

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

3 CASE NO.: 502009 CA 040800XXXMBAG

4 JEFFREY EPSTEIN,

5 Plaintiff,

6 vs.

7 SCOTT ROTHSTEIN, individually,  
8 BRADLEY J. EDWARDS, individually,  
and L.M., individually

9 Defendants.  
/

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11  
12 HEARING BEFORE: THE HONORABLE DAVID F. CROW

13 DATE TAKEN: Wednesday, September 28, 2011

14 TIME: 8:15 a.m. - 8:45 a.m.

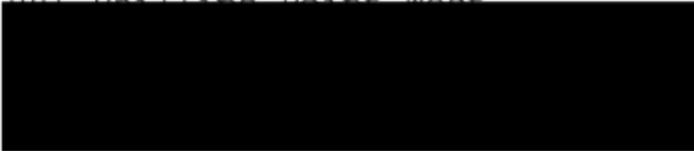
15 PLACE: Palm Beach County Courthouse  
16 205 North Dixie Highway  
West Palm Beach, Florida 33401

17 REPORTED BY: BARBARA L. KENT, RMR, RPR, FPR, CSR-MI  
18 Court Reporter and Notary Public  
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A P P E A R A N C E S

JOSEPH L. ACKERMAN, JR., ESQUIRE  
CHRISTOPHER E. KNIGHT, ESQUIRE  
OF: Fowler, White, Burnett, P.A.  
201 Phillips Point West



APPEARING ON BEHALF OF THE PLAINTIFF,

JACK SCAROLA, ESQUIRE  
OF: Searcy, Denney, Scarola, Barnhart & Shipley



APPEARING ON BEHALF OF BRADLEY J. EDWARDS.

ALSO PRESENT: Bradley J. Edwards.

## P R O C E E D I N G S

\* \* \* \*

THE COURT: Okay. Have a seat, please.

We're here on Epstein versus Rothstein, and it's the Motion to Dismiss. I guess, the second point, as well as your new Motion for Punitive Damages.

I have read the motions. I have read all the cases you guys provided to me, and I have read them, too, when they were submitted to me earlier, at least most of them.

So I think we should deal with the Motion to Dismiss, first.

So, I guess, that is your motion.

Mr. Scarola.

MR. SCAROLA: Thank you, Your Honor.

With the Court's permission, may I address the Court from counsel table?

THE COURT: That's fine, yes. Certainly.

MR. SCAROLA: Thank you very much.

Your Honor, what I think will be most helpful is, if we went through the second amended complaint and addressed what that complaint does or does not do in some detail.

Obviously, the introduction, which is

1 unnumbered, and does not constitute any of the  
2 allegations against Mr. Edwards, is nothing more  
3 than a press release incorporated into a pleading,  
4 for purposes of cloaking it in litigation, in  
5 unity. I think we can effectively ignore it.

6 The first five numbered paragraphs are,  
7 basically, jurisdictional, and then paragraphs six,  
8 seven, eight, nine, ten, 11, 12, 13, 14, all the  
9 way through paragraph 22, are paragraphs that  
10 describe in substantial detail the uncontested  
11 misconduct of Scott Rothstein, and his involvement  
12 in a Ponzi scheme.

13 Paragraph 21 alleges that Mr. Edwards was  
14 aware that RRA's offices were monitored and  
15 recorded various discussions. Obviously, that is  
16 immaterial to any claim of abusive process. And  
17 paragraph 22 talks about the level of  
18 communications going on within the firm, relating  
19 to the prosecution of what clearly was, and  
20 continued to be, an extremely important case within  
21 the firm.

22 The substantive allegations on which I  
23 suggest we must focus, to the extent there's any  
24 substance in them at all, begin at paragraph 23.  
25 And that paragraph says that, that there were a lot

1 of e-mails that went back and forth with regard to  
2 the prosecution of this -- these major pending  
3 cases within the law firm. There is nothing about  
4 that exchange of e-mails that would suggest  
5 Mr. Edwards' knowledge of, or involvement in an  
6 Ponzi scheme.

7 Paragraph 24 describes a variety of events  
8 that clearly have, from Mr. Edwards' perspective,  
9 an entirely innocent explanation, and dove-tie him  
10 into that Ponzi scheme. But as we're going to see,  
11 even if Mr. Edwards were tied into the Ponzi  
12 scheme, that's got nothing to do with any damage  
13 suffered by the plaintiff, Mr. Epstein.

14 Paragraph 25 says that, given the  
15 interdependence of so many RRA lawyers,  
16 investigators, and other staff, the wide  
17 communications that necessarily accompanied the  
18 involvement of so many people, Edwards knew or  
19 should have known, there was a Ponzi scheme going  
20 on.

21 Well, that clearly is a conclusion that is  
22 based upon the pyramiding of a variety of  
23 inferences, and is not a reasonable conclusion,  
24 based upon the preceding allegations about nothing  
25 more than an exchange of e-mails and meetings going

1 on, none of which, Edwards is alleged to have been  
2 involved in, in terms of the -- the attempt to sell  
3 investments.

4 Then we get to paragraphs 26, 27, and 28, and  
5 we're back to Mr. Rothstein, again. And now we  
6 have the abusive process claim against Mr. Edwards.

7 In paragraph 30, we learned that on  
8 September 11, 2008, Mr. Edwards filed a state court  
9 action on behalf of a client seeking damages. Now,  
10 we know that those were legitimate claims. There's  
11 no allegation anywhere in this complaint that they  
12 were anything other than well-founded legitimate  
13 claims.

14 30 B says that there was a federal court  
15 complaint that was filed against somebody with a  
16 different name, that because it was filed against  
17 somebody with a different name, Mr. Epstein never  
18 learned about it. Because not only was it filed  
19 against somebody with a different name, it was  
20 never served, according to the allegations in the  
21 complaint on Mr. Epstein.

22 Now, clearly, there can be no abuse of  
23 process, and no damages arising out of a complaint  
24 against someone else with a different name that is  
25 never served on this plaintiff.

1           Then we have allegations in 30 C, that state  
2 what Mr. Epstein believes about the federal  
3 complaint; and he believes that it was filed to  
4 show to prospective Ponzi scheme investors. Well,  
5 again, assuming those -- assuming that belief to be  
6 accurate, and a belief is not an allegation of  
7 fact, except as to the subjective understanding of  
8 Mr. Epstein. It doesn't say, this is what did  
9 occur, it says that's what Mr. Epstein believed  
10 occurred.

11           Even assuming that to be the case, the filing  
12 of a federal court action to show to somebody else,  
13 to defraud someone else, clearly cannot produce  
14 damages to Mr. Epstein. And, in fact, when we get  
15 to the damage allegations, the only allegation of  
16 damages are, that Mr. Epstein was obliged to pay  
17 attorney's fees to defend against state court  
18 actions taken in the prosecution of the filed and  
19 served state court claim. So there can be no  
20 causal connection between what is alleged in  
21 paragraph 30 C, and any damages to Mr. Epstein.

22           Now, the same is true when we get to  
23 paragraph 32. Edwards also made illegal, improper,  
24 and perverted use of civil process in order to  
25 bolster the case to investors by using it to

1           conduct unreasonable and unnecessary discovery,  
2           making unfounded allegations, and we're going to  
3           get to that. That clearly can't be the federal  
4           court case, because the federal court case is never  
5           served. So we must be talking about the state  
6           court case, and paragraph 31 makes reference to the  
7           state court case.

8                     Then, we take a look at what it is that  
9           Mr. Edwards is alleged to have done, that  
10          constituted abuse of process. And we go to  
11          subparagraphs one through ten, about actions  
12          alleged to have been taken directly in the state  
13          court action during the course of the prosecution  
14          of the state court action, that are alleged to have  
15          caused Mr. Epstein to spend money on attorney's  
16          fees to defend against those actions alleged to  
17          have been directly involved in the prosecution of  
18          the state court claim.

19                    Now, there is an allegation in paragraph 33  
20          that Mr. Edwards had ulterior motives.  
21          Significantly, there is no allegation that these  
22          "ulterior" motives were the sole motives involved  
23          in all of the actions described in paragraph 32.  
24          And these ulterior motives are maintaining a Ponzi  
25          scheme, of which Mr. Epstein was never, and could

1 not have been a victim, because he didn't know  
2 about it. So, that's got no relevance, and it's  
3 not alleged that it was the sole motive.

4 And then there are two other very curious  
5 motives alleged; obtaining funds for the continued  
6 investigation and prosecution of the Epstein  
7 actions, and obtaining operating revenues so that  
8 RRA could continue to operate.

9 Now, I don't know how the plaintiff's law  
10 firm business is conducted, but there isn't any law  
11 firm that I'm aware of, that doesn't engage in the  
12 practice of law for purposes of obtaining funds to  
13 investigate and prosecute other cases; or to obtain  
14 operating revenue so that the firm could continue  
15 to operate. I don't know how that constitutes some  
16 form of improper motive, that you are in business  
17 to make a profit, and to continue to be able to  
18 fund other cases to make profits.

19 So those allegations, even if they were  
20 allegations that those were the sole motives, are  
21 not allegations of some malicious and improper  
22 motivation.

23 That's where the allegations of wrongdoing  
24 end, and then paragraph 34 is the -- is the damage  
25 paragraph, as a result of Mr. Edwards doing all of

1           these things to prosecute his legitimate claims.  
2           It is alleged that the plaintiff suffered damages  
3           by incurring additional and unnecessary attorney's  
4           fees.

5           There are four cases that are entirely  
6           dispositive of this third attempt to try to  
7           fabricate some justification for the extortion  
8           attempt that Mr. Epstein began back in 2009, and  
9           continues to pursue today.

10           The first of those is, SI Investments versus  
11           Payless Flea Market, it appears at tab 18 in the  
12           notebook that Your Honor was provided by the  
13           defendants. You might just make --

14           THE COURT: Okay. Because I didn't see any  
15           cases, other than the litigation for those cases  
16           cited in your motion.

17           MR. SCAROLA: Your Honor, the Motion to  
18           Dismiss incorporates the legal authorities that are  
19           described in detail in the Motion to Assert a Claim  
20           for Punitive Damages, and all of these cases are  
21           cited by both parties.

22           So, SI Investments stands for the following  
23           propositions, and these are quotes. Plaintiff must  
24           prove that the process was used for an immediate  
25           purpose other than that for which it was designed.

1           Where the process was used to accomplish the result  
2           for which it was intended, regardless of an  
3           incidental or concurrent motive of spite or  
4           ulterior purpose, there is no abusive process.  
5           That's the case the defendants themselves are  
6           relying upon.

7                     So if you have two motives, one's a good one,  
8           because what you want to do is, you want to recover  
9           damages against Mr. Epstein for his serial abuse of  
10          young children. If you have --

11                    THE COURT: Well, isn't the -- isn't the  
12          distinction, or as I understand it, correct me if  
13          I'm wrong, but the -- while the initial process may  
14          be for profit purpose, the issue on abuse of  
15          process is something occurring subsequent. Even  
16          though it may be filed for legitimate purpose, the  
17          abuse process occurs, as compared to malicious  
18          prosecution when it's filed for an improper  
19          purpose; right?

20                    MR. SCAROLA: In order for an abusive process  
21          claim.

22                    THE COURT: Right.

23                    MR. SCAROLA: To be based upon an initial  
24          filing.

25                    THE COURT: Right.

1 MR. SCAROLA: It must be demonstrated that  
2 the sole purpose was an improper purpose. And the  
3 case law is, that subsequent use of process where  
4 there is a concurrent legitimate purpose, does not  
5 constitute an abuse of process. That's the Fourth  
6 DCA, 2010 recent law, that clearly describes the  
7 scope of an abuse of process claim and the elements  
8 involved.

9 THE COURT: Well, it also says, the mere  
10 filing of a complaint having process served is not  
11 enough to show abusive process. The plaintiff must  
12 prove improper use of the process after it issues.

13 MR. SCAROLA: Yes, sir, that's correct.

14 THE COURT: Okay.

15 MR. SCAROLA: Okay. And that's what they  
16 attempt to do, when they lay out in paragraph 32,  
17 all of these alleged improper uses of the  
18 litigation.

19 THE COURT: Where -- where -- I mean, I don't  
20 mean to cut you off, but I mean you're running  
21 short of time here, and, you know, if we started  
22 right on time -- but I do have to give them an  
23 opportunity.

24 You said this is the dispositive -- SI  
25 Investments is dispositive. I thought you were

1 going to talk about damages, but is there something  
2 about damages in here?

3 MR. SCAROLA: There are. Your Honor, there  
4 are four cases, which together, I suggest are  
5 dispositive.

6 THE COURT: Give me the names of them,  
7 because I want to read them.

8 MR. SCAROLA: Yes, sir.

9 The next case, and I will hand Your Honor a  
10 copy of these others.

11 THE COURT: Are they all in the book here?

12 MR. SCAROLA: They are. Two of them are in  
13 the book, I think the third one is, as well.

14 THE COURT: Okay.

15 MR. SCAROLA: Tab number four --  
16 Levin-Middlebrook is tab number 18.

17 THE COURT: Gotcha. I've read that 1,000  
18 times.

19 MR. SCAROLA: Yes, sir, I'm sure you have.  
20 And --

21 THE COURT: You can give it to me, again,  
22 though.

23 MR. SCAROLA: I will be happy to do that.

24 THE COURT: Yeah. This deals with litigation  
25 privilege.

1 MR. SCAROLA: Yes, sir. It does deal with  
2 litigation privilege. Echevarria also deals with  
3 the litigation privilege, and Delmonico stands for  
4 the proposition that the issues with regard for  
5 privilege, are issues of law for the court to  
6 determine.

7 And I've provided Your Honor with highlighted  
8 copies, I'm providing opposing counsel with  
9 highlighted copies, as well.

10 THE COURT: Okay.

11 MR. SCAROLA: The basic point here is, Your  
12 Honor, that the litigation privilege is an absolute  
13 privilege. Once it is established that the actions  
14 occur within the course and scope of the  
15 litigation, the privilege applies absolutely as a  
16 matter of public policy.

17 The basis of those decisions is, that if  
18 there's misconduct in the course of the litigation,  
19 if you're taking improper discovery, if you're  
20 filing improper motions, there are remedies that  
21 are available to the court through the court's  
22 inherent power to control its own litigation,  
23 through the contempt powers of the court, through  
24 Florida Statute 57.105, and through the filing of  
25 bar grievances, and it will cripple the system, if

1 litigants are obliged to respond to separate  
2 litigation, just because somebody is alleged, you  
3 notice the deposition that shouldn't have been  
4 noticed, you filed a motion that shouldn't have  
5 been filed.

6 THE COURT: Are you saying it's a matter of  
7 law, there can be no abuse of process by an  
8 attorney, then?

9 MR. SCAROLA: No, sir. I'm not saying as a  
10 matter of law there can be no abuse of process by  
11 an attorney.

12 THE COURT: Just the --

13 MR. SCAROLA: Because if there -- because the  
14 test is, it must be related to the litigation. So,  
15 if I were to issue a subpoena to my next-door  
16 neighbor in a pending case, just because I want to  
17 inconvenience him and bring him down to the  
18 courthouse, knowing that he just moved to Florida  
19 two weeks ago, and this case involves an automobile  
20 accident that occurred three years ago, that he  
21 couldn't absolutely know anything about, that would  
22 be an abuse of process.

23 THE COURT: Here's my question.

24 MR. SCAROLA: Yes.

25 THE COURT: Whether or not that litigation --

1 and generally speaking, a privilege is an  
2 affirmative defense. Whether or not something is,  
3 or is not within the process, or within the  
4 lawsuit, and falls within the immunity, is  
5 certainly something that the judge will have to  
6 decide rather than the jury. But it may be  
7 dependent on specific facts under specific  
8 circumstances, may it not?

9 MR. SCAROLA: It may be.

10 THE COURT: Okay. But you're saying, as a  
11 matter of law -- I'm sorry.

12 MR. SCAROLA: I am sorry. I didn't mean to  
13 interrupt the Court.

14 THE COURT: I guess what you're saying, it's  
15 a matter of law, these allegations are such that I  
16 can determine from the law -- looking at the  
17 pleadings themselves, that it falls within the  
18 privilege?

19 MR. SCAROLA: First, absolute privilege, as  
20 distinguished from qualified privilege. Qualified  
21 privilege is -- almost always involves questions of  
22 fact, but this is an absolute privilege. And  
23 secondly, you can determine from the face of the  
24 complaint, that this was related to the litigation  
25 itself.

1 THE COURT: Okay.

2 MR. SCAROLA: You can see that on the face of  
3 the complaint.

4 THE COURT: Okay.

5 MR. SCAROLA: So that's the basis of -- of  
6 this dismissal argument, and the -- the allegations  
7 of the nature of the damages that were incurred, as  
8 well.

9 The nature of the damages are, I had to incur  
10 attorney's fees in the context of this litigation.

11 THE COURT: Yes, sir.

12 MR. ACKERMAN: Your Honor, it's our position  
13 that the corrected second amended complaint  
14 satisfies on its four corners, every element of the  
15 tort of abuse of process.

16 We have alleged a misuse of the judicial  
17 system through a legal, improper, perverted use of  
18 process. We have set those examples out.

19 We have alleged in the complaint, that they  
20 were for ulterior purposes, not intended by the  
21 law, after the action was, that resulted in  
22 damages. We can clearly show that, by looking at  
23 paragraph 30 A-C, when the LM case is filed in  
24 state court against Mr. Epstein, and it is pending  
25 for some time, that this 234-page, 156-count

1 complaint is filed in Federal Court seeking in  
2 excess of \$23 million in damages, and it was  
3 against Mr. Epstein. We can prove that. And was  
4 intended there, we believe, with highly charged  
5 allegations, to assist Mr. Rothstein in attracting  
6 investors to invest in the Epstein cases.

7 Mr. Epstein's damages include filing motions  
8 to dismiss that. That occurred approximately nine  
9 months later. So, on that -- on its face, that is  
10 a process that is issued after LM, involving the LM  
11 case.

12 We then proceeded to list 32 separate  
13 instances of abuse of process, and not all of them  
14 are in the state cases, a couple are in the federal  
15 cases.

16 Paragraph 33 alleges the motives, and we  
17 believe that Mr. Edwards was attempting to assist  
18 Mr. Rothstein, which is why all the allegations of  
19 Mr. Rothstein's conduct with Mr. Edwards' cases,  
20 that Mr. Scarola clearly wants to dismiss as  
21 unrelated, are appropriate. Because the Court can  
22 see on the face of the complaint that there is a  
23 link. Mr. Edwards' investigators, Mr. Edwards'  
24 cases are ultimately involved with Mr. Rothstein,  
25 with the Ponzi scheme.

1           We've also alleged in paragraph 24, and I  
2 believe if the Court looks at the 15 e-mails  
3 in camera, the Court will see that link; and what  
4 Mr. Scarola wants to clearly dismiss as e-mails on  
5 a case, is on the day that there is contact with  
6 Mr. Rothstein and the investors, Mr. Rothstein  
7 extends an e-mail, which we've alleged, to the  
8 investors, who subsequently invest in the Epstein  
9 cases, which is the purpose we've alleged, not  
10 recovering money on a cause of action, that state,  
11 here are the causes of action we have against  
12 Mr. Epstein.

13           And based on the privileged log information  
14 that we've received, you can see Mr. Rothstein  
15 asking Mr. Adler, and Mr. Edwards in August, and  
16 then again in October, what are the causes of  
17 action against Mr. Epstein? On the day that he  
18 communicates -- the day that Mr. Rothstein  
19 communicates with the investors, there's a series  
20 of e-mails that involve Mr. Adler, that involve  
21 Mr. Edwards, that involve investigators and other  
22 people, contrary to what Mr. Edwards has testified  
23 to, that show a clear link that they are providing  
24 the information that Mr. Rothstein asked for -- on  
25 the causes of action against Mr. Epstein, that he

1 subsequently gives to the investors.

2 Now, it is our position that links  
3 Mr. Edwards to Mr. Rothstein's scheme. And that  
4 therein, provides the necessary element that we can  
5 prove that the actions that were taken, that we've  
6 alleged to be an abuse of process, aren't protected  
7 by any privilege, and were in furtherance of that  
8 scheme, as alleged.

9 We've also alleged special damages. The law  
10 is very clear, that if a person has to defend  
11 themselves against the conduct of another party, that  
12 they are allowed to come in in separate litigation  
13 and claim those damages as special damages. Those  
14 have been specifically pled. And right now  
15 everything that Mr. Scarola is arguing, are issues  
16 of fact that need to be properly pled as  
17 affirmative defenses.

18 THE COURT: Let me understand the damages  
19 here. The damages are not the defending the  
20 lawsuit, because nowhere in here do you contend  
21 that the lawsuits are frivolous or not supported by  
22 facts.

23 MR. ACKERMAN: No, the damages --

24 THE COURT: Let me finish.

25 MR. ACKERMAN: I apologize, Your Honor.

<p>11:23 19:13  <b>basic</b> 14:11  <b>basically</b> 4:7 25:8  <b>basis</b> 14:17 17:5  <b>be</b> 7:5 16:6 22:22  <b>be.</b> 16:9  <b>BEACH</b> 1:2, 15, 16  2:4, 8, 8 27:17 28:3  <b>bearing</b> 22:23  <b>been</b> 6:1 15:3  <b>began</b> 10:8  <b>beginning.</b> 23:25  <b>BEHALF</b> 2:6, 10 6:9  <b>belief</b> 7:5, 6  <b>believe</b> 18:4, 17  19:2 21:17 23:20  <b>believed</b> 7:9  <b>believes</b> 7:2, 3  <b>between</b> 27:4  <b>bolster</b> 7:25  <b>book</b> 13:11, 13  <b>Boulevard</b> 2:8  <b>BRADLEY</b> 1:7 2:10,  12  <b>Briefly</b> 23:22  <b>bring</b> 15:17  <b>Burnett</b> 2:3  <b>business</b> 9:10, 16  <b>by</b> 15:10 20:21</p> <p>&lt; C &gt;  <b>CA</b> 1:3  <b>call</b> 25:8  <b>camera</b> 19:3  <b>can</b> 18:21 20:4  <b>CASE</b> 1:3 4:20  7:11, 25 8:4, 4, 6  11:5 12:3 13:9  15:16, 19 17:23  19:5 25:11, 11, 17  <b>case.</b> 8:7 18:11  22:16  <b>cases</b> 3:9 5:3  9:13, 18 10:5, 15,  15, 20 13:4 18:14,  24 19:9 22:20, 22  <b>cases,</b> 18:19  <b>cases.</b> 18:6, 15  <b>causal</b> 7:20  <b>cause</b> 19:10 25:5  <b>caused</b> 8:15  <b>causes</b> 19:11, 16, 25  <b>certainly</b> 16:5  <b>Certainly.</b> 3:19</p>	<p><b>CERTIFIED</b> 28:18  <b>certify</b> 28:6  <b>charged</b> 18:4  <b>children</b> 11:10  <b>Christine</b> 27:16  <b>CHRISTOPHER</b> 2:2  <b>CIRCUIT</b> 1:1, 1  <b>circumstances</b> 16:8  <b>cited</b> 10:16, 21  <b>civil</b> 7:24  <b>claim</b> 4:16 6:6  7:19 10:19 12:7  20:13 23:6  <b>claim.</b> 8:18 11:21  <b>claimed</b> 22:11  <b>claims</b> 6:10  <b>claims.</b> 6:13 10:1  <b>clear</b> 19:23 20:10  <b>clearly</b> 4:19 5:8, 21  6:22 7:13 8:3  12:6 17:22 18:20  19:4  <b>client</b> 6:9  <b>clients</b> 25:13  <b>cloaking</b> 4:4  <b>Club</b> 27:17  <b>come</b> 20:12  <b>communicates</b>  19:18, 19  <b>communications</b>  4:18 5:17  <b>compared</b> 11:17  <b>complaint</b> 3:22, 23  6:11, 15, 21, 23 7:3  12:10 16:24 17:13,  19 18:1, 22 21:20  <b>complaint.</b> 17:3  <b>complete</b> 28:8  <b>completely</b> 27:7  <b>concerns</b> 24:17, 23  25:4  <b>concluded</b> 27:14  <b>conclusion</b> 5:21  <b>conclusion,</b> 5:23  <b>concurrent</b> 11:3  12:4  <b>conduct</b> 8:1 18:19  20:11  <b>conducted</b> 9:10  <b>confusing</b> 25:14, 22  <b>connection</b> 7:20  <b>constitute</b> 4:1 12:5  <b>constituted</b> 8:10  <b>constitutes</b> 9:15</p>	<p><b>contact</b> 19:5  <b>contempt</b> 14:23  <b>contend</b> 20:20  <b>context</b> 17:10  <b>continue</b> 9:8, 14, 17  <b>continued</b> 4:20 9:5  <b>continues</b> 10:9  <b>contrary</b> 19:22  <b>control</b> 14:22  <b>copies</b> 14:8, 9  <b>copy</b> 13:10  <b>corners</b> 17:14  <b>correct</b> 11:12 23:20  <b>correct.</b> 12:13 21:9  23:21  <b>corrected</b> 17:13  <b>could</b> 8:25  <b>counsel</b> 3:18 14:8  <b>Counterclaim</b> 25:2  26:21  <b>counterclaim.</b> 24:25  <b>COUNTY</b> 1:2, 15  28:3  <b>couple</b> 18:14  <b>course</b> 8:13 14:14,  18  <b>COURT</b> 1:1, 17 3:3,  18, 19 6:8, 14 7:12,  17, 19 8:4, 4, 6, 7,  13, 14, 18 10:14  11:11, 22, 25 12:9,  14, 19 13:6, 11, 14,  17, 21, 24 14:5, 10,  21, 23 15:6, 12, 23,  25 16:10, 14 17:1,  4, 11, 24 18:1, 21  19:2, 3 20:18, 24  21:1, 4, 10, 12, 19  22:3, 9, 13, 15, 17,  19, 20 23:5, 9, 10,  15, 16, 18, 22 24:4,  6, 19 26:4, 20 27:1,  11, 13, 15 28:5, 18  <b>Court.</b> 16:13  <b>Courthouse</b> 1:15  15:18  <b>Courts</b> 27:3  <b>Court's</b> 3:17 14:21  <b>cripple</b> 14:25  <b>CROW</b> 1:12  <b>CSR-MI</b> 1:17 28:5  <b>curious</b> 9:4  <b>cut</b> 12:20</p> <p>&lt; D &gt;</p>	<p><b>damage</b> 5:12 7:15  9:24 24:20  <b>damages</b> 6:9, 23  7:14, 16, 21 10:2,  20 11:9 13:1, 2  17:7, 9, 22 18:2, 7  20:9, 13, 13, 18, 19,  23 24:2 25:25  26:16  <b>Damages.</b> 3:7 26:3  27:9  <b>DATE</b> 1:13  <b>Dated</b> 28:10  <b>DAVID</b> 1:12  <b>day</b> 19:5, 17, 18  26:15 28:10  <b>DCA</b> 12:6  <b>deal</b> 3:12 14:1  24:20  <b>deals</b> 13:24 14:2  <b>decide</b> 16:6  <b>decisions</b> 14:17  <b>defeat</b> 23:6  <b>defend</b> 7:17 8:16  20:10 21:7, 25  <b>defendants</b> 10:13  11:5  <b>Defendants.</b> 1:9  <b>defended</b> 21:7  <b>defending</b> 20:19  21:12, 14 22:12  <b>defense</b> 16:2 21:22  23:7  <b>defenses.</b> 20:17  <b>defraud</b> 7:13  <b>Delmonico</b> 14:3  <b>demonstrated</b> 12:1  <b>denied</b> 26:21  <b>Denney</b> 2:7  <b>dependent</b> 16:7  <b>deposition</b> 15:3  <b>describe</b> 4:10  <b>described</b> 8:23  10:19  <b>describes</b> 5:7 12:6  <b>designed.</b> 10:25  <b>detail</b> 4:10 10:19  <b>detail,</b> 21:20  <b>detail.</b> 3:24  <b>determine</b> 16:16, 23  23:19  <b>determine.</b> 14:6  <b>dichotomy</b> 27:6  <b>did</b> 7:8 28:6</p>
--	--	--	--

16:21 17:2, 5, 17  
 18:18 19:16 25:16,  
 21  
**offices** 4:14  
**Okay** 3:3 10:14  
 12:15 16:10 21:12,  
 19 22:18 23:22  
 24:9, 21 25:13, 25  
 26:17  
**Okay.** 12:14 13:14  
 14:10 17:1, 4 22:9,  
 17 24:5 27:11  
**on** 6:7 19:4, 24  
**on.** 5:20  
**Once** 14:13  
**one,** 11:7  
**ones** 27:6  
**one's** 11:7  
**only** 24:2  
**operate** 9:15  
**operate.** 9:8  
**operating** 9:7, 14  
**opportunity.** 12:23  
**opposing** 14:8  
**or** 5:18 11:3 21:6  
**order** 7:24 11:20  
**originally** 26:12  
**other** 19:21  
**others.** 13:10  
**out.** 17:18  
**outside** 21:5, 15

**< P >**

█. 2:3  
**PALM** 1:2, 15, 16  
 2:4, 8, 8 27:17 28:3  
**paragraph** 4:9, 13,  
 17, 24, 25 5:7, 14  
 6:7 7:21, 23 8:6,  
 19, 23 9:24, 25  
 12:16 17:23 18:16  
 19:1  
**paragraphs** 4:6, 7, 9  
 6:4  
**parties.** 10:21  
**party** 20:11  
**pay** 7:16  
**Payless** 10:11  
**pending** 5:2 15:16  
 17:24  
**people** 5:18 19:22  
**permission** 3:17  
**permit** 23:3  
**permitted** 21:16

23:2  
**person** 20:10  
**perspective,** 5:8  
**perverted** 7:24  
 17:17  
**Phillips** 2:3  
**Phlipps** 27:16, 16  
**PLACE** 1:15  
**plaintiff** 5:13 10:2,  
 23 12:11  
**Plaintiff,** 1:5 2:6  
**plaintiff.** 6:25  
**plaintiff's** 9:9 25:11  
**pleading,** 4:3  
**pleadings** 16:17  
**pleadings.** 23:8  
**please.** 3:3  
**pleased** 24:15  
**pled** 20:14, 16 25:5  
**Point** 2:3 3:6  
 14:11  
**point.** 23:13  
**policy.** 14:16  
**Ponzi** 4:12 5:6, 10,  
 11, 19 7:4 8:24  
 18:25 21:18  
**position** 17:12 20:2  
**power** 14:22  
**powers** 14:23  
**practice** 9:12  
**preceding** 5:24  
**predicate** 22:21  
**prefer** 24:1, 4  
**PRESENT** 2:12  
**press** 4:3  
**preventing** 25:12  
**privilege** 14:2, 3, 5,  
 12, 13, 15 16:1, 18,  
 19, 20, 21, 22 20:7  
 22:19 23:12  
**privilege.** 13:25  
**privileged** 19:13  
**problem** 26:4  
**problems** 27:3  
**proceeded** 18:12  
**proceeding** 22:24  
**proceedings** 28:7  
**process** 4:16 6:6,  
 23 7:24 8:10  
 10:24 11:1, 13, 15,  
 17, 20 12:3, 5, 7, 10,  
 11, 12 15:7, 10  
 16:3 17:18 18:10,  
 13 20:6 21:6 25:5,  
 17, 21, 22 27:5

**process.** 11:4  
 15:22 17:15 21:8  
**produce** 7:13  
**products** 25:8  
**profit** 9:17 11:14  
**profits.** 9:18  
**properly** 20:16  
**proposition** 14:4  
**propositions** 10:23  
**prosecute** 9:13  
 10:1  
**prosecution** 4:19  
 5:2 7:18 8:13, 17  
 9:6 11:18 25:13,  
 16, 20 27:5  
**prospective** 7:4  
**protected** 20:6  
**prove** 10:24 12:12  
 18:3 20:5  
**provided** 3:9 10:12  
 14:7  
**provides** 20:4  
**providing** 14:8  
 19:23  
**Public** 1:17 14:16  
**Punitive** 3:6 10:20  
 24:2, 19 25:24  
 26:3, 16  
**purpose** 10:25  
 11:4, 14, 16, 19  
 12:2, 2, 4 19:9  
 25:12  
**purposes** 4:4 9:12  
 17:20 26:7  
**pursue** 10:9  
**put** 27:1  
**pyramiding** 5:22

**< Q >**

**Qualified** 16:20, 20  
**question** 22:7  
 23:10  
**question.** 15:23  
 22:6  
**questions** 16:21  
 24:16  
**quotes** 10:23

**< R >**

**read** 3:8, 8, 9 13:7,  
 17 21:20 24:3 26:9  
**reading** 24:8 25:3  
**really** 24:12, 24  
 25:14 26:12

**reason** 21:19  
**reason.** 25:6  
**reasonable** 5:23  
**received** 19:14  
**reconsidering** 26:24  
**record** 27:16 28:8  
**recorded** 4:15  
**recover** 11:8  
**recovering** 19:10  
**reference** 8:6  
**regard** 5:1 14:4  
 22:18 24:17  
**regardless** 11:2  
**related** 15:14 16:24  
**relating** 4:18  
**relationship** 22:23  
**release** 4:3  
**relevance** 9:2  
**relying** 11:6  
**remedies** 14:20  
**report** 28:7  
**REPORTED** 1:17  
 27:16  
**Reporter** 1:17 28:6,  
 18  
**Reporting,** 27:16  
**require** 23:5  
**required** 22:21 23:1  
**reschedule** 26:15  
**reschedule,** 26:10  
**reset** 24:24  
**respond** 15:1 21:6  
**rest** 22:16  
**result** 9:25 11:1  
**resulted** 17:21  
**revenue** 9:14  
**revenues** 9:7  
**right** 11:19 12:22  
 20:14  
**Right.** 11:22, 25  
**rights** 25:13  
**rise** 25:24  
**RMR** 1:17 28:5  
**ROTHSTEIN** 1:7  
 3:4 4:11 6:5 18:5,  
 18 19:6, 6, 14, 18,  
 24 21:18  
**Rothstein,** 18:24  
**Rothstein's** 18:19  
 20:3  
**RPR** 1:17 28:5  
**RRA** 5:15 9:8  
**RRA's** 4:14  
**ruled** 25:1

ruling 26:8, 15  
running 12:20

< S >

S 2:1 3:1  
satisfies 17:14  
saying 15:6, 9  
16:10, 14 26:23  
says 4:25 5:14  
6:14 7:9 12:9  
**SCAROLA** 2:7, 7  
3:16, 20 10:17  
11:20, 23 12:1, 13,  
15 13:3, 8, 12, 15,  
19, 23 14:1, 11  
15:9, 13, 24 16:9,  
12, 19 17:2, 5  
18:20 19:4 20:15  
22:5 23:22 24:1, 5,  
15 26:2, 18 27:10  
**Scarola.** 3:15  
**Scarola's** 23:6  
**scheme** 5:10, 12, 19  
7:4 8:25 20:3, 8  
**scheme.** 4:12 5:6  
18:25 21:18  
**scope** 12:7 14:14  
**SCOTT** 1:7 4:11  
**Searcy** 2:7  
**seat** 3:3  
**second** 3:5, 22  
17:13  
**secondly** 16:23  
**see** 10:14 17:2  
18:22 19:3, 14  
22:20  
**see,** 5:10  
**seeking** 6:9 18:1  
**sell** 6:2  
**separate** 15:1  
18:12 20:12  
**September** 1:13  
6:8 28:10  
**serial** 11:9  
**series** 19:19  
**serious** 25:4  
**served** 6:20, 25  
7:19 8:5 12:10  
**set** 17:18  
**seven** 4:8  
**Shipley** 2:7  
**short** 12:21 25:3  
**show** 7:4, 12 12:11  
17:22 19:23

**SI** 10:10, 22 12:24  
**sides** 24:12  
**Significantly** 8:21  
**sir** 12:13 13:19  
14:1 15:9  
**sir.** 13:8 17:11  
21:3, 11 27:10  
**six,** 4:7  
**slap-suit** 25:9  
**so** 24:13  
**So,** 15:14  
**sole** 8:22 9:3, 20  
12:2  
**some** 9:15 23:12  
**somebody** 6:15, 17,  
19 7:12 15:2 25:10  
**something** 13:1  
**sorry** 16:12  
**sorry.** 16:11  
**South** 2:4  
**speaking** 16:1  
**special** 20:9, 13  
**specific** 16:7, 7  
21:15  
**specifically** 20:14  
**spend** 8:15 24:10  
**spite** 11:3  
**sponte** 26:24  
**staff** 5:16  
**stage** 23:12, 14  
**stands** 10:22 14:3  
**started** 12:21  
**state** 6:8 7:1, 17,  
19 8:5, 7, 12, 14, 18  
17:24 18:14 28:3  
**state,** 19:10  
**Statute** 14:24  
**stenographic** 28:9  
**stenographically**  
28:7  
**stuff.** 26:9  
**subjective** 7:7  
**submitted** 3:10  
**subparagraphs** 8:11  
**subpoena** 15:15  
**subsequent** 11:15  
12:3  
**subsequently** 19:8  
20:1  
**substance** 4:24  
**substantial** 4:10  
**substantive** 4:22  
**suffered** 5:13 10:2  
**sufficient** 23:4, 6

**suggest** 4:23 5:4  
13:4 25:6  
**sui** 26:24  
**suit** 25:16, 17, 20,  
21, 22  
**supported** 20:21  
**sure** 13:19 25:16  
27:7  
**system** 14:25 17:17  
**system.** 22:14

< T >

**tab** 10:11 13:15, 16  
**table** 3:18  
**take** 8:8 23:15, 17  
24:1, 3 26:14  
**TAKEN** 1:13 7:18  
8:12 20:5  
**talk** 13:1 26:11  
**talking** 8:5  
**talks** 4:17  
**tell** 24:6 26:18  
**ten** 4:8 8:11  
**terms** 6:2  
**test** 15:14  
**testified** 19:22  
**Thank** 3:16, 20  
27:12, 13  
**that** 4:9 8:8, 9 9:7  
12:1 14:20 20:3, 7,  
11 23:5, 6 25:14  
28:8  
**that,** 22:1 26:22  
**that.** 13:23 23:16  
**THE** 1:1 3:8 4:1, 8  
5:14, 17 6:20 8:6  
9:11 10:11, 12  
11:11, 16 12:2, 6,  
17 14:14 15:13, 17  
16:3, 16, 17, 23  
17:14, 20 19:7  
20:19 21:12, 14  
22:5, 10, 18 23:2,  
11, 14 24:17 25:1  
26:19, 20 27:2, 8, 15  
**them** 18:13  
**them,** 13:6  
**them.** 3:11 13:7  
21:25  
**themselves** 20:11  
**theory** 25:7  
**there** 13:3  
**there,** 21:22  
**There's** 6:10  
**these** 8:21

**they** 6:11 12:15  
17:19  
**things** 10:1 21:4  
**think** 3:12, 21 4:5  
13:13 21:1 22:1, 5  
24:11 25:2  
**third** 10:6 13:13  
**this** 25:10  
**this,** 25:3  
**Those** 20:13 22:19,  
21  
**though.** 13:22  
**thought** 12:25 24:9  
**three** 15:20  
**through** 14:23  
**tied** 5:11  
**TIME** 1:14 12:21,  
22 17:25 23:23  
24:1, 11  
**times.** 13:18  
**to** 3:12 5:1 7:3, 22,  
24, 25 8:2, 10, 16  
9:12, 17 10:6, 17  
14:5 15:16 16:5,  
12 21:24 23:18  
**today.** 10:9 24:4  
**tort** 17:15 25:25  
**tort,** 26:2  
**transcript** 28:8  
**trial** 27:3  
**true** 7:22 25:15  
28:8  
**try** 10:6  
**two** 9:4 11:7  
13:12 15:19 24:3  
26:15

< U >

**ulterior** 8:20, 22, 24  
11:4 17:20  
**ultimately** 18:24  
23:9  
**uncontested** 4:10  
**underlying** 21:13  
26:2  
**understand** 11:12  
20:18 23:16 24:12,  
13 25:7 26:22 27:2  
**understand.** 22:15  
**understanding** 7:7  
**unfounded** 8:2  
**unity** 4:5  
**unnecessary** 8:1  
10:3

unnumbered 4:1  
 unreasonable 8:1  
 unrelated 18:21  
 upon. 11:6  
 use 7:24 12:3, 12  
 17:17 22:14  
 uses 12:17

< V >

valid 25:12, 19  
 variety 5:7, 22  
 various 4:15  
 versus 3:4 10:10  
 vetted 26:12 27:7  
 victim 9:1  
 vs. 1:6

< W >

want 11:8, 8 13:7  
 15:16 24:8, 10, 14,  
 20, 23 27:7  
 wants 18:20 19:4  
 was 4:13 6:19  
 18:2, 3  
 way 4:9  
 way. 27:1  
 we 6:5 18:16  
 Wednesday 1:13  
 weeks 15:19  
 well 3:6 5:21  
 11:11 12:9 27:1  
 Well, 7:4  
 well. 13:13 14:9  
 17:8  
 well-founded 6:12  
 went 3:22 5:1  
 were 9:19 12:25  
 21:5  
 We're 3:4 5:10  
 6:5 8:2  
 West 1:16 2:3, 4, 8  
 27:17  
 We've 19:1, 7, 9, 14  
 20:5, 9  
 what 19:3 21:15  
 where 12:3  
 White 2:3  
 wide 5:16  
 win 25:17  
 with 14:1, 2, 8 19:5  
 within 4:20  
 wonderful 25:15  
 would 15:21 23:4  
 wrong 11:13

wrongdoing 9:23

< Y >

Yeah 13:24  
 years 15:20  
 Yes. 15:24  
 you 15:2  
 you. 22:13  
 you-all 26:15  
 young 11:10  
 Your 14:11 22:7  
 you're 14:19