling.

25 The second transaction or occurrence

1 since the January 5th order was right before
2 this hearing, Mr. Vitale -- and I thank him
3 for this -- advised me that Mr. Edwards will
4 not be seeking admissibility of the amounts
5 of the other tort claimants, meaning other
6 than Edwards' three.

7 **MR. VITALE:** If I could clarify that.
8 Sorry. The statement that I made was
9 regarding the relief that was being sought
10 in this motion in limine, which was the
11 individual amounts.

12 The individual names we are no
13 longer -- I am not opposing that relief in
14 my opposition.

15 As to the gross number of the dollar
16 value pre-December 7th, 2009 and post
17 December 7th, 2009, that's the subject of a
18 second motion to lift confidentiality
19 designations.

20 **THE COURT:** As a corollary to my
21 rulings -- and if I haven't made that clear
22 yet, I will -- now, I have no intention of
23 unsealing the confidentiality provisions of
24 claims that were not handled by Mr. Edwards.

25 The only thing that I believe is

1 appropriately admissible as to the malicious
2 prosecution claims, and how this type of
3 case differs from the norm when we are
4 talking about comparators, and that is, that
5 in most of the cases that have been cited by
6 Mr. Epstein, in his moving papers that I
7 have been given today, the introduction of
8 those similar types of settlements have
9 typically been barred, either by the trial
10 courts or by the appellate courts, because
11 they are interrelated to the claim at issue.
12 Meaning, while they are -- they are the
13 subject of a claim at the issue, better
14 stated.

15 Meaning that, in most situations,
16 everyone's case is different. And to try to
17 use comparison settlements in those types of
18 settings, i.e., where one individual may
19 have resolved a case under similar
20 circumstances with the same defendant, it's
21 really, in most situations, irrelevant to
22 the actual claim made by the plaintiff at
23 bar, because of the significant differences,
24 in most situations, in one party's damages
25 and another.

1 The reason for the Court's general
2 ruling, that I have made and willing to
3 expound upon today, as to allowing the gross
4 settlement amounts, both before and after
5 the filing of the lawsuit by Mr. Epstein
6 against the Rothstein firm and Mr. Edwards
7 and [REDACTED], individually, reflects, at least
8 from a relevancy standpoint, i.e., does it
9 touch on a fact at issue, is the legal
10 elements that Mr. Edwards must prove in his
11 malicious prosecution claim, and one is
12 proximate cause; and then as a corollary to
13 that, malice.

14 So that has always been the idea behind
15 the Court's global ruling that will not
16 disturb, because of the Court's sensitivity,
17 in large part understanding the issue well,
18 but also, as directed by the appellate
19 courts, that settlement offers that contain
20 confidentiality clauses must be respected,
21 and there may also be a Florida
22 constitutional argument regarding the
23 impairment of contracts, if the Court was to
24 disturb that confidentiality provision. So
25 the Court is sensitive and respectful to

1 those confidentiality provisions.

2 The ruling, though, is that the number
3 of claims that Mr. Epstein settled for the
4 exposure that he had after in the aggregate,
5 which were later converted then into actual
6 settlement of dollars, that aggregate, I
7 continue to maintain, would be admissible
8 and is relevant to Mr. Epstein's motive.

9 And again, the time of this filing is
10 critical to the Court's analysis. I have
11 made that clear on numerous occasions.

12 This was all going on at or near the
13 time that the Rothstein firm imploded; that
14 Mr. Rothstein and many members of the firm
15 were implicated in this Ponzi scheme, which
16 was the largest in the State of Florida;
17 which Mr. Rothstein is now going hard time;
18 from my anecdotal observations, quite
19 deservedly so; and there was a chaotic
20 condition at that office as a result of the
21 raids that were being done to confiscate --
22 not confiscate. Poor word. -- to secure
23 every piece of evidence that the respective
24 government agencies were seeking against
25 Mr. Rothstein, and perhaps all of the

1 tentacles that Rothstein had as a result of
2 this massive Ponzi scheme, that went to the
3 very heart of the whole idea of personal
4 injury claims, and the factoring of these
5 claims and things of that nature.

6 And so while Mr. Epstein has every
7 right to state his position as to why he
8 filed the lawsuit, as I have also mentioned
9 on several occasions, Mr. Edwards has the
10 conterminant obligations to be able to use
11 whatever evidence that is relevant in order
12 to show what is a significant burden here,
13 and one that has been suggested by courts of
14 this jurisdiction and others to be often a
15 very difficult one. And that is, in large
16 part, the probable cause. And again, as a
17 corollary, the malice, that may have existed
18 to what is, at least, some relevant proof of
19 that -- or those elements.

20 But in large part, the financial
21 exposure, the potential embarrassment and
22 publicity that Mr. Epstein was facing, to
23 some degree, as far as the publicity and the
24 embarrassment, that Mr. Edwards was also
25 facing.

1 The theory being, as espoused by
2 Mr. Edwards in his malicious prosecution
3 claim, that Mr. Epstein was striking while
4 the iron was hot. And that when somebody is
5 down, when somebody is potentially
6 suffering, when someone is weakened --
7 whether it be he himself believed he was
8 implicated or not, this was massive. This
9 was publicized. This was known throughout
10 the country, Rothstein's antics after this
11 all broke, going to Morocco, I believe, on a
12 plane, and having to be talked back into the
13 country by his wife, as I recollect.

14 Having handled those cases, the state
15 claims -- my division before I moved to
16 juvenile -- I saw firsthand what transpired,
17 and had a significant interest in knowing
18 all of the facts and circumstances, because
19 I was handling this case at the time.

20 I remember handling Mr. Edwards'
21 withdrawal from -- I guess, withdrawal from
22 the Rothstein firm, and coming in indicating
23 he was filing a notice of appearance on
24 either himself or his own firm or joining
25 another outfit. I can't remember. I do

1 remember that time period very strikingly.

2 So, I think that's where we are. I am
3 more than willing to hear further argument
4 as far as whittling down or more carefully
5 structuring the Court's decision here. But
6 globally, that's where I am, for the reasons
7 I just stated, which has been stated in the
8 past.

9 Ms. Rockenbach.

10 **MS. ROCKENBACH:** Thank you, Your Honor.
11 I think I just lost my motion, but I don't
12 want to reargue anything that the Court has
13 ruled.

14 **THE COURT:** It is an 11-page motion, so
15 if I left anything out or if I have not
16 touched on things that need to be further
17 touched on, you know you have full carte
18 blanche to let me know, because of the
19 respect that I have for you and for
20 plaintiff -- defense counsel --
21 counter-plaintiff's counsel, you are never
22 encroaching upon the Court's patience when
23 it comes to trying to get this right, which
24 is all I am trying to do.

25 **MS. ROCKENBACH:** Thank you. I

1 appreciate that, Your Honor. And I also
2 respect this Court's ruling.

3 You did previously rule that the number
4 of claimants were coming in before 2009 and
5 after 2009.

6 **THE COURT:** But I saw that there was a
7 caveat there regarding more so discovery
8 than it was specific to admissibility.

9 Today I am being asked to determine
10 admissibility, and that's why I expounded,
11 rather lengthily, on that issue.

12 **MS. ROCKENBACH:** That's correct. And
13 the January 5th order it was the discovery
14 issue.

15 Last week Your Honor did rule at a UMC
16 hearing with Mr. Scarola and Mr. Link, who
17 were present -- we weren't -- Mr. Vitale and
18 I were not -- and your ruling, as I
19 understand it, although we don't have the
20 paper, was that the number of claimants
21 before 2009 and the number of claimants
22 after would be admissible.

23 **THE COURT:** And the aggregate amounts
24 of the settlements.

25 **MS. ROCKENBACH:** And so today's motion

1 is in part some overlap of that with regard
2 to respecting the Court's ruling, but also
3 making sure that -- and preserving the
4 objection to any of it coming in based on
5 relevance and probative value and the
6 prejudicial impact to this jury -- there is
7 an additional layer of prejudice, but it's
8 the 90.403 of misleading the jury.

9 **THE COURT:** Let me answer a couple of
10 those questions now --

11 **MS. ROCKENBACH:** Sure.

12 **THE COURT:** -- because I made some
13 notes while I was reading the materials
14 here. To quell any concerns, you wrote
15 here -- forgive me. I sometimes get
16 confused. Whomever wrote the well-written
17 motion here --

18 **MS. ROCKENBACH:** Then it was me.

19 **THE COURT:** It was actually signed by
20 Mr. Link. It does have your name and
21 Ms. Many, M-A-N-Y -- her name as well, so
22 any of the three of you did a good job --
23 combined effort.

24 **MS. ROCKENBACH:** Thank you.

25 **THE COURT:** But it says, quote, this

1 Court has made it clear that Edwards may try
2 to prove the elements of malice by allowing
3 Edwards to discuss generally the number of
4 pending claims that existed in December 2009
5 and the financial exposure those claims
6 represented, end quote.

7 I would editorialize this by indicating
8 that to prove the elements of probable cause
9 and as a corollary, malice. But other than
10 that, it's relatively accurate.

11 It then goes on to state, quote,
12 settlement amounts of Edwards' three tort
13 claimants have zero relevance to Edwards'
14 burden of proof, and evidence of any other
15 tort claimants' settlements obviously even
16 less.

17 Rather, they are being sought to
18 tarnish the jury's view of Epstein and
19 inflame the jury against Epstein.

20 In other words, Epstein is damned if
21 the amounts are disclosed or not. They will
22 either be so high as admission of great
23 guilt, or too low as further alleged abuse
24 of the civil tort claimants, end quote.

25 So what I have wrote here is that I

1 made it clear to Mr. Scarola and
2 Mr. Vitale -- and I will continue to make it
3 clear -- that there will be no pejorative,
4 there will be no extraneous or other
5 inappropriate comments.

6 When I use the word inappropriate, what
7 I mean by that is not that I have ever heard
8 either of them make inappropriate comments,
9 at least since the Court has harnessed
10 Mr. Scarola relative to some of the words --
11 descriptions he has leveled at
12 Mr. Epstein -- but those have stopped after
13 I made that pretty clear.

14 But the contemplation is to solely
15 utilize the amounts of the settlements in
16 the three cases at issue. And remember, it
17 has to also be emphasized, as Mr. Vitale, in
18 his response, indicated, that [REDACTED]. was a
19 defendant in the case -- in the Epstein case
20 that was brought against Rothstein, Edwards
21 and [REDACTED]. Her party status is important and
22 has to be explained.

23 But irrespective of that, the reason
24 for the Court's admission of this evidence
25 at this juncture -- we have to talk,

1 perhaps, more about how we are going to deal
2 with the gross settlement amounts that
3 Mr. Epstein faced, either exposure or by
4 virtue of the actual numbers paid, the cases
5 where Mr. Edwards was not counsel.

6 The argument is going to be, as I
7 understand it from Mr. Scarola's prior
8 arguments, is that Mr. Epstein, essentially,
9 attempted to chill the bar members, if you
10 will, the attorneys who were bringing these
11 cases, and that Mr. Edwards was, if not
12 actually involved in those cases, was a
13 source or a resource for these cases, and
14 also was, from my recollection, involved in
15 the prosecution of the federal claim that
16 was pending and still is pending pertaining
17 to the Victims' Rights Act.

18 How much that's going to impact upon
19 the Court's analysis here, I'm not sure.
20 But the decision that the Court made
21 regarding the global settlement amounts paid
22 still tends to prove or disprove a material
23 fact, and, that is, the probable cause and
24 corollary malice that will have to be proven
25 up. And again, the burden is significant on

1 the part of the counter-plaintiff Edwards.

2 So this Court will go to great pains
3 in, one, not allowing any type of pejorative
4 comments to be made against Mr. Epstein;
5 two, to ensure that the jury understands, if
6 necessary, the rationale for the Court's
7 admission of this information; and three,
8 that we are not going to go into any detail
9 whatsoever as to the nature of any claims
10 Mr. Edwards was not lead counsel. It is
11 solely to show the exposure that Mr. Epstein
12 faced going forward.

13 It will only be admissible to show the
14 timing of the suit that was brought by
15 Epstein against Edwards, to explain the
16 reasons why, from the counter-plaintiff's
17 side, Edwards' side, why he believed that
18 this suit by Epstein was brought at that
19 critical juncture. And, of course, as to
20 the three claimants: ■■■., Jane Doe and --
21 the third person that escapes my mind right
22 now --

23 **MR. VITALE:** E.W.

24 **THE COURT:** E.W. Thank you.

25 -- the past exposure -- the past

1 payments that he made, so as to give the
2 jury some idea of Mr. Epstein's mindset.

3 Again, I have to look at this case from
4 both sides. You have the unique
5 perspectives, from your respective sides, to
6 be advocates for your clients. I have to
7 find what I believe to be the most
8 appropriate level playing field so that both
9 sides are adequately able to prove their
10 respective cases. And that's the whole
11 basis for these rulings.

12 So the way I would suggest that this
13 may be incorrect, what I read here from your
14 papers, is why I wanted to clarify or, at
15 least, explain more fully the core reasons
16 for the Court's determination of
17 admissibility.

18 Now, let me ask Mr. Vitale a question.
19 And if you don't know, that's fine as well.
20 As far as [REDACTED], E.W. and Jane Doe are
21 concerned, have you spoken to them as to
22 whether or not they are willing to waive
23 their side of the confidentiality aspect?

24 **MR. VITALE:** As to the amount of the
25 settlement payments only? No, I have not.

1 I do not believe Mr. Edwards has. But if
2 that's important to the Court's
3 determination as to whether we can introduce
4 the settlement payments made specifically to
5 ■■■., E.W. and Jane Doe, and also the timing
6 of those payments, we can go ahead and do
7 that.

8 Because, as my response makes clear, in
9 the initial complaint by Mr. Epstein he
10 pleads and alleges that these were weak and
11 minimal-value claims, being used solely to
12 fund a Ponzi scheme, and then he settles
13 them for amounts that have already been --
14 Your Honor is aware of -- after he knows the
15 Ponzi scheme is over.

16 **THE COURT:** Pardon me for interrupting.

17 And that's a reason, again, just so the
18 record is clear, for the Court's decision on
19 admissibility, was that specific allegation
20 in Mr. Epstein's initial complaint that gave
21 rise to the malicious prosecution claim by
22 Mr. Edwards, that he identified the three
23 claims held by ■■■., E.W. and Jane Doe,
24 those clients being represented by
25 Mr. Edwards, as weak in nature. And that,

1 again, goes to the timing, in large part, of
2 the action brought by Mr. Epstein against
3 Rothstein, Edwards and [REDACTED].

4 I appreciate you raising that.

5 Right now -- again, the individual
6 claims that I think are probably going to
7 need to be further scrutinize, but I don't
8 want to leave any loose ends out. So I
9 think that because of the nature of the
10 allegations made by Mr. Epstein against
11 Edwards in the claim initially brought that
12 gave rise to the malicious prosecution
13 action now being tried, that those
14 individual claims will likely be admissible.
15 Again, weighing the confidentiality aspect
16 with the need for that information to be
17 potentially utilized by Edwards in proving
18 up his case against Mr. Epstein.

19 Again, there are references in the
20 actual documents that confidentiality can be
21 overcome. And one is -- I believe it says
22 by rule or by law or something like that.

23 **MS. ROCKENBACH:** That's correct, Your
24 Honor. It's page three of my motion,
25 "Except to the extent required by law or

1 rule; or in response to a validly issued
2 subpoena from a government or regulatory
3 agency."

4 Goes on to say that the settlement
5 agreement or terms thereof, shall be used or
6 disclosed in any court, arbitration or other
7 legal proceedings, except to enforce the
8 provisions of this settlement agreement.

9 **THE COURT:** And my position is,
10 certainly, it would have been better had it
11 specifically stated order of the court.

12 But the genesis, if you will, or the
13 underpins of the Court's ruling, is clearly
14 one that is subsumed under section one of
15 the exception. And that is, quote, to the
16 extent required by the law or rule, end
17 quote.

18 By virtue of Mr. Epstein bringing this
19 suit against Rothstein, Edwards and ■■■.,
20 the confidentiality aspect of the individual
21 settlements to which ■■■. was a party, E.W.
22 and Jane Doe also being represented by
23 Edwards at the critical time of this
24 analysis, in my respectful view, would be
25 required by law so as to legally permit

1 Mr. Edwards to be able to fundamentally
2 prove up his case for malicious prosecution.

3 As Mr. Vitale amply points out,
4 Mr. Epstein was the initiator of all of
5 this. This would not have occurred had
6 Mr. Epstein not brought that case in the
7 first place, and then abruptly dismissed it
8 at the eve of summary judgment hearing.

9 So again -- I am not saying that with
10 any judgmental aspect or intent. It's
11 simply pointing out the fact that we
12 wouldn't be here without Mr. Epstein
13 initiating those claims.

14 And so to the extent required by law,
15 to me, a reasonable reading of that sanction
16 would be that now that Mr. Epstein has
17 started the fire, has dismissed his case in
18 chief, has now --

19 **MS. ROCKENBACH:** Against Mr. Edwards.

20 **THE COURT:** Correct.

21 -- has now given rise to the Edwards
22 malicious prosecution claim as a direct,
23 obviously, response to the dismissal of the
24 case in chief against Edwards, to the extent
25 required by law, seems to me to be quite

1 self-evident. And, that is, that these
2 three claims, that were otherwise
3 confidential, is now needed under the law
4 for Mr. Edwards to be able to, in part,
5 prove up his malicious prosecution claims
6 that the six -- I believe it's six --
7 elements that are required, most probably
8 here, probable cause and corollary malice.

9 **MR. VITALE:** Your Honor, I would just
10 point out for the record that in one of
11 Mr. Epstein's interrogatories he requested a
12 breakdown of all the payments made as a
13 result of these settlements, which
14 essentially asks for a copy of the closing
15 statement.

16 In responding to that we obviously need
17 to assert attorney-client and work product
18 privilege. But we were required to
19 disclosed these total settlement amounts
20 already in discovery initiated by
21 Mr. Epstein. I think that's important for
22 the record.

23 **THE COURT:** Thank you. I didn't know
24 that. I appreciate -- If I did, I didn't
25 remember. Thank you.

1 **MS. ROCKENBACH:** Your Honor, just to,
2 perhaps close our hearing -- and I
3 appreciate the Court's thoughtful ruling,
4 extensive ruling -- you have denied
5 Epstein's motion to motion in limine
6 regarding the admissibility of the three
7 tort claimants and the amounts paid to them.
8 But I haven't -- the tail end of your ruling
9 did not quite address the other tort
10 claimants.

11 I understand that Your Honor said
12 that -- and cautioned Mr. Edwards' counsel
13 that no detail whatsoever of other tort
14 claimant would come in at trial. I presume
15 that you mean lurid details regarding their
16 claims against Mr. Epstein so as to further
17 inflame the jury.

18 **THE COURT:** Let's not add something
19 that was not said. None of the details
20 regarding those claims will be admissible.

21 The only details that will be
22 admissible, if you will -- if you want to
23 call them details. I don't think that they
24 are. -- is the aggregate amount of the
25 settlements thus showing at least relevant

1 evidence, i.e., tending to prove or disprove
2 a material fact -- strike that.

3 Material fact being probable cause and
4 the malice corollary. And that is what is
5 the best evidence -- and I am not using best
6 evidence in the traditional sense, but as
7 generically -- and that is, what would be
8 the best way to be able to prove -- or a way
9 to prove Mr. Epstein's exposure at the time
10 he filed his lawsuit, then the proof being
11 in the pudding, i.e., the aggregate
12 settlement amounts that were paid out, so as
13 to demonstrate what could be potentially
14 seen as a chilling effect to all who were --
15 who were prosecuting claims against him.

16 Now, again, I hate to leave loose ends,
17 but I am going to have to hear a little bit
18 more about Mr. Edwards' involvement in these
19 later cases to be able to really get a
20 flavor for how much I am going to let in.

21 The aggregate sounds like a tempting
22 limit -- a tempting limiting starting point.
23 But if it can be reasonably shown to me that
24 Mr. Edwards had no real involvement in
25 anything other than those three claims, then

1 the Court -- as I have mentioned and as you
2 well know, the appellate courts have been
3 much more prolific in writing about the
4 fluidity of motions in limine until the
5 court gets the full flavor at trial. And I
6 don't think any case that I can think of
7 would be more pertinent to that type of
8 analysis than this one, because there is so
9 many things that are going on in the
10 workings of the case.

11 So, while I made a definitive ruling as
12 to the three claimants that Mr. Edwards was
13 representing, and the fact that the
14 individual settlement amounts, because of
15 the reasoning I have already mentioned,
16 would be permissible and would be an
17 exception to the confidentiality agreement,
18 particularly with the expressed permission
19 of those three claimants, I would feel more
20 comfortable if that is immediately obtained.

21 **MR. VITALE:** Yes, sir.

22 **THE COURT:** But other than that, I
23 think that the extent required by law,
24 provision of the exception is something that
25 the Court can hang its hat on comfortably,

1 and I have given you the analysis in that
2 respect.

3 But again, I going to continue to
4 reserve on this aggregate amount until I can
5 figure out what Mr. Edwards' involvement
6 was, a better understanding of how, if at
7 all, Mr. Edwards' continuing involvement, if
8 any, what it may have been, vis-a-vis the
9 time periods.

10 Because it is very hard for me -- as
11 you know and you see what goes on in these
12 hearings -- I try my best to remember as
13 much as I can -- I am talking about even the
14 8:45s when people asking me to recall things
15 that happened a month ago -- I just don't.

16 We went four trials back-to-back. I
17 mean, since the beginning of the year, four
18 jury trials back-to-back. It wasn't until
19 last Tuesday -- my deputy is my witness --
20 that during business hours I was able to
21 spend more than a half hour in block time in
22 my office, so the rest of time was out here
23 on the bench. It's sometimes hard to
24 remember everything that goes on, obviously.

25 But what it simply is trying to

1 communicate is I do need to have further
2 information in that regard.

3 **MS. ROCKENBACH:** Regarding the other
4 tort claimants?

5 **THE COURT:** Correct.

6 **MS. ROCKENBACH:** And not only, may I
7 suggest to the Court, you need a flavor, as
8 you say it, for Mr. Edwards' role in those
9 cases, but if the basis or predicate for
10 your ruling is what was motivating
11 Mr. Epstein, it would be important to know
12 whether Mr. Epstein knew Mr. Edwards' role.

13 **THE COURT:** Remind me of when the
14 settlements of the three --

15 **MR. VITALE:** July 2010, Your Honor.

16 **THE COURT:** And that was --

17 **MR. VITALE:** Seven months after the
18 filing of this lawsuit, Mr. Epstein's
19 lawsuit.

20 **THE COURT:** So the exposure would be,
21 then, what would be at issue at the time
22 Mr. Epstein filed his case against
23 Rothstein, Edwards and [REDACTED]. And then the
24 amounts that were paid after, would serve as
25 proof as to the fact that the claims -- at

1 least what will be argued by the
2 counter-plaintiff Edwards was that the
3 claims weren't weak, that Mr. Epstein faced
4 significant exposure, faced significant
5 exposure for those three cases and other
6 cases.

7 **MS. ROCKENBACH:** It's the other cases,
8 Your Honor, that you are reserving ruling on
9 until you receive more information or --

10 **THE COURT:** Yeah.

11 **MR. VITALE:** May I seek some
12 clarification?

13 **THE COURT:** I mean, I did say earlier
14 about the chilling effect. But I am not
15 convinced that that would make much of a
16 difference, because Mr. Edwards, [REDACTED]. and
17 Rothstein were the only ones that were sued.
18 He didn't sue -- Mr. Kuvin, I believe, had
19 cases, Mr. Josefsberg.

20 **MS. ROCKENBACH:** Mr. Scarola.

21 **THE COURT:** I didn't know Mr. Scarola
22 had cases. But Mr. Scarola.

23 Under the circumstances, I am still not
24 terribly comfortable with talking about the
25 aggregate.

1 Something you needed clarified,
2 Mr. Vitale?

3 **MR. VITALE:** Yes, sir. When you're
4 saying the aggregate, are you referring to
5 the aggregate number of claims, or are you
6 referring to the aggregate settlement
7 amounts?

8 **THE COURT:** Both.

9 **MR. VITALE:** Because we had a hearing
10 last week where you had ruled admissible the
11 aggregate number of claims.

12 At that hearing Mr. Link had suggested
13 that, well, if those are coming in, we are
14 going to want to tell the jury what the
15 aggregate settlement amounts are, because my
16 client is a billionaire and he's --

17 **THE COURT:** And I'm sorry.

18 **MR. VITALE:** He wanted that stipulation
19 and you wouldn't give it. So I just want --
20 if that issue is still -- if the Court would
21 like further workup on it, I want to make
22 sure I'm clear.

23 **THE COURT:** Again, goes to the fluidity
24 of these rulings.

25 It's hard for me -- again -- and I

1 don't mean to make excuses, but when you're
2 carrying the loads that we're carrying,
3 without any dedicated support -- we have the
4 nine staff attorneys assigned to the
5 courthouse to cover the needs of 50 judges
6 or so -- it's hard for me to have anything
7 in a condensed format.

8 Everything that I read, I have to read
9 every page, or I try to read every page. I
10 don't have the luxury of having some
11 dedicated clerk who can digest all of this
12 material and provide me the streamline
13 version of what it is.

14 So the problem that I have often is
15 trying to put into place the dates that all
16 of this took place, i.e., the settlements
17 with the three people that Mr. Edwards
18 represented, vis-a-vis, the time that
19 Epstein filed a lawsuit. That often comes
20 as a bit of a confusion point to me, not the
21 cause by anybody, except my own attempt to
22 try to remember this stuff as best I can.

23 So as I'm listening to it today, as I
24 said, I have no doubt -- and I am
25 comfortable with the ruling regarding the

1 exposure that Mr. Epstein faced prior to his
2 filing of the lawsuit in 2009.

3 The proof in the pudding statement that
4 I made earlier regarding the ultimate
5 resolution of those cases by way of
6 settlement, the least of which I believe is
7 \$1 million of the three, and juxtaposing
8 that exposure with the ultimate settlement
9 amounts, so as to show from the counterclaim
10 standpoint, evidence of probable cause, or
11 lack thereof, and malice.

12 The struggle that I'm having right now
13 is what would be the nexus between any of
14 these other outstanding claims and the
15 aggregate settlements of those when
16 Mr. Epstein did not sue any of those other
17 lawyers for any reason that I'm aware of.
18 And you both have clarified and confirmed
19 that, to my knowledge.

20 And also, again, just trying to
21 understand both sides' theories here, that
22 the discreet issue that Mr. Epstein was
23 suing on was what was transpiring as a
24 result of Mr. Rothstein's illegal activities
25 and not having anything to do with any of

1 these other lawyers or claimants that I am
2 aware of.

3 So I don't want to really get into that
4 any more today. I think that I am going to
5 reserve, really, until -- and I don't think
6 I want -- I don't really -- let me think
7 about this for a moment.

8 **MR. VITALE:** We have the hearing coming
9 up, Your Honor, on March 7th (sic), next
10 Wednesday.

11 **THE COURT:** Thursday.

12 **MR. VITALE:** We can take it up then.

13 **MS. ROCKENBACH:** I think we are trying
14 to confirm it.

15 **THE COURT:** I reserved Thursday, all
16 day.

17 **MS. ROCKENBACH:** All day. Okay. Thank
18 you very much.

19 **THE COURT:** Sure.

20 On the one hand I am trying to not have
21 to overburden myself with anything more than
22 needing to be heard on Thursday with this.
23 But if you want to readdress it then, I -- I
24 guess we should, because it likely could
25 come up in opening statement.

1 **MS. ROCKENBACH:** Yes.

2 **THE COURT:** So I will hear kind of the
3 revised, boiled-down motion on just that
4 issue alone.

5 **MS. ROCKENBACH:** Of the other tort
6 claimants.

7 So Your Honor denied my motion as to
8 Mr. Edwards' three, reserved as to the other
9 tort claimants for today?

10 **THE COURT:** Correct. And that's the
11 latest ruling that the Court has made. I
12 have been able to better put into
13 perspective today the timing of the
14 respective proceedings that transpired back
15 in 2009 and 2010, and have further
16 contemplated this issue of these other
17 claimants.

18 And, again, I'm just not sure that
19 whatever probative value may be gleaned from
20 that information would not be materially
21 outweighed by the prejudice. And that
22 analysis, I think, applies here. So right
23 now my inclination is to look at it again
24 and get a fresh perspective.

25 I am having more and more doubts that

1 that is something that I am really going to
2 allow in.

3 **MR. VITALE:** Your Honor, may I ask for
4 one clarification?

5 **THE COURT:** Sure.

6 **MR. VITALE:** You had mentioned that for
7 the other -- you had mentioned for the other
8 claims against Mr. Epstein that, obviously,
9 we will not go into detail as to the
10 allegations of those claims. But the
11 primary damage claim against Mr. Edwards is
12 that Mr. Epstein spent attorney's fees
13 defending against discovery he deemed to be
14 not relevant to the three claims being
15 brought by [REDACTED], E.W. and Jane Doe. That
16 damage claim is obviously barred by the
17 litigation privilege.

18 But, assuming it's bought in,
19 Mr. Edwards, in the defense of the
20 discovery, is going to be that it was
21 relevance to a couple issues. It was
22 relevant to the punitive damages claims on
23 behalf of these three individuals, it was
24 relevant to the modus operandi of
25 Mr. Epstein.

1 So if arguments are made that you tried
2 to depose the pilots, but weren't your three
3 clients not on the planes? Well, yes,
4 that's true. But the reason for the
5 depositions of those pilots will go to --
6 without getting into detail -- will go to
7 the existence of other claims that there
8 were claims that younger, underage women
9 were on planes with Mr. Epstein.

10 **THE COURT:** Again, Mr. Vitale, think of
11 it from my standpoint in trying to make sure
12 that this case is very much focused on the
13 malicious prosecution action and only the
14 malicious prosecution action.

15 Now, I have indicated that we can't
16 sanitize this case completely. Both sides
17 have agreed with that. But again, I think
18 you are making my argument for me to some
19 degree when I talk about the 90.403
20 analysis --

21 **MS. ROCKENBACH:** Yes.

22 **MR. VITALE:** Yes, sir.

23 **THE COURT:** -- when I'm talking about
24 prejudice versus probative. I am looking at
25 that as -- when it deals with other

1 people -- largely corollary and largely
2 collateral. And also, again, a probative
3 versus probative analysis, too. So that's
4 where the Court is focusing right now.

5 Again, I appreciate the additional
6 discussion today, because it helps me to
7 focus on these dates and timing.

8 When it comes to discreet issues like
9 we are talking about, we will figure it out,
10 I think, as we go along and it becomes much
11 more obvious to me as we go through this --
12 but sometimes it may be even wiser to just
13 get a ruling from the Court, as far as that
14 issue, during the trial.

15 I mean, the Court may be able to make a
16 definitive determination as to whether or
17 not it's relevant. If it is relevant, then
18 how far we will go into it. I will get a
19 better idea of what's going on during the
20 trial, something that relatively small.

21 And I appreciate the fact that you are
22 using it as an example.

23 **MR. VITALE:** It is in the complaint.
24 And my understanding is it is part of the
25 argument that Mr. Epstein actually suffered

1 damages.

2 **THE COURT:** And it can be explained,
3 but it doesn't have to be explained to the
4 extent that those other people were
5 claimants. There is really no relevance
6 there.

7 If there were minors that were on the
8 plane and that gave rise to the need to
9 depose the pilots, I think you can leave it
10 at that. I don't think the need that they
11 were claimants makes any difference, except
12 to potentially inflame the jury.

13 The fact that there was need to take
14 those depositions because they were
15 potentially the minors on the plane, first
16 of all, that would have to be likely shown
17 to me, proffered outside the presence of the
18 jury first. And if there was sufficient
19 predicate then to be established, then we
20 may be able to go into it, but in a much
21 more sanitized fashion, and in a way that
22 wouldn't trigger the fact that they may be
23 claimants. I don't really see the
24 connection. The need to take the
25 depositions can be shown without having to

1 get into any of the litigation details.

2 If there were minors on the plane, that
3 could be established by way of a predicate
4 first, then the likelihood is that I will
5 allow it, but in a limited sanitized
6 version, so as to simply show the need to
7 have taken those depositions, not the fact
8 that there was a claimant onboard,
9 especially, as I understand it, she wasn't a
10 client of Mr. Edwards'.

11 **MR. VITALE:** No, sir. I believe I
12 understand the distinction.

13 **THE COURT:** So that is where we are
14 going.

15 **MS. ROCKENBACH:** Thank you, Your Honor.

16 **THE COURT:** Go ahead and prepare an
17 order that's going to say what I have
18 indicated, and that is that I am -- pursuant
19 to that exception in the confidentiality
20 agreement, I am allowing, with -- likely
21 with or without, but better with, the
22 permission of the three claimants. Because
23 they may have their own feelings about this.
24 And the likelihood that their names may be
25 mentioned, now that they are adults, at some

1 point during the trial, since the media will
2 be here, could sway them otherwise. So I
3 will need to know.

4 But it is not going to deviate from the
5 Court's global ruling that the aggregate
6 amounts of those settlements would still be
7 admissible, even without the admission of
8 the settlement of the then minors.

9 **MS. ROCKENBACH:** And that's the
10 aggregate of those three?

11 **THE COURT:** Correct. The aggregate of
12 those three will still be admitted.

13 The individual claims will be admitted
14 as well. But again, I would prefer to have
15 the permission of the three claimants.

16 I think [REDACTED] is a done deal, though,
17 because she was a defendant in the case. So
18 I am making that ruling with or without her
19 permission.

20 That goes to, again, the alleged
21 weakness of the claims as well as the
22 motivation for -- potential motivation for
23 Mr. Epstein to have filed the suit in the
24 first place and the issues of probable cause
25 and the corollary malice element.

1 The Court is reserving jurisdiction as
2 to the admissibility of the aggregate claims
3 and aggravate settlement amounts of those
4 who were not represented by Mr. Edwards.

5 As to the other evidentiary matters
6 that may come up with regard to the
7 rationale for taking depositions and other
8 expenditure of resources by Mr. Epstein in
9 the litigation regarding the three claimants
10 represented by Mr. Edwards, the Court will
11 handle each on a matter-by-matter basis.

12 However, with the understanding that it
13 is unlikely that the Court will allow
14 testimony that involves other claimants not
15 represented by Mr. Edwards. However, the
16 rationale for such expenditures will be
17 developed at trial in a sanitized fashion.

18 That pretty much takes us through that
19 motion, correct?

20 **MS. ROCKENBACH:** Thank you, Your Honor.
21 Yes, it does. Thank you so much. We will
22 prepare --

23 **THE COURT:** Nice to see you.

24 **MS. ROCKENBACH:** Nice to see you, too.

25 **THE COURT:** Also, thanks to our court

1 reporter for staying overtime.

2 Have a pleasant rest of the week. See
3 you soon.

4 - - -

5 (The above proceedings were
6 concluded at 11:06 a.m.)

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COURT CERTIFICATE

STATE OF FLORIDA)
 : SS
COUNTY OF PALM BEACH)

I, SONJA D. HALL, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true record of my stenographic notes.

Dated this 28th day of February 2018.



SONJA D. HALL