

1 IN THE CIRCUIT COURT OF THE 15TH
2 JUDICIAL CIRCUIT IN AND FOR PALM
3 BEACH COUNTY, FLORIDA
4 CIVIL DIVISION
5 CASE NO. 502009CA040800XXXXMBAG

6 JEFFREY EPSTEIN,
7 Plaintiff,
8 vs.

9 SCOTT ROTHSTEIN, individually and
10 BRADLEY J. EDWARDS, individually,
11 Defendants.

12 HEARING BEFORE HONORABLE DAVID F. CROW
13 PLAINTIFF'S MOTION TO CONTINUE TRIAL

14 DATE: February 16th, 2011
15 TIME: 9:11 a.m. - 9:28 a.m.
16 PLACE: Palm Beach County Courthouse
17 205 North Dixie Highway
18 Courtroom 9C
19 West Palm Beach, Florida 33401

20 REPORTED
21 BY: Alexandria Kaan
22 Court Reporter
23 Notary Public, State of Florida

24 PRESENT: Joseph L. Ackerman, Jr., attorney for Plaintiff
25 Jack Scarola, Esquire, attorney for Defendants
(ATTENDING BY TELEPHONE)

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1 P R O C E E D I N G S
2 BAILIFF: Mr. Scarola?

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3 MR. SCAROLA: Yes.

4 BAILIFF: Judge Crow calling on Epstein vs.
5 Rothstein.

6 MR. SCAROLA: Thank you very much.

7 JUDGE CROW: Sir, you're on the speaker
8 phone, opposing counsel is on the courtroom. If you
9 want to step up closer so he can hear you.

10 MR. ACKERMAN: Yes, sir.

11 MR. SCAROLA: Good morning, Your Honor.
12 Thank you for accommodating me by telephone.

13 JUDGE CROW: Not a problem. What do you
14 got?

15 MR. ACKERMAN: Your Honor, we represent
16 Jeffrey Epstein. This is a motion to continue the jury
17 trial. Presently it's set for jury trial on calendar
18 call on February 25th which is an eight-week docket
19 beginning March 7th. Even though there have been orders
20 entered by the bankruptcy court to prepare a privilege
21 log, we received this privilege log -- which has to be
22 addressed -- with 24,000 documents. There is one entry
23 relating to all of them so we have a hearing scheduled
24 with the special master today to address that and other
25 issues. We have filed a motion for relief in the

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1 bankruptcy court relating to the fact that the privilege
2 log hasn't been timely complied with in a legally
3 sufficient form.

4 As we've pointed out to the court in our
5 motion for summary judgment, we haven't been able to
6 obtain documents from the defendant and from the
7 bankruptcy trustee. We've taken one deposition and

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8 we've scheduled others in February and March. The
9 trustee in the bankruptcy hasn't produced records
10 related for our subpoena on the Fortress Service System
11 although they initially told us that they had. Also,
12 they were ordered to produce documents from the Q-task.
13 A Q-task is privileges owned by former members of RRA.
14 The Rothstein Firm is in contempt for not producing
15 those documents and all of those requested materials in
16 preparation of our claim. We believe that it is about
17 8,000 documents at this point subject to receiving the
18 Fortress and the Q-task documents that may be subject to
19 an in-camera review. So we don't have enough time to
20 conduct that discovery, properly prepare for the hearing
21 that's resolved that could be needed on the in-camera
22 hearings. Mr. Scarola has scheduled two hearings for
23 tomorrow to compel mediation and compel a more
24 definitive exhibit list in compliance with this court's
25 order but we really can't prepare a definitive exhibit

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1 list until we complete this discovery process with the
2 documents.

3 In addition, the court has set Mr. Edwards'
4 motion to assert a claim for punitive damages on
5 March 30th. There is a motion the court has set for
6 reconsideration relating to our objection for discovery
7 request which if the court grants on March 31st that
8 will cause additional issues to be injected into this
9 court case based on discovery that the defendant wants
10 to conduct and we believe should not be conducted. We
11 have an amended motion and supplemental motion to

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12 overrule plaintiff's objections to questions and compel
13 answers on deposition. That's scheduled for April 1st.
14 On April 5th we have a motion to compel and have the
15 court rule on objections to request to produce that we
16 have submitted and to determine if privileged claims
17 asserted as it relates to documents requested of Edwards
18 in his possession as opposed to those of the bankruptcy
19 trustee because the failure to prepare log had been
20 waived. We also have several lawyers involved in this
21 case are on trial dockets beginning next week through
22 early March. And I know that does not necessarily
23 effect how the court sets a case but it does have a
24 bearing on our ability to be prepared. We're requesting
25 the case be set in September because we really believe

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1 that until these documents are released and we can
2 conduct this discovery with those documents, as we've
3 pointed out to the court before, and with the
4 difficulties we're having just basically getting a
5 legally sufficient privilege log. Special master's
6 already sent an e-mail out indicating he doesn't believe
7 this log purports with what the requirements are under
8 the TIG Insurance case and we've had some arguments
9 about whether or not we can proceed with an in-camera
10 review in spite of the lack of a privilege log.

11 So as you can see, there's a number of
12 issues that preclude us from being properly prepared for
13 trial in the present docket and we're asking the court
14 to continue it.

15 JUDGE CROW: Let me just ask you one
16 question. The privilege log we're talking about here

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17 was a little unclear to me originally. The documents
18 that we're talking about are documents in the possession
19 of whom the privilege log is being filed, are these in
20 the possession of the trustee or are these in possession
21 of a successor law firm?

22 MR. ACKERMAN: Your Honor, there's two
23 privilege logs that are at issue.

24 JUDGE CROW: Right.

25 MR. ACKERMAN: One of the privilege logs

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1 that I gave you are the documents that are in the
2 possession of the trustee. Initially the bankruptcy
3 court, when he ordered the motion to compel and the
4 preparation of a privilege log, directed the special
5 master to prepare the law. The special master came
6 before the bankruptcy court about a month later and
7 asked that order to be clarified because he told him he
8 couldn't adequately prepare log and claim the privileges
9 without the assistance of the Farmer Jaffe Firm and
10 Mr. Edwards. The bankruptcy courts granted that motion,
11 documents were given on disk based on search terms from
12 the trustee to the special master and to the Edwards and
13 Farmer Jaffe Law Firm to prepare the log. Then we had
14 subsequent motions where they felt that they couldn't
15 prepare the log based on the disk so at our expense we
16 copied the documents, all had them bates stamped, we did
17 not keep copies, we turned them over to the special
18 master and Mr. Edwards' firm so that they could prepare
19 this privilege log. Then in December they came in and
20 said there's 74,000 documents, in fact they've later

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21 said there's only 24,000.

22 JUDGE CROW: Let me back up. The documents,
23 he's got a bates stamp on all of these so you have
24 received the documents which are any documents?

25 MR. ACKERMAN: (Shakes head) We've received

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1 two boxes of documents.

2 JUDGE CROW: Okay, the ones that are bates
3 stamped are not objected.

4 MR. ACKERMAN: No, the ones that are bates
5 stamped they're claiming privileges on.

6 JUDGE CROW: I understand that. But the
7 ones that are not bates stamped, like he's got 01018
8 objection, and then the next one is 01080, so there's
9 obviously a whole bunch of documents in between there,
10 right?

11 MR. ACKERMAN: I don't know that, Your
12 Honor. We have received two boxes of documents and I
13 don't believe those are the bates-stamped documents.
14 It's my understanding based on what they've told us --

15 JUDGE CROW: Is this going to ever end in
16 the bankruptcy court? This is one of the concerns that
17 I had when I entered in the order quite frankly was once
18 I lose control of the documents.

19 MR. ACKERMAN: Well, here's what we're
20 talking about doing. There are some underlying issues
21 that need to be addressed. At the time this subpoena
22 was issued, as I previously advised the court, there was
23 no objection filed in state court to this subpoena.
24 Within a month after the subpoena being served on the
25 trustee the bankruptcy court asserted jurisdiction over

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1 because it believed in the bankruptcy cases and codes
2 stated it has a jurisdiction over property in the hands
3 of the trustee. Now, I believe and this is our position
4 that while we are attempting to get documents from the
5 trustee and while there are presently orders for
6 privilege logs, those issues rest with bankruptcy
7 trustee, once we are at the point of having the special
8 master conduct the hearing on the privileges stuff and
9 him issuing his report I believe that we have underlying
10 issues to address that should come to you and you
11 determine whether or not the objections if any to the
12 report are applicable or not. And that's the way I
13 believe and would be our position. We have some
14 underlying issues that have to be addressed with that.

15 JUDGE CROW: When is this ever going to be
16 resolved, that's what I'm asking? I mean, you say
17 September. This thing has been going on for two years
18 now and I can't --

19 MR. ACKERMAN: Your Honor, when we filed the
20 subpoena we moved to compel in July, had the hearing in
21 August, the judge required that this privilege log be
22 prepared in 30 days. When the special master came in
23 and asked for clarification they were given another
24 30 days. That was November. In November they said we
25 can't do without the bates stamps, we gave him until the

1 end of December.

2 JUDGE CROW: Let me stop you. This is not

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3 casting blame. What I'm trying to find out is when do
4 you reasonably anticipate if ever this is going be
5 resolved by the bankruptcy or the special master? It
6 seems to me we're just --

7 MR. ACKERMAN: The problem is we don't have
8 a privilege log that purports with the requirements. We
9 believe if we had that we could be undertaking those
10 proceedings right now. Bankruptcy court from my reading
11 of its orders is about to hold the principals and Q-task
12 in contempt and incarcerate them for not complying with
13 orders that have been outstanding for over a year.

14 JUDGE CROW: Mr. Scarola, what's your
15 position, sir?

16 MR. SCAROLA: The problems of which
17 Mr. Ackerman complains are problems of the plaintiff's
18 own making. As he acknowledged at the outset of this
19 conference before Your Honor they have taken one
20 deposition and that deposition was taken last week of
21 one of the Rothstein Ponzi scheme investors. That
22 investor testified under oath clearly and unequivocally
23 I've never heard of Brad Edwards, I've never worked with
24 Brad Edwards, I don't know a thing about Brad Edwards,
25 my contact was with Rothstein and Rothstein told me he

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1 was personally prosecuting these claims. In order for
2 them to ever overcome any assertion of attorney/client
3 privilege on the basis of a crime-fraud exception they
4 must demonstrate that the client to whom the privilege
5 belongs, that is the Epstein child molestation victims,
6 those clients were participants in a crime or a fraud.
7 They have never attempted to allege it, they've made no

8 effort to try to prove it. All of this is a journey
9 into delay and is solely for purposes of delaying the
10 ultimate resolution of this claim.

11 with regard to the work product privilege, we
12 have offered to turn over to the special master every
13 single work product document because that's our
14 privilege for the special master's review to make the
15 determination as to whether anything whatsoever is
16 discoverable or probative with regard to the claims that
17 have been made. We have a hearing today in front of the
18 special master that begins at 10 o'clock this morning.
19 He has repeatedly taken the position in written
20 communications with the plaintiff that the plaintiff has
21 failed to even attempt to carry its burden, that they
22 have been delaying, that they have been rejecting
23 reasonable offers to resolve these issues. We have
24 offered to have Your Honor appoint the bankruptcy's
25 special master so that these issues can be resolved in

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1 the state court where Your Honor has appropriately
2 stated they need to be resolved.

3 At the last hearing before Your Honor with regard
4 to these issues Mr. Ackerman represented that there were
5 other pending discovery requests within the bankruptcy
6 court relating to these documents and that that was the
7 reason why the bankruptcy judge had taken control over
8 these issues, appointed a special master, and was
9 seeking to resolve these issues in the bankruptcy court.
10 That representation was not accurate. There is one and
11 only one discovery request pending, it is the subpoena

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12 issued out of the state court for these documents. As
13 Your Honor has observed in your last order, the
14 discoverability of the evidence in this pending case is
15 for Your Honor's determination and Your Honor's
16 determination only. The bankruptcy judge has no
17 jurisdiction over those issues. Its sole motivation in
18 appointing a special master was to protect the interest
19 of the trustee so that the trustee was not wasted on
20 this issue, attorney-overprivileged documents that
21 should not be turned over at the consequence of the
22 subpoena issued out of the state court.

23 This case from our perspective is ready for
24 trial. If it's not ready for trial from the plaintiff's
25 perspective it's because the plaintiff has failed to do

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1 what the plaintiff should have been doing in an effort
2 to try to prepare this baleful claim for trial. And the
3 only thing that's happening right now is that we are
4 running around in circles because the plaintiff has
5 chosen to move in circles. We ask that this motion be
6 denied at least, at least pending the outcome of today's
7 hearing so that Your Honor can hear directly from the
8 bankruptcy special master, Judge Carney, who is going to
9 report both to you and to Judge Ray. Thank you, sir.

10 MR. ACKERMAN: Your Honor, a brief response.
11 I don't know if it's appropriate now but we did send a
12 letter to Mr. Farmer in an effort to resolve some of
13 these issues and were told we're going before the
14 bankruptcy special master today, he didn't agree with
15 it. Also, the subpoena that we sent to the bankruptcy
16 trustee except for one paragraph is specifically related

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17 to documents naming third parties. The motion for
18 protective order filed by Farmer says the entire
19 subpoena asked for privileged documents. So they are
20 claiming various privileges on request that are clearly
21 not covered by any privilege because they specifically
22 name the subject matter of Epstein and Rothstein with
23 third parties, these investors. And that's part of the
24 reason why we need the privilege log because they are
25 attempting to cast four or five privileges on behalf of

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1 LM, Mr. Edwards himself, the work product privilege, the
2 joint defense privilege, and the others listed there
3 without putting them down on an item-by-item,
4 document-by-document basis. In the last e-mail last
5 night from the special master said in citing a case that
6 he believes that a proper privilege log needs to be
7 prepared based on the case authority that the
8 crime-fraud exception can't be examined in total, it has
9 to be done on a document-by-document basis.

10 JUDGE CROW: Okay, guys. I'm going to have
11 to look at this. I'll let you enter an order, we'll go
12 out this afternoon. I've got a final argument, some
13 cases. I'll look at it this afternoon and you'll get an
14 order in the mail and we'll deal with it. Okay, thank
15 you.

16 MR. ACKERMAN: Thanks, Your Honor.

17 MR. SCAROLA: Thank you.

18 (Proceedings before Judge David F. Crow concluded
19 at 9:27 a.m.)
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1 CERTIFICATE OF REPORTER
2 STATE OF FLORIDA
3 COUNTY OF PALM BEACH
4
5 I, ALEXANDRIA KAN, Shorthand Reporter and Notary
6 Public, State of Florida, HEREBY CERTIFY that I was
7 authorized to and did stenographically report the
8 proceedings in the included transcript and the foregoing
9 transcript, pages 1 through 13, is a true and accurate
10 record of my stenographic notes.
11 I FURTHER CERTIFY that I am not a relative, employee,
12 attorney, or counsel of any of the parties, nor am I a
13 relative or employee of any of the parties' attorney or
14 counsel connected with the action, nor am I financially
15 interested in the action.
16 Dated this 16th day of February, 2011.

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ALEXANDRIA KAN, CCR, Notary Public,
State of Florida at Large