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1 obviously, what may or may not be asked of
2 Mr. Edwards and Mr. Epstein principally on
3 these cases or these issues, the global
4 order of the Court would be that those
5 individual claims would not be subject to
6 discussion as to the merits, as Mr. Scarola
7 has stipulated.

8 However, as it relates to both probable
9 cause, i.e., motive and malice, the number
10 of claims -- that is, speaking in terms of
11 volume -- that Mr. Epstein was facing at the
12 time that he brought the suit and continued
13 the prosecution of that suit would be
14 relevant. So that's the distinction being
15 drawn by the Court, the detail, the merits,
16 whatever may have been discovered as it
17 relates to those cases would not be
18 individually admissible in evidence, or any
19 of those details from those cases.

20 However, as I said, the sheer number of
21 cases may be relevant, i.e., to tend to
22 prove or disprove a material fact as it
23 relates to probable cause and malice. So
24 that's the decision.

25 Next issue, please.

6

1 MR. SCAROLA: Excuse me. May I also
2 ask for this clarification, Your Honor?

3 Will we be permitted to discuss the
4 fact that Mr. Edwards had taken a leadership
5 role in coordinating the prosecution of all
6 of those claims, that is, that it was a --
7 it was a unified effort on the part of
8 multiple law firms that Mr. Edwards was
9 playing a leadership role, which then led to
10 a basis to focus upon Mr. Edwards because of
11 that leadership role?

12 THE COURT: If that's based on fact,
13 then I believe it would be -- you would be
14 able to introduce that, yes.

15 MR. SCAROLA: Thank you, sir.

16 THE COURT: Because, again, it tends to
17 prove or disprove a material fact, i.e.,
18 probable cause, motive, malice.

19 Again, whether or not the jury accepts
20 that -- it's going to be up to the jury to
21 accept it, reject it, give it the weight it
22 deserves, or to infer anything that they
23 reasonably believe would be inferrible as a
24 result of that information.

25 The next issue, please.

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1 MS. ROCKENBACH: Thank you, Your Honor.

2 **The next -- I think based on that**
3 **ruling, Your Honor would preclude the**
4 **settlements of any of the claimants,**
5 **including the settlement amounts of the**
6 **three that were represented by Mr. Edwards.**

7 And in our motion in limine, we cited
8 the Florida Evidence Code 90.408, which
9 precludes the admissibility or evidence of
10 offers to compromise or settlements to prove
11 liability or absence of liability.

12 The cases settle all the time for many
13 different reasons. And I know that value
14 has become an issue in this case of
15 Mr. Edwards' three claimants, but certainly
16 not of any of the other claims that
17 Mr. Epstein may have settled. So that's the
18 first issue. Any other cases that he may
19 have settled are wholly irrelevant and
20 should be precluded.

21 THE COURT: Let me understand. The
22 issue of any settlements outside of the
23 three people, I don't have a problem with in
24 terms of introducing that information.

25 In other words, I don't intend to allow

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1 that information to be introduced, unless I
2 can be persuaded otherwise.

3 MR. SCAROLA: I don't intend to attempt
4 to persuade you at this point in time.

5 I don't mean to interrupt the Court,
6 but I thought it might abbreviate things.

7 THE COURT: That's fine.

8 MR. SCAROLA: I don't intend to attempt
9 to convince the Court at this point in time
10 that that evidence is admissible. I can,
11 however, foresee that it becomes relevant
12 and material.

13 THE COURT: You are talking about those
14 individuals outside of the three --

15 MR. SCAROLA: Yes, Your Honor.

16 THE COURT: -- that we have been
17 speaking about at length.

18 MR. SCAROLA: And I am only raising
19 that now, because, although I don't intend
20 to contest admissibility at this point, I
21 foresee the potential that it may be
22 admissible and therefore it should be
23 discoverable.

24 We should be able to discover what
25 Mr. Epstein's economic motive was to attempt

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1 to avoid liability in all of those other
2 cases, because his economic motive in
3 attempting to avoid liability -- not only of
4 the three cases settled for \$5.5 million,
5 but for the liability in all of the other
6 cases as well -- could become relevant and
7 material, since it's reasonably calculated
8 to lead to discoverable evidence.

9 I would ask -- and this may or may not
10 be the appropriate time to address this, but
11 it relates directly, so I think that it
12 is -- I would ask that Mr. Epstein be
13 compelled to respond to discovery with
14 regard to each of those settlements.

15 THE COURT: All right. Do you know how
16 many cases were actually filed against him
17 for the same or similar activities that were
18 alleged by the three individuals here?

19 MR. SCAROLA: Right now I would only be
20 guessing, Your Honor.

21 THE COURT: I know Mr. Kuvin had
22 several, if my memory is correct, in my
23 division.

24 MR. SCAROLA: Sid Garcia had a number
25 that he was prosecuting as well. There

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1 were -- I think it was close to 20. I think
2 there were approximately 20. I think we
3 have listed each of the case numbers.

4 THE COURT: I won't hold you to the
5 exact number. It is really for anecdotal
6 information.

7 MR. SCAROLA: I think it was about 20.

8 Also, there were a substantial number
9 of additional victims with whom settlements
10 were negotiated in the context of the
11 non-prosecution agreement. Those were all
12 of the victims that were represented by
13 Mr. Josefsberg.

14 THE COURT: So they were claims that
15 were settled without the formal filing of a
16 lawsuit? Is that what you are suggesting?

17 MR. SCAROLA: I think that
18 Mr. Josefsberg may have filed some lawsuits,
19 but I believe he also settled some claims
20 under the terms of the non-prosecution
21 agreement simply by asserting the claims
22 under the federal statute and coming to an
23 agreement with regard to how those were to
24 be resolved without the necessity of filing
25 formal legal proceedings.

11

1 But [REDACTED] pretty sure that some cases
2 were filed by Mr. Josefsberg.

3 THE COURT: Thank you.

4 Ms. Rockenbach, so as far as the
5 collateral claims are concerned -- by no
6 means am I minimizing those by using that
7 terminology. It's just to distinguish the
8 three cases that are at the heart of this
9 case as it relates to the malicious
10 prosecution claim as opposed to those other
11 folks -- those other young women, in
12 particular, who had either brought suit or
13 made claims that were paid by Mr. Epstein.

14 **The ruling of the Court is that I am**
15 **going to find at this point -- again,**
16 **subject to further inquiry at a later time**
17 **and whether or not that becomes an issue is**
18 **going to be subject to further scrutiny --**
19 **but I'm going to find that that information**
20 **would be discoverable, i.e., what was the**
21 **total amount of payments made by**
22 **Mr. Epstein?**

23 **At this point I am withholding my**
24 **ruling -- or deferring ruling on**
25 **admissibility, just for the record --**

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1 **because you all are far better aware of the**
2 **standard than I -- but the standard being**
3 **because discovery is broader than what may**
4 **be admissible at trial, the total amount**
5 **paid, again, goes back to that place in time**
6 **when Mr. Epstein would have brought this**
7 **lawsuit at or near the time of**
8 **Mr. Rothstein's arrest, at or near the time**
9 **of federal and perhaps state agents raiding**
10 **the offices of the firm; at or near the time**
11 **of these cases reaching a crescendo as far**
12 **as discovery was transpired, and then**
13 **ultimately -- at least these three cases --**
14 **settling less than a year thereafter, as I**
15 **recall. You can correct me if I am wrong.**

16 **So the motive, malicious, probable**
17 **cause issues that we have talked about at**
18 **length in the past, again, because of the**
19 **nature of discovery being broader than what**
20 **may be admissible at trial, I am going to**
21 **require that information be provided, so [REDACTED]**
22 **deferring as to its admissibility.**

23 **Any confidentiality matters that may**
24 **have attached to those settlement offers --**
25 **strike that -- to those settlement payments**

1 would also have to be discussed at a later
2 time.

3 Section 90.408, for the record, states,
4 though, "Evidence of an offer to compromise
5 a claim which was disputed as to validity or
6 amount, as well as any relevant conduct or
7 statements made in negotiations concerning a
8 compromise, is inadmissible to prove
9 liability or absence of liability for the
10 claim or its value. End quote.

11 So this is concerning, obviously, in
12 light of the statute, as to not only the
13 global settlement number that may be
14 involved, but also as it relates to the
15 three individuals.

16 Now, that's not squarely before me
17 today. And I would rather be able to deal
18 with that at some other time so that it's
19 fully briefed and we know where we are going
20 on this, because Mr. Scarola has his own
21 rationale for insisting that the \$5.5
22 million figure associated between the three
23 individuals involve directly here would, in
24 his view, be admissible.

25 Mr. Epstein largely hanging his hat on

1 section 90.408 takes a different view.

2 Similar to the hearsay rule, there are
3 noted and notable exceptions to 90.408,
4 meaning that, in the hearsay context, if the
5 information is not being used to prove the
6 truth of the matter asserted, there are
7 other ways in order to get that information
8 in.

9 Similarly, I am at least generically
10 aware that there have been exceptions that
11 have been stated under the law to 90.408.

12 So again, I would prefer to talk about
13 them at a later time. So I think that,
14 Ms. Rockenbach, what I would suggest you do
15 is separate out, as part of the motion in
16 limine -- my apologies -- if it is, I would
17 ask simply to separate it out and set it for
18 a half-hour special set hearing and we will
19 take it up at another time.

20 I would rather get into, now, these
21 issues of Fifth Amendment privilege that
22 have been scheduled.

23 MS. ROCKENBACH: Yes, Your Honor.
24 Thank you.

25 MR. LINK: Your Honor, may I make one

1 clarification, please?

2 THE COURT: Sure. Of course.

3 MR. LINK: Judge, I think I heard you
4 say that we are required to produce, on
5 Mr. Scarola's ore tenus motion, the
6 settlement agreements.

7 THE COURT: No, I didn't say settlement
8 agreements. I said the gross settlement
9 amount.

10 MR. LINK: Gross amount.

11 Your Honor, for further clarification,
12 would that amount only include those
13 settlements that took place on or after the
14 date that Mr. Epstein filed his Complaint?

15 If you look at their argument, the
16 exposure that still existed is what they
17 believe helps them show motive or malice.
18 Anything settled beforehand, obviously, had
19 been taken care of and should not fit within
20 the description that they gave the Court.

21 THE COURT: Mr. Scarola, your position
22 on that?

23 MR. SCAROLA: First, Your Honor, I'm
24 not sure we're arguing over any practical
25 significance because I don't think any of

1 the cases settled before this lawsuit -- the
2 malicious prosecution claim -- was filed.

3 MR. LINK: They did in fact, Your
4 Honor.

5 MR. SCAROLA: Well, I stand corrected,
6 then.

7 But at any rate, we respectfully should
8 get discovery that may be admissible with
9 regard to the extent to which these claims
10 were, quote, ginned up, unquote, as a
11 consequence of anything that Mr. Edwards
12 did.

13 And what we have heard repeatedly is,
14 we're talking about things Mr. Edwards did
15 while he was at Rothstein, Rosenfeldt &
16 Adler. So settlement of claims before then
17 as compared to settlement of claims after
18 that, and settlement of claims following the
19 disclosure of the alleged misconduct at RRA,
20 would be at least discoverable with regard
21 to whether these claims were somehow ginned
22 up.

23 THE COURT: We no longer need to use
24 the term alleged in terms of the misconduct
25 at RRA.

1 MR. SCAROLA: I was referring to --

2 THE COURT: There was misconduct at
3 RRA.

4 MR. SCAROLA: -- Mr. Edwards.

5 THE COURT: Whether there was
6 misconduct on behalf of Mr. Edwards, that
7 is, in fact, still a matter of allegation.

8 MR. SCAROLA: Yes, sir. And that's the
9 only misconduct I was referring to.

10 THE COURT: Absolutely.

11 I agree with Mr. Scarola, not only as
12 to his argument, but also as it relates to
13 Mr. Epstein's state of mind, i.e., probable
14 cause to bring this claim in the first
15 place.

16 It can be argued -- and I expect you to
17 argue that -- that being Mr. Mr. Link and
18 Ms. Rockenbach and his other counsel -- that
19 he clearly had probable cause to bring these
20 claims.

21 **On the other hand, an argument -- a**
22 **piece of the argument that will be made on**
23 **behalf of Mr. Epstein is that he was looking**
24 **at this in a vengeful fashion, that he was**
25 **looking at this as a way to get back at**

1 **Edwards for not only his pecuniary loss, but**
2 **some of the other things that we have**
3 **discussed as it relates to motive, i.e.,**
4 **probable cause, i.e., malice.**

5 **So that's the reason behind the Court's**
6 **ruling that the global settlement amount may**
7 **be potentially admissible or discoverable,**
8 **in my view certainly. Because, again, the**
9 **issue of relevancy is such of a broader**
10 **discussion and such more of a broader view**
11 **on the part of the appellate courts as it**
12 **relates to admissibility.**

13 So for now, that's the ruling of the
14 Court.

15 MR. LINK: I understand that. We want
16 to comply with the Court's order. Two
17 things. One, you're asking us to provide a
18 gross number of the total amount of
19 settlements, correct? And we ask the Court
20 that that number be subject to
21 confidentiality. We are disclosing
22 confidential settlement amounts --

23 **THE COURT: That would be for, at this**
24 **point, Counsel and his client's eyes only,**
25 **and shall not be disclosed.**

1 MR. SCAROLA: May we get a breakdown as
2 to -- because of the argument that's been
3 made and Your Honor's comments -- the number
4 of cases settled prior to the filing of the
5 malicious prosecution claim against
6 Mr. Edwards, that total gross; then the
7 number of cases settled while at -- while
8 Mr. Edwards was at RRA, that gross; the
9 number of the cases settled post RRA's
10 implosion and that gross?

11 THE COURT: Mr. Link or Ms. Rockenbach?

12 MR. LINK: Judge, I think that -- as I
13 said, I don't want to dispute the Court's
14 ruling, but now breaking it down into
15 segments has a whole different potential
16 relevance. It's no longer discovery. We
17 are looking at, then, finding individual
18 folks who may have resolved their cases,
19 where if we give you a gross number -- if I
20 understand Mr. Scarola's argument -- it's
21 the gross exposure that was hanging over
22 Mr. Epstein's head that caused him to do
23 this.

24 THE COURT: **That's precisely the word I**
25 **was going to use, and that's the reason**

1 **behind the Court's ruling, is that the issue**
2 **of exposure is one that, in my respectful**
3 **view, would be the relevancy of potentially**
4 **admitting that information.**

5 MR. SCAROLA: And knowledge of
6 Mr. Epstein's exposure would clearly be
7 based upon what he had to pay even before he
8 filed the lawsuit. I had to pay X number of
9 dollars and I'm really mad at Bradley
10 Edwards now for the role he has played in
11 causing me to expend that much money so far.
12 I'm going to put a stop to this. I'm going
13 to sue Edwards and scare off everybody else.

14 **THE COURT: Again, for discovery**
15 **purposes only at this point, I'm going to**
16 **require, then, simply a breakdown of what**
17 **was paid prior to December 9th, 2009. Happy**
18 **anniversary in two days: the gift that keeps**
19 **on giving.**

20 MR. SCAROLA: Actually, apparently
21 today is the anniversary day. Pearl Harbor.
22 Sneak attack.

23 MR. LINK: Justified filing. We can
24 sit out here and hurdle things to the court
25 reporter, Your Honor.

1 THE COURT: We have been speaking with
2 smiles on our faces, knowing that despite
3 the seriousness of everything that has gone
4 on here, the attorneys and the Court, at
5 least, can have moments of brevity that is
6 not disrespectful to any of the litigants or
7 any of those who may have been subject to
8 the prior cases. I want to make clear that
9 that is in fact the case in this brief
10 moment.

11 I think that I am at least reasonably
12 convinced that any prior settlements that
13 were made within a two-year period of
14 December 7th, 2009 -- and then that would be
15 broken down. And then anything paid after
16 would be broken down.

17 I think it's a relatively simple
18 exercise that won't cause any type of
19 overburden or onerous type of requirement on
20 the part of Mr. Epstein and/or his prior
21 counsel.

22 MR. LINK: We understand the Court's
23 ruling. Thank you, Judge.

24 THE COURT: Thank you, again. And
25 that's the reason behind the ruling that --

1 in fact, the nail was hit on the head by
2 Mr. Link, is one of mindset of Mr. Epstein
3 going to, again, what may be reasonably
4 calculated to lead to the discovery of
5 admissible evidence, and that is, relating
6 to issues of probable cause and malice as it
7 pertains to the potential total exposure,
8 the best -- a consideration of best
9 evidence, not so much under the rule --

10 What I'm saying is, a way to portray
11 that mindset would be one of the exposure
12 Mr. Epstein faced, not only at the time, but
13 potentially in the future so-called proof of
14 the pudding axiom that ultimately resulted
15 in the amount of money that was paid.

16 MR. LINK: Your Honor, should we
17 prepare an order on that to include the
18 attorneys'--eyes-only confidentiality ruling?

19 MR. SCAROLA: Attorneys and client.

20 THE COURT: Attorneys' and clients'
21 eyes only, not to be disclosed in any
22 fashion outside of this litigation.

23 MR. LINK: Actually, Mr. Edwards is one
24 of his own attorneys, isn't he?

25 MR. SCAROLA: He is. Yes.

1 THE COURT: Thank you.

2 All right, let's get to, now, the Fifth
3 Amendment issues, if we could please. I
4 have gone through the materials. Thank you,
5 particularly to Mr. Scarola and his office
6 for culling these out and -- pursuant to the
7 court order -- which I have never had a
8 situation in the many years I have been
9 doing this that Mr. Scarola -- for that
10 matter, Ms. Rockenbach -- to a lesser
11 degree, to the extent that Mr. Link has not
12 appeared before me that often -- to ever
13 knowingly transgress the Court's order. In
14 any event, I commend them for doing what
15 they have done to cull this out.

16 So my thinking is -- I think I asked
17 that both of you try to get together and see
18 if there's any common ground here to avoid
19 the Court's involvement.

20 Have there been any agreements with
21 respect to any of these questions and
22 answers?

23 MR. SCAROLA: We have been told every
24 one is challenged, Your Honor.

25 And if I might make a preliminary

1 statement.

2 THE COURT: Ms. Rockenbach you may as
3 well.

4 MR. SCAROLA: Your Honor, the defense
5 has cited case law that an element of a
6 civil claim may not be proved based solely
7 upon the inference that arises from the
8 assertion of the Fifth Amendment. We agree.
9 That is not a point of contention.

10 The defense has also asked for a jury
11 instruction to be given at the time that the
12 Fifth Amendment, I assume, is initially
13 asserted in the jury's presence by
14 Mr. Epstein -- in all likelihood through
15 playing excerpts of his deposition -- his
16 videotaped depositions -- and we have no
17 objection to that.

18 I think that both sides can get
19 together and fashion an appropriate jury
20 instruction that informs the jury that while
21 in the context of a criminal case, an
22 individual's assertion of a Fifth Amendment
23 right may not be used against him.

24 In the context of a civil case, an
25 adverse inference may be drawn from the