

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA
CASE NO.: 502009CA040800SSSSMB

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

vs.

SCOTT ROTHSTEIN, INDIVIDUALLY and
BRADLEY J. EDWARDS, INDIVIDUALLY,

Defendants/Counter-Plaintiffs.

PROCEEDINGS HELD BEFORE JUDGE DONALD HAFELE

Epstein's Motion for Fees and Costs

HELD: December 8, 2014

Palm Beach County Courthouse
West Palm Beach, Florida

ORIGINAL

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P R O C E E D I N G S

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THE COURT: Okay. Welcome everybody.

MR. BREWER: Good morning.

MR. SCAROLA: Good morning, your Honor.

THE COURT: Thank you. Good morning.

This is counter-defendant Epstein's motion for fees and costs pursuant to an offer of settlement and offer of judgment. Mr. Brewer?

MR. BREWER: Yes, your Honor. Would you prefer we do this from the podium?

THE COURT: Whichever. You can stay there if you want.

MR. BREWER: I'll stand here.

THE COURT: Thank you.

MR. BREWER: For the record, my name is Chester Brewer. I represent Mr. Epstein. We have with us also representing Mr. Epstein Miss Tanya Haddad and Mr. Jack Goldberger.

Your Honor, first of all, this motion is only to entitlement.

THE COURT: I understand.

MR. BREWER: Did your Honor get the different handouts that we had delivered to you?

THE COURT: I believe so. I've got a stack of

1 materials here from you and I've got the response
2 in opposition filed by Mr. Edwards as well.

3 MR. BREWER: As your Honor might remember, you
4 entered a summary judgment --

5 THE COURT: Right. I remember the facts. I
6 presume it's on appeal now; is that correct?

7 MR. BREWER: It is, your Honor.

8 THE COURT: Okay.

9 MR. BREWER: You are also aware then probably
10 that earlier, before the granting of that motion
11 for summary judgment, that Mr. Epstein had received
12 a proposal for settlement on Mr. Edwards. We will
13 not be like the previous hearing. We've only got
14 here two people involved: Mr. Epstein and
15 Mr. Edwards. We don't have to figure out who the
16 parties are.

17 The amount of -- the proposed amount, I should
18 say, for settlement was \$300,000. Attached to the
19 proposal was a written release, a written
20 stipulation, and a written proposed order of
21 dismissal. Those documents were completely or
22 would have completely done away with all of the
23 issues in the case; both the original claim and the
24 counterclaim. It would put judicial effort at an
25 end.

1 The release contained a confidentiality
2 clause, which was a very, very simple one. One
3 paragraph. It essentially said that Mr. Edwards
4 was not to reveal the amount or the reason for the
5 settlement. Only to his attorneys, accountants,
6 et cetera.

7 Case law tells us that if the proposal follows
8 the requirements of the statute and the rule, if
9 any nonmonetary terms are stated with
10 particularity, and if the proposal was made in good
11 faith, then it is mandatory that the court grant
12 the motion requesting attorney's fees and costs.

13 Here, good faith. There's a number of cases
14 cited to you, your Honor, but in essence the cases
15 or the question of good faith normally turn upon
16 the fact -- or normally come up in cases in which
17 there's been a nominal offer; a few hundred dollars
18 or a thousand dollars or something like that. This
19 particular case was for -- the offer was for
20 \$300,000. Not much question about good faith.
21 Even if it were -- well, they're not. I'll stop
22 there.

23 The proposal was actually drafted by Joe
24 Ackerman. And if you look at it, it follows the
25 rule and the statute page and line. I mean, bimp,

1 bimp, bimp, bimp.

2 There is an issue that has been raised as to
3 whether nonmonetary terms had been stated with
4 particularity. A number of cases are cited, which
5 we probably will get into in rebuttal, but there
6 were a number of cases cited, some of which, or one
7 of which, anyway, is a federal court case which
8 really has no bearing here because in federal court
9 they have a completely different rule they follow.
10 And the issue in those, or the standard, is whether
11 it was a more advantageous outcome. Those words do
12 not even appear in our rule. In fact, some of the
13 federal cases that we have cited said that the
14 federal courts are pretty much bound by the Florida
15 state courts when they're looking at our state
16 statute and rule.

17 Additionally, most of the cases that are
18 cited, or I should say some of the cases that are
19 cited, deal with situations in which the actual
20 language of the nonmonetary terms were not attached
21 to the proposal. Here, they were. That is
22 essentially the preferred practice, and that was
23 what was followed.

24 We know that our Supreme Court has said, Well,
25 if you describe essentially with some particularity

1 so that you understand what's going on, you don't
2 necessarily have to attach the actual language
3 itself, but here the actual language was attached.

4 We're not dealing with multiple offerors or
5 offerees, we're not dealing with cases that deal in
6 insurance coverage in which there are potentially
7 multiple coverages that are being available to the
8 insured and perhaps a proposal for settlement was
9 made with regard to a PIP claim and then there
10 was -- it was ambiguous or unclear as to whether
11 that applied to other potential causes of action
12 like property damage or uninsured motorists. But
13 we're not. So we believe, your Honor, that here
14 everything has been attached --

15 THE COURT: Really, the core issue here is
16 whether or not this confidentiality clause passes
17 muster based upon the appellate case law in the
18 State of Florida. So why don't we hit that head
19 on, if you would, please.

20 MR. BREWER: Certainly. Does your Honor have
21 it in front of you?

22 THE COURT: I do.

23 MR. BREWER: Okay. It is abundantly clear
24 that it is a very, very supple confidentiality
25 agreement. It's very clear. It states that

1 Mr. Edwards will not reveal the amount of the
2 settlement or the reason for the settlement except
3 to his accountants, attorneys, et cetera; and if he
4 does reveal it to them, then he will request that
5 they also not reveal it. Plain and simple. It's
6 directed to Mr. Edwards only.

7 It is very clear as to -- I should say that it
8 is clear as to its term or its length. It's not
9 limited. It's forever.

10 In the counter-plaintiff's brief they talked
11 in terms of -- I just lost my train of thought. I'm
12 sorry.

13 THE COURT: That's okay. You were talking
14 about the confidentiality clause.

15 MR. BREWER: Yes.

16 They make reference to the Schwartzle case.

17 Interestingly enough, he was represented by
18 Mr. Scarola. Also represented by me at one time or
19 another. I know Kathy Schwartzle.

20 In that case, they cite language that talks
21 about, you don't know what the terms of the
22 confidentiality agreement are or who they would
23 apply to, what its term was. These kinds of
24 issues. Well, that is because in that case the
25 proposal for settlement was not attached. It just

1 simply said there -- we will require a
2 confidentiality agreement, without more. Without
3 saying anything more than that.

4 Here the confidentiality agreement is clear.
5 All they would have to do to comply would be sign
6 the release. There would be no need to revert back
7 to or require that the Court spend any time trying
8 to determine exactly what was meant.

9 If the documents that were attached,
10 specifically the Stipulation for Dismal with
11 Prejudice and Order, did not require any additional
12 judicial effort, it was a very simple, very clean
13 proposal for settlement, and we believe, your
14 Honor, that the law in Florida requires that the
15 Court grant the motion.

16 THE COURT: All right. Do you have any cases
17 that specifically relate to a confidentiality
18 clause being upheld under similar language that we
19 have here?

20 MR. BREWER: Tanya has got some brilliant
21 young people who do research, and I said, If you
22 all could find me a confidentiality agreement that
23 was contained within a proposal for settlement that
24 was in writing and attached, I would give them a
25 bonus. We can't find one, your Honor. Certainly

1 not in the State of Florida.

2 THE COURT: All right. Thank you, Mr. Brewer.
3 Mr. Scarola?

4 MR. SCAROLA: Thank you very much, your Honor.

5 Your Honor, there are five reasons why this
6 Court should not grant the relief that is currently
7 being requested.

8 The first of those is that there is not yet a
9 final decision with regard to the liability issues
10 in this matter, as has been acknowledged in
11 response to the Court's question. This case is
12 still on appeal. And I know that your Honor
13 recognizes the significance of the appellate
14 issue that is presented because the Wolfe decision
15 upon which your Honor's summary judgment was based

16 is in fact the only decision in the country that
17 applies the litigation privilege to destroy the
18 tort of malicious prosecution.

19 I suggest to your Honor that for that reason
20 alone, this motion is premature, and a decision
21 should be deferred until after the appellate court
22 has had an opportunity to address this issue.

23 THE COURT: Is there any stay issue that I
24 have to be concerned about? Has there been a
25 request for stay or --

1 MR. SCAROLA: No, sir. This is not a matter
2 of jurisdiction. There's no stay issue. The Court
3 has the discretion to entertain this motion at this
4 point in time, and the Court also has the
5 discretion to defer entertaining the motion to
6 conserve the judicial resources that would be
7 necessary in order to resolve this issue now, when
8 the issue may be entirely mooted.

9 The second, third and fourth reasons why this
10 relief should not be granted all focus on the
11 confidentiality provision in the Proposal for
12 Settlement. And if your Honor takes a look at that
13 provision, the key language in the provision is, As
14 further consideration, I agree not to disclose the
15 details of this release in settlement of all

16 claims, including the nature or the amount paid,
17 and the reasons for the payment to any person other
18 than my lawyer, accountant, income tax preparer or
19 by valid order of the court of competent
20 jurisdiction, whether directly or indirectly.

21 Your Honor asked about whether there is any
22 appellate authority that assists the Court in
23 addressing this issue, and the answer to that
24 question is there is Fourth DCA precedent that is
25 in fact very directly on point.

1 Schwartzle versus Publix Super Markets is a
2 case in which the appellate court, the Fourth DCA,
3 was asked to address the issue of the inclusion of
4 a confidentiality provision in a proposal for
5 settlement. What that opinion says is -- and this
6 is a direct quote from the language of the case --
7 it would be crucial to know what is being made
8 confidential, who is covered by the
9 confidentiality, whether there is any period to the
10 confidentiality, and what the remedies are in the
11 event of a breach.

12 There are questions among those identified by
13 the Fourth DCA as necessary to be responded to that
14 remain entirely unanswered under the terms of this
15 proposal. We don't know based upon this proposal

16 what is meant by the language the reasons for the
17 payment. That phrase could clearly be interpreted
18 as including all of the underlying circumstances
19 that relate to the litigation between Mr. Edwards
20 and Mr. Epstein. And the disclosure that's
21 prohibited is both direct disclosure and indirect
22 disclosure of any of those circumstances relating
23 to the litigation.

24 We don't know what the period of
25 confidentiality is. Presumably, because it's

1 unspecified, it would be forever. And there is no
2 reference to what the remedies would be.

3 So under the guidance of Schwartzle, the
4 criteria that had been laid out by the Fourth DCA
5 have clearly not been met. That's defect Number 1
6 in the confidentiality provision.

7 Defect Number 2 is that obviously because this
8 confidentiality provision is expressly identified
9 as part of the consideration for the settlement of
10 this claim, it has some monetary value to the
11 proponent of the proposal. Mr. Epstein was clearly
12 bargaining for secrecy. How much value he placed
13 upon that secrecy is a matter of speculation
14 because the value of the confidentiality provision
15 is not expressly identified. Indeed, the

16 circumstances of this case are such that it may
17 well have been the entire \$300,000 that was being
18 paid for confidentiality in this case.

19 And so when we look at the other appellate
20 court decisions that relate to proposals for
21 settlement and the conditions imposed upon
22 proposals, we are left with an inability to compare
23 the zero result that currently stands with the
24 result under the terms of the proposal for
25 settlement because we don't know whether the value

1 of the confidentiality provision itself was all or
2 part of the \$300,000.

3 The Fifth DCA in the case of Dryden versus
4 Pedemonti, P-e-d-e-m-o-n-t-i -- and I'm not
5 referencing the page and line citations; they're
6 included in our memo, your Honor -- the Fifth DCA
7 noted, again directly quoting, One might logically
8 posit, in fact, that the only enforceable
9 nonmonetary condition allowable under the rule is
10 one that does not go beyond what the offerer would
11 be entitled to by operation of law upon settlement
12 or, for that matter, upon verdict.

13 It is impossible to do an apples-to-apples
14 comparison when nonmonetary conditions such as
15 confidentiality, which are not assigned a dollar
16 value, are included in the proposal for settlement.

17 There have been other appellate court
18 decisions that address the same issue that talk
19 about the inability to make an apples-to-apples
20 comparison; and that is certainly the circumstance
21 that exists here.

22 The last and very significant defect with
23 regard to this confidentiality provision is that
24 the circumstances under which this proposal for
25 settlement were made made it absolutely unethical

1 for Brad Edwards to have accepted this proposal for
2 settlement. That requires an evidentiary basis,
3 and I am prepared to give testimony with regard to
4 that aspect.

5 THE COURT: Just summarize what your argument
6 would have been. What the evidence would have
7 been.

8 MR. SCAROLA: Yes, sir. Bradley Edwards
9 represents multiple victims, presently represents,
10 and at the time this proposal for settlement was
11 filed represented victims of Mr. Epstein in a
12 federal proceeding under the Crime Victims Rights
13 Act. I think that those are matters that have been
14 addressed at least in argument before your Honor,
15 although I don't know the testimony has been.

16 THE COURT: I recall that I had the active
17 cases that were filed in federal court, now
18 inactive, closed cases in division AB. So I recall
19 that at the last hearing there was some discussion
20 with regard to those cases still pending in federal
21 court, and I don't know if they're still pending.

22 MR. SCAROLA: They are still pending, your
23 Honor. There have been appellate proceedings. The
24 case has been up to the 11th Circuit on issues
25 relating to the Crime Victims Rights Act. That

1 case is pending before Judge Marra. And one of the
2 threshold issues in that case was whether victims
3 rights attach prior to the filing of a federal
4 indictment. And Judge Marra ruled that they did.
5 That particularly under the circumstances of this
6 case, the victims were required to be consulted
7 before the federal government could enter into the
8 non-prosecution agreement with Mr. Epstein. The
9 issue is whether there will be an invalidation of
10 the non-prosecution agreement that Mr. Epstein
11 entered into with the federal government as a
12 consequence of the violation of the Crime Victims
13 Rights Act.

14 So Mr. Edwards at the time this proposal was
15 made was very much involved in the prosecution of
16 claims that arise out of the same representation of
17 victims that led to the malicious prosecution
18 claims on Mr. Edwards' behalf against Mr. Epstein.

19 My testimony would confirm those circumstances
20 and would explain, as co-counsel with Mr. Edwards,
21 why Mr. Edwards could not ethically enter into a
22 confidentiality agreement that imposed any
23 restrictions on his ability to represent existing
24 clients.

25 So this wasn't simply a matter that we were

1 dealing with a vague and ambiguous confidentiality
2 provision, not simply a matter that we're dealing
3 with a confidentiality provision of unknown,
4 unspecified value that made it impossible to do an
5 apples-to-apples comparison; we were also dealing
6 with a confidentiality provision that made it
7 impossible for Mr. Edwards to accept the proposal
8 for settlement because he would have been imposing
9 an unethical restriction upon his legal obligations
10 to existing clients. Simply couldn't be done.

11 Now, if opposing counsel is willing to accept
12 that proffer without the necessity of my taking the
13 witness stand and swearing to those matters, I will
14 accept that agreement. Otherwise, to complete this
15 record, I believe it's necessary that I take the
16 stand and testify to those matters.

17 THE COURT: Mr. Brewer?

18 MR. BREWER: I think it would have to be
19 Mr. Edwards that would testify to those matters, as
20 opposed to Mr. Scarola.

21 MR. SCAROLA: We're talking about the
22 underlying facts, your Honor. I have direct
23 personal knowledge of those underlying facts, and I
24 am a competent and qualified witness to testify
25 about those matters of which I have personal

1 knowledge.

2 MR. BREWER: I'm sorry? We were conferencing
3 over here.

4 THE COURT: He's indicating he has personal
5 knowledge of these matters, and right now he's
6 simply requesting whether or not you would
7 stipulate to the facts that he has proffered
8 without being under oath.

9 MR. BREWER: Mr. Scarola is an officer of this
10 court. Whatever he says, he says without having to
11 be under oath.

12 I'm still having -- my problem, your Honor, is
13 I'm having a little trouble understanding why in a
14 case in which Mr. Edwards is suing Mr. Epstein
15 there's -- some ethical dilemma arises.

16 THE COURT: I think it's a fair question.

17 MR. SCAROLA: I am prepared to address it by
18 way of argument --

19 THE COURT: I'd rather hear the argument first
20 so I can make a threshold determination if there's
21 any relevancy.

22 MR. SCAROLA: This is a confidentiality
23 provision which precludes the disclosure directly
24 or indirectly of any matters relating to the reason
25 for the settlement of the claims against

1 Mr. Epstein by Mr. Edwards. Well, the reason for
2 the settlement clearly relates to the underlying
3 merits of the claim.

4 THE COURT: Well, it actually says, quote, As
5 further consideration, I agree not to disclose the
6 details of this release and settlement of all
7 claims, including the nature or the amount paid and
8 the reasons for the payment, to any person other
9 than my lawyer, accountant, income tax preparer, or
10 by valid order of a court of competent
11 jurisdiction, whether directly or indirectly, end
12 quote. There's further language, but that's the
13 pertinent quote.

14 MR. SCAROLA: Exactly. Reasons for the
15 payment. Reasons for the payment means, why was
16 this case settled? Why this case was settled has
17 to do with a total analysis of all of the
18 surrounding factual circumstances.

19 Mr. Edwards would have been precluded from
20 disclosing even to his own clients, because there's
21 a specific list of those to whom he can make a
22 disclosure and his own clients are not included on
23 that list, he could not even disclose to his own
24 clients the circumstances that led to the claims
25 between Mr. Edwards and Mr. Epstein, going both

1 ways, which relate to the merits of the underlying
2 case.

3 THE COURT: Unless he chose to seek a court
4 order in that regard.

5 MR. SCAROLA: Which may or may not be granted.
6 Yes, sir.

7 THE COURT: I agree.

8 MR. SCAROLA: So the point is --

9 THE COURT: Go ahead.

10 MR. SCAROLA: I didn't mean to interrupt the
11 Court. I apologize.

12 THE COURT: No, I was just going to say I
13 would have difficulty managing a scenario where if
14 that was accepted, a judge would not allow
15 disclosure of the fact that Mr. Epstein settled

16 with Mr. Edwards and Mr. Edwards settled with

17 Mr. Epstein and accepted the amount proffered, that
18 he could not state to his client that, I have
19 accepted whatever was proposed, and I would think
20 that the amount would be included in a court order.

21 Again, you're right; it is speculative. And
22 there is the axiom that these types of offers are
23 to reduce the amount of judicial labor, not to
24 increase it. So I can understand the position
25 you're taking.

1 And I think that, obviously -- I mean, you
2 understand the underlying reasons for Mr. Scarola's
3 argument, Mr. Brewer, correct?

4 MR. BREWER: No, quite frankly, I don't.

5 THE COURT: Well, my thinking is that there
6 would then be an issue of whether or not
7 Mr. Edwards stands in a conflict with his client
8 once he accepts that amount and is unable to
9 disclose that to the client.

10 Do you understand? In other words --

11 MR. BREWER: When we talk about apples and
12 oranges --

13 THE COURT: No, I'm not so sure that's the
14 case because if Mr. Edwards stands in the position
15 to gain through a payment made by Mr. Epstein, and
16 gain hundreds of thousands of dollars but is

17 precluded from telling his clients that, in my view
18 he stands in a position of potential conflict.

19 I mean, is that the point you made --

20 MR. SCAROLA: Yes, sir.

21 THE COURT: -- or one of the points you're
22 making?

23 MR. SCAROLA: There are a number of other
24 scenarios that make this even clearer.

25 Your Honor is aware of how high profile a

1 matter this has been.

2 THE COURT: Sure.

3 MR. SCAROLA: And one of the aspects of my
4 testimony if I were to testify would be that on a
5 regular basis, even since this lawsuit has been --
6 a summary judgment has been granted and there has
7 been no active litigation, I receive telephone
8 calls regularly from members of the International
9 Press continuing to ask about what the status of
10 the lawsuit is, continuing to be concerned about
11 Mr. Epstein, continuing to be concerned about
12 Mr. Edwards, and there is a tremendous focus of
13 public attention that continues to exist with
14 regard to these matters.

15 Now, it would be in Mr. Edwards' clients' best
16 interest to continue that focus of public
17 attention; to hold press conferences, to make
18 disclosures about underlying facts, to talk about
19 the fact that Mr. Epstein has now paid another
20 \$300,000 to try to keep quiet the circumstances
21 that led to his criminal prosecution. That would
22 serve Mr. Edwards' client's best interests.

23 THE COURT: I mean, that may or may not be
24 true. And certainly he has the ability to accept
25 or reject the terms and conditions of a given

1 offer. Whether strategically he finds it better to
2 reject is of no moment to the Court. The ethical
3 issue may have some impact. Strategy and whether
4 or not it is better for him to talk about his case
5 so that in the eyes of public opinion, or whomever
6 he's trying to convince, his clients are in better
7 stead, I'm not really interested in, frankly.

8 MR. SCAROLA: Well, I obviously haven't made
9 my point clear, and let me try again.

10 What I am saying is if it is in Mr. Edwards'
11 client's interest to make statements about the
12 status of this case, the reasons for the
13 settlement, why Mr. Epstein paid and how much he
14 paid, if that's in his clients' interest and he has
15 entered into a contract that prohibits him from

16 doing that, he has entered into an unethical

17 contract because he can no longer take that
18 strategic step. He has for his own purposes --
19 that is, to put \$300,000 into his own pocket -- he
20 sold away the strategic ability to be able to
21 advance his client's interests in that manner.

22 He can't do that. He cannot sell away that
23 strategic option. He's ethically prohibited from
24 doing it.

25 THE COURT: I think my argument may make

1 better -- may make more of an ethical statement
2 than yours. But I'll accept the rationale.

3 MR. SCAROLA: I'm not presenting it as an
4 alternative, I'm suggesting to your Honor that
5 there are multiple reasons why this is unethical.

6 THE COURT: I respect that.

7 MR. SCAROLA: That's all that I am suggesting
8 to the Court.

9 THE COURT: Okay.

10 MR. SCAROLA: The last aspect of my objection
11 to this proposal is that it is the burden of the
12 proponent of this proposal for settlement to prove
13 that it was made in good faith. And it is our
14 position that a \$300,000 offer, pre-Wolfe, that
15 included a confidentiality provision of obviously
16 very substantial value to Mr. Epstein, who has been
17 doing everything he can to avoid publicity
18 regarding this matter, that constitutes a nominal
19 offer and was made in bad faith, considering the
20 fact that a punitive damage claim had been
21 approved, that this case was proceeding on the
22 basis of both compensatory and punitive damages
23 against a billionaire, and there has been no proof
24 that would satisfy the burden of the proponent that
25 this was a good faith offer under those

1 circumstances.

2 So for all of those reasons: The decision's
3 not final until the mandate issues on the pending
4 appeal; we ought to conserve judicial resources; a
5 failure to assign monetary value, which prohibits
6 an apples-to-apples comparison; the vagueness of
7 the confidentiality provision because we don't know
8 what direct or indirect disclosure of the reasons
9 for the settlement mean; we don't know how long the
10 confidentiality provision is to last; we don't know
11 what the sanctions would be for violation of the
12 confidentiality provision; and because the
13 confidentiality provision is unethical; as well as
14 because there has been a failure to satisfy the
15 good faith burden, the relief being requested
16 should be denied.

17 THE COURT: All right. Thank you again,
18 Mr. Scarola.

19 All right, Mr. Brewer. I'll give you a few
20 minutes.

21 MR. BREWER: Thank you, your Honor.

22 Your Honor, this ethical thing, quote,
23 dilemma, it's the first time it's been raised. It
24 was not raised in any pleading, nor has it been
25 raised in any of the memorandum. I will attempt,

1 though, to respond to it.

2 First of all, we are dealing with a situation
3 in which the people that supposedly will be heard
4 are not even parties to this litigation. We're
5 talking about Mr. Edwards' clients. The issue of
6 an ethical dilemma has, I think, very little to do
7 with whether or not the prerequisites of the
8 proposal for settlement had been met. And the
9 prerequisites are, in essence, have the terms --
10 have the nonmonetary terms been set forth with
11 particularity? And they have. They have.

12 Then we have the argument that was made --

13 THE COURT: But what about the Court's
14 concern -- and I think it's a valid one, and I
15 recognize that it was not raised in the spirit of
16 the response -- I recognize also that he took the
17 affirmative step in a public proceeding -- and
18 there was no, to my recollection, similar to what
19 was done with the minors in the actual abuse cases
20 that were brought by the minors, there was no
21 hiding of-- hiding is a bad word -- but what I
22 meant to say is there was no use of any initials or
23 anything like that.

24 MR. SCAROLA: That's not the case, your Honor.
25 I don't mean to interrupt, but there's still

1 anonymity of the plaintiffs in the federal action.

2 THE COURT: I understand that. I'm talking
3 about the anonymity against the claims of
4 Mr. Edwards against Mr. Epstein. There was no
5 attempt at anonymity here in this particular case
6 either by Epstein or Edwards.

7 But recognizing all of that, the thought is
8 that would there not be the potential of an
9 inherent conflict if Mr. Edwards was not permitted
10 to disclose to his clients the fact that he settled
11 with the very individual against whom he is suing
12 in these pending federal actions?

13 MR. BREWER: I don't know that by that
14 language he is precluded from revealing that there
15 was a settlement. It's the terms that are
16 confidential.

17 THE COURT: But the details, like they say on
18 one of my shows that I watch on CABC, the devil is
19 in the detail. And in this case, a client would
20 have every right to know, in my view, not only that
21 there was a settlement -- because a settlement
22 could be a dollar. There are many cases that just
23 go away for reasons that both sides just want an
24 end to the litigation. But I think it somewhat
25 erodes Mr. Scarola's argument relative to the bad

1 faith -- or the lack of good faith -- it erodes his
2 ethics argument, at least the argument that I find
3 more persuasive, and then the conflict argument by
4 suggesting on the one hand that it would be a
5 detriment ethically to his clients and on the other
6 hand suggest that the offer was not made in good
7 faith if it was accepted.

8 I reject that in terms of the nominal amount.
9 I reject it also because of the presence of the
10 Etchaverria case and the other case that involves
11 the law firm that slips my mind.

12 MS. HADDAD: Levin.

13 THE COURT: The Levin case.

14 So there was language principally used in the
15 Wolfe case -- that's the underlying case that you
16 primarily relied upon, correct?

17 MR. SCAROLA: Yes, your Honor.

18 THE COURT: Okay. So the language was
19 utilized from Levin and Etchaverria in order to
20 support the oral decision in the Fourth District
21 Court of Appeal. But again, the fact that the
22 argument in good faith may erode the ethics
23 argument doesn't dispel the concern that the Court
24 has, and I think it's a valid one, relative to the
25 chilling effect that this may have on Mr. Edwards

1 if he would have accepted it vis-a-vis discussing
2 the details to his clients, because they would then
3 be in a position to reject or accept his continued
4 representation. But they would have to know about
5 the amount that the settlement was for. Especially
6 lay people. When they hear the sum of \$300,000
7 being exchanged, despite what some of you folks may
8 think is nominal or not in good faith, they think
9 it's a lot of money. And I think it's a lot of
10 money too, frankly. Again, not prejudging the
11 issues here in the case, but just from the
12 standpoint of it's a lot of money. And they're
13 certainly going to think it's a lot of money. And
14 their confidence in their lawyer could be
15 materially affected when they say to themselves,

16 Wait a minute. My lawyer just took \$300,000 from a
17 person that we're suing. How effective is he going
18 to be in his continued representation of me now
19 that he's been satisfied?

20 MR. BREWER: Your Honor, can I interrupt you
21 for one second?

22 THE COURT: Sure. Of course. I'm done.

23 MR. BREWER: I don't know that by the time
24 this offer or this proposal was made if any of
25 those cases were still active or had been settled.

1 I don't know because I was not involved in any of
2 those.

3 THE COURT: All I know is my vague
4 recollection from the initial hearing and this case
5 when I disclosed my involvement in the Division AB
6 cases that dealt with the actual claims by minors
7 and others against Mr. Epstein was that it was
8 brought up for one reason or another that there
9 were still these claims pending in federal court
10 under the statute that Mr. Scarola identified here
11 and also Mr. Scarola brought out -- or
12 Mr. Edwards -- himself at that hearing.

13 MR. BREWER: So you're not speaking to the
14 cases in which he had direct representation and in
15 the state court cases but, rather, you're speaking
16 to the federal cases?

17 THE COURT: There's a statute that is involved
18 here that is different from, my understanding, is
19 different from the actual direct claims that he had
20 not only in state court but he also had, my
21 recollection is, federal court actions as well that
22 raised essentially the same issues in the state
23 court cases. But now there are federal cases that
24 deal with -- the statute, Mr. Scarola, again is
25 what?

1 MR. SCAROLA: Crime Victims Rights Act, your
2 Honor.

3 THE COURT: Now, the one question I had is, is
4 there limited damages involved in that case? Is
5 there only --

6 MR. BREWER: They're completely different
7 parties. Mr. Epstein is not a party to that. The
8 entity being sued there is the United States
9 government. The issues are completely different,
10 your Honor, because in that one the issue really
11 is, did the prosecutors have an obligation to
12 converse or confer with the alleged victims prior
13 to entering into any prosecution agreement?
14 Essentially, were happy. And so it's completely,
15 completely different.

16 THE COURT: Well, I have no -- number one --
17 that sounds familiar, but I have to know, one: Are
18 there any claims currently pending against Epstein,
19 direct claims, brought by any of the alleged
20 victims?

21 MR. BREWER: I think not. No, your Honor.
22 Mr. Goldberger knows better than I. But he's
23 indicating not.

24 THE COURT: Okay. And so, Mr. Goldberger,
25 your understanding of the claims that are

1 pending -- they're not pending against Mr. Epstein,
2 but are brought against the prosecution in failing
3 to do their due diligence and the like? Is that
4 what it is?

5 MR. GOLDBERGER: Exactly correct, your Honor.
6 Under the CVRA -- it's called the Crimes Victims
7 Reporting Act -- Mr. Edwards has sued the United
8 States of America for failing to comply with that
9 statute. Mr. Epstein is not a party to that and
10 has no involvement in the case.

11 THE COURT: And, to your knowledge,
12 Mr. Epstein is no longer a defendant in any claims
13 brought by any alleged victims --

14 MR. GOLDBERGER: That is correct, your Honor.

15 THE COURT: -- currently? All right.

16 Mr. Scarola, do you want to address that
17 briefly so I can get a better handle on your
18 ethical argument then?

19 MR. SCAROLA: My recollection, and I am only
20 going from recollection at this point, is that
21 Mr. Epstein has intervened with regard to multiple
22 issues that have been raised in the federal court
23 action. Obviously, Mr. Epstein is trying to
24 reserve the advantages of the non-prosecution
25 agreement into which he entered. He has got a

1 tremendous stake in the proceedings before the
2 federal court because if the non-prosecution
3 agreement is upheld, then he does not face federal
4 felony criminal prosecution. If the
5 non-prosecution agreement is struck down, he is
6 facing prosecution by the federal government for
7 multiple felony charges.

8 THE COURT: Right. But what I'm trying to
9 again pin down is whether Mr. Edwards maintains any
10 bona fide active and present attorney-client
11 relationships with any of the alleged victims in
12 these -- what we'll call globally -- Epstein cases.

13 MR. SCAROLA: Yes, sir. He represents the
14 moving parties in the federal proceeding that are
15 trying to strike down the non-prosecution
16 agreement. So his clients are Epstein victims that
17 he continues to represent.

18 THE COURT: Okay. Fair enough. All right.

19 MR. SCAROLA: And clearly -- I think your
20 Honor is absolutely right. I want to know whether
21 my lawyers cut a dollar deal with the guy that I'm
22 asking him to continue to act against. How much?
23 How much did he pay you? Can I still continue to
24 place my confidence in you, or have you been bought
25 off? To put it very bluntly.

1 THE COURT: I understand. And that was the
2 concern I had from the inception.

3 MR. BREWER: Your Honor, if I might, Ms.
4 Haddad told me that the, quote, Epstein cases were
5 all resolved and dismissed prior to the time of the
6 proposal for settlement. At least the state court
7 actions. So we're being kind of -- hearing this at
8 the last instance. And things that I don't know to
9 represent to the Court, things that I don't know,
10 such at what's going on in federal court, whether
11 the state court cases were resolved by the time of
12 this, but the one thing that I do want to say, your
13 Honor, is if Mr. Epstein truly, truly was worried
14 about conflict of interest or unethical behavior --

15 THE COURT: Mr. Edwards.

16 MR. BREWER: Mr. Edwards. Excuse me.

17 If he truly was concerned about that, he could
18 have withdrawn from representation or he could have
19 just not sued Mr. Epstein because whether he gets
20 money from a proposal of settlement or judgment,
21 he's still getting money from Mr. Epstein.

22 THE COURT: All right. I'm going to take a
23 closer look at this and decide where you are. I
24 think you're right; the ethical issue is somewhat
25 new to the papers. To the process.

1 I have a blank order. Thank you. And I thank
2 you both, all of you, for your presentations and
3 input.

4 MR. GOLDBERGER: Thank you, Judge.

5 MR. BREWER: Your Honor, would you like briefs
6 in regard to the ethical? Because we're hearing it
7 just now for the first time today.

8 THE COURT: I think it probably be would
9 helpful, if you can get them to me in about a ten-
10 day span. If you look at December 19th --

11 MR. SCAROLA: We would then like ten days in
12 which to respond, your Honor.

13 THE COURT: Well, I guess really you would be
14 raising the issue in writing.

15 MR. SCAROLA: We're responding to their
16 motion. There was no obligation for us to have

17 laid out all of the details of our opposition that
18 I'm aware of. This is their motion.

19 THE COURT: Do you want to deal with the issue
20 first then? Is that what you'd like to do?

21 MR. BREWER: We're not a hundred percent sure
22 exactly what the issue is, your Honor. I think it
23 would probably be more logical for Mr. Scarola to
24 first raise this issue and let us respond to it.

25 MR. SCAROLA: I tried to lay it out in careful

1 detail during my oral arguments.

2 THE COURT: I think the oral arguments speak
3 for themselves. I'm going to need a copy of the
4 transcript as well; the cost of the Court's
5 transcript to be shared by both parties. And then
6 you can respond to what's been provided orally, and
7 you can respond to that as well.

8 MR. SCAROLA: Your Honor, ten days from when
9 we get the transcript?

10 THE COURT: That's fine. Yeah. There's not a
11 lot going on around the mid or latter part of
12 December anyway, so I should have time to review it
13 and probably get some assistance from our staff
14 attorneys as well.

15 Thank you. Nice to see all.

16 Let me also disclose something on the record
17 as well. Mr. Scarola is hosting a Catholic Lawyers
18 Guild mass and reception at his home. I usually go
19 to that event and have gone to it when it's hosted
20 by various other people in the past as well.

21 MR. SCAROLA: And the entire defense team is
22 invited.

23 THE COURT: Does anybody --

24 MS. HADDAD: I think I'm the only Catholic.

25 THE COURT: You're inviting the mainstream

1 Catholics?

2 MR. SCAROLA: Yes, sir. There's always hope
3 for --

4 MR. GOLDBERGER: No objection on that. And
5 we'll reciprocate on the Hanukkah party.

6 THE COURT: So, Mr. Goldberger, you're hosting
7 the Hanukkah party, and Mr. Scarola, you have not
8 objection to that?

9 MR. SCAROLA: None at all. As long as I get
10 an invitation also.

11 THE COURT: Other than that, I know you all
12 pretty equally and have a great deal of respect for
13 all of you guys. Appreciate your efforts today.

14 MR. BREWER: Thank you.

15 MR. SCAROLA: Thank you, your Honor.

16 THE REPORTER: Who's ordering the transcript?

17 MR. BREWER: I am.

18 THE REPORTER: Mr. Scarola, would you like a
19 copy?

20 MR. SCAROLA: Yes, please.

21 THE REPORTER: Thank you very much.

22 (Thereupon at 12:27 p.m., the hearing was
23 concluded.)

24

25

C E R T I F I C A T E

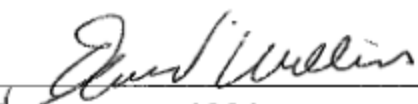
THE STATE OF FLORIDA
COUNTY OF PALM BEACH.

I, Elaine V. Williams, Registered Professional Reporter, State of Florida at Large, do hereby certify that I was authorized to and did report said hearing in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said hearing.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

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