

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(FORT LAUDERDALE DIVISION)

CASE NO. 11-61338- CIV-COHN

In re:

ROTHSTEIN ROSENFELDT ADLER, P.A.,

Debtor.

**TRUSTEE'S EXPEDITED MOTION TO AMEND  
WRIT OF HABEAS CORPUS AD TESTIFICANDUM**

Trustee, Herbert Stettin ("Trustee"), through his undersigned counsel, hereby moves this Court to Amend its *Writ of Habeas Corpus Ad Testificandum* (D.E. #52) pertaining to the deposition of Scott Rothstein ("Rothstein"), and states:

1. On September 13, 2011, this Court issued its *Writ of Habeas Corpus Ad Testificandum* (D.E. #52) (the "Writ") which provided for, among other things, Rothstein's deposition to commence on December 12, 2011. Circumstances described below are such that the Writ needs amendment or a supplement.

2. The Court will also recall that in the underlying bankruptcy proceeding of *In Re Rothstein, Rosenfeldt and Adler*, Case No. 09-34791- BKC RBR, Judge Ray entered a detailed Agreed Order ("Order") at D.E. #1751, which set forth defined protocol to govern both the Bankruptcy Rule 2004 Examination of Rothstein and the Bankruptcy Rule 7030 Deposition of Rothstein related to pending adversary proceedings filed in the RRA bankruptcy case.

3. At the time the Order was entered, the Trustee was the plaintiff in approximately 20 adversary proceedings pending in this Court. Since the date of the Order, the Trustee has filed approximately 46 new adversary proceedings, many of those just in the past two weeks. The Trustee intends to file additional adversary proceedings as well. The impact of these new

case filings is material as it pertains to the Rothstein depositions. In practical terms, most of the defendants in the Trustee's adversary proceedings that have been filed after the date of the Order have been served only recently. Typically, the defendants in the Trustee's adversary proceedings—indeed as in most cases- will seek an extension of time to respond to the Trustee's complaint. The Trustee expects that many of the defendants in the adversary proceedings filed after the date of the Order may not have even responded to their respective complaints by December 12, 2011, the date that Rothstein's deposition is presently scheduled to commence.

4. The Trustee wishes to promptly and efficiently prosecute his cases for the benefit of RRA's creditors. However, the Trustee recognizes that by December 12, 2011, counsel for the defendants in the adversary proceedings filed after the date of the Order: (i) will be entering these cases knowing little about their respective adversary proceedings, (ii) will not have exchanged discovery or Rule 26 disclosures with the Trustee, and (iii) may not have conducted their own case specific factual investigations or legal research regarding defenses. While the Trustee is not here to argue for any of these new adversary complaint defendants, the Trustee does not wish to incur additional expense responding to arguments which the counsel to the defendants may raise that the defendants' rights have been impaired by not having meaningful access to Rothstein or that the Trustee should not be permitted to introduce into evidence the deposition testimony of Rothstein.

5. Further complicating this issue is whether the defendants sued in these new adversary proceedings are charged with knowledge of paragraph 2 of Judge Ray's seven-page Order, entered five months ago, which sets forth certain requirements of a party before appearing at the deposition, notwithstanding the Trustee's above concern about lack of notice as to the timing of the deposition itself. Notably, the vast majority of the new adversary proceeding

defendants are not listed in the RRA creditor matrix (meaning they have not filed claims in the RRA bankruptcy), and thus, would not have ever received notice of the Order.

6. Three additional points are relevant to resolving present issues regarding the Rothstein deposition. First, the Trustee has strong reason to believe that the United States is of a firm mindset not to produce Rothstein for two depositions, but rather, only once. Thus, holding only one deposition beginning on December 12, 2011, potentially creates the due process issue for the new adversary defendants that the Trustee wishes to avoid. However, ultimately, this Court does have jurisdiction to issue a second or amended *Writ of Habeas Corpus Ad Testificandum*, that would provide for a second Rothstein deposition, if the Court deems it appropriate.

7. Second, on or about November 4, 2011, the United States advised that all attorneys participating in the Rothstein deposition were required to submit certain personal information by November 8, 2011, in order to get security clearance to attend the Rothstein deposition. The Trustee and his counsel went through this same procedure for their interview with Rothstein that occurred in August, and at that time, more than one month's notice for this information was required for the U.S. Marshal to secure clearance. It is unclear whether all present counsel of record in various RRA cases have even been notified of this requirement. Clearly, counsel in many of the adversary proceedings filed since the date of the Order could not have complied with this security clearance requirement; many may not have been retained as of this date. This issue suggests that numerous attorneys potentially could be denied access to the deposition if they have not been timely vetted. Complicating this further, it was initially believed that the U.S. Marshal would need to provide a deposition room for about 30 people, which on information and belief is not easy to find given the circumstances, and it would now

seem that such sized room is too small to accommodate the needs of what may be a more widely attended deposition.

8. Third, Trustee's counsel has had numerous discussions with Rothstein's lawyer, Marc Nurik ("Nurik") who is presently in the midst of a federal criminal trial in Boston. The undersigned counsel has been advised by Nurik that his trial will unequivocally extend at least through the entire week of December 12, 2011. This fact materially complicates the timing of the Rothstein deposition since, upon information and belief, Rothstein wishes to have Nurik present at the deposition. The Trustee and presumably everyone else would not want to travel to a remote location for Rothstein's deposition, only to find out that he was unwilling to testify due to lack of counsel.

9. The Trustee also advises this Court that he is filing a similar motion contemporaneously herewith before Judge Ray, given his jurisdiction over the Rothstein deposition protocol, to discuss protocol issues apart from this Court's exclusive jurisdiction over Rothstein and the *Writ of Habeas Corpus Ad Testificandum*. Accordingly, it seems that there will probably need to be a reconciling of both courts' interest in reaching an equitable and practical result in dealing with scheduling Rothstein's deposition.

10. Accordingly, given the foregoing circumstances, the Trustee submits two alternative positions. First, the Court can continue the Rothstein deposition to a future date that assures all defendants in RRA related adversary proceedings receive appropriate and fair notice of the deposition. Second, the Court can bifurcate the deposition so that the first part commences as scheduled on December 12, 2011, with the Court either amending or issuing a new *Writ of Habeas Corpus Ad Testificandum* that requires the appearance of Rothstein at a second deposition at a time when the new adversary defendants can participate.

11. Finally, the Trustee is very mindful of numerous parties in interest having varying legitimate concerns about taking the deposition as scheduled for December 12, 2011. The Trustee is not advocating their positions in this submission. This motion is not brought for purposes of delay and indeed, the Trustee respectfully asks the Court to address these issues at its earliest practicable date, given the fact that the Rothstein deposition is now approximately only one month away, and numerous parties in interest are impacted by this issue.

Dated: November 10, 2011.

Respectfully submitted,

BERGER SINGERMAN, P.A.  
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By: /s/ Charles H. Lichtman  
Charles H. Lichtman  
Florida Bar No. 501050  
[REDACTED]

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served, as indicated, on the Service List below on this 10th day of November, 2011.

By: /s/ Charles H. Lichtman  
Charles H. Lichtman

**SERVICE LIST**

**Electronic Mail Notice List**

The following is the list of parties who are currently on the list to receive e-mail notice/service for this case and who therefore will be served via the Court's Notice of Electronic Filing:

- **David Charles Cimo**

[REDACTED]

- **Joseph A. DeMaria**

[REDACTED]

- **David L. Gay**

[REDACTED]  
[REDACTED]

- **Jordi Guso**

[REDACTED]

- **Lawrence D. LaVecchio**

[REDACTED]  
[REDACTED]

- **Charles Howard Lichtman**

[REDACTED]

- **Noticing Bankruptcy Court**

[REDACTED]

- **Marc S. Nurik**

[REDACTED]

- **Claudio Riedi**

[REDACTED]

- **C. Thomas Tew , Jr**

[REDACTED]

- **Bryan Thomas West**

[REDACTED]

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