

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
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In re:

CASE NO.: 09-34791-BKC-RBR

ROTHSTEIN ROSENFELDT ADLER, [REDACTED],

CHAPTER 11

Debtor.

TRUSTEE'S PROPOSED PROTOCOLS FOR ROTHSTEIN SECOND DEPOSITION

Herbert Stettin, Chapter 11 Trustee ("Trustee") for Rothstein Rosenfeldt Adler, [REDACTED] ("RRA") submits the following proposed protocols for use in the Second Deposition of Scott Rothstein (the "Deposition"):

I. EXISTING ADMINISTRATIVE ISSUES TO RESOLVE.

1. Given the complexities of communicating, negotiating and finalizing a court order with approximately 30 attorneys, the Court should appoint Michael Goldberg, counsel to the RRA Creditors Committee, plus 2 or 3 other attorneys (collectively "Defense Lawyers") to work on behalf of all other parties and with counsel to the Trustee, in order to quickly and collaboratively finalize future deposition protocol related orders or resolve other Deposition related issues.

2. The Defense Lawyers should be required to formulate a universal set of Deposition questions that apply to every adversary case on the somewhat common defense issues including, but not limited to property of the estate, solvency and good faith. The Trustee shall have a similar obligation to prepare his own list of questions on issues common to all adversary cases. At the Deposition, one lawyer should either be selected by the Defense Lawyers or the Court to ask all such questions on behalf of all adversary defendants. Perhaps this part of the

Deposition should be deemed a Rule 2004 examination subject to the procured testimony being allowed in all cases subject to the Deposition? The Trustee shall promptly determine whether or not he needs to allocate any portion of time in the Deposition (or Rule 2004 examination) to question Rothstein on matters related to claims objections.

3. All attorneys presently designated to participate in the Deposition may submit any additional protocol ideas to Trustee's counsel and Defense Lawyers by May 4, 2011. Trustee's Counsel shall confer with Defense Lawyers and then incorporate all such reasonably proposed protocols into a new version of protocols to be filed with the Court by May 11, 2012.

4. All parties participating in the Deposition must acknowledge their responsibility to pay Marc Nurik an hourly proportionate amount for attorneys' fees and reasonable travel costs incurred in representing Rothstein through the two week deposition. The Court should determine a methodology for assessment and pre-Deposition payment of these fees.

5. All parties participating in the Deposition must acknowledge their responsibility to pay their *pro rata* share of the reasonable costs incurred by the United States Government to transport Rothstein to the location of the Deposition from where it will be videotaped, plus security and other reasonable related costs of the Deposition.

II. PRE-DEPOSITION ISSUES.

6. Each party shall be responsible for obtaining their own copy of Rothstein's first deposition transcript from the court reporter, and for knowing all contents of same, prior to the Deposition to assure there are no repetitive questions asked in the Deposition on any topic.

7. To assure availability for the two week Deposition, the Trustee has already made arrangements with a court reporter (Friedman Lombardi), who will provide coverage for the entire Deposition. Each party shall be responsible for ordering any or all transcripts from the

court reporter. If daily copy is requested by a party, the court reporter is to be advised one week before the Deposition begins, to assure that the court reporter provides appropriate coverage in the Deposition.

8. All parties shall exchange indexed CD's or DVD's of all documents to be used in the Deposition to opposing counsel on May 25, 2012. No party shall engage in a "document dump," meaning intentionally serving a large number of documents upon opposing counsel knowing they will not be used in the Deposition. All documents must be bates stamped including those given to Rothstein, to save identification time in the Deposition and to assure everyone is working off of the same set of documents. Given that the Deposition will occur by video-conference, no documents other than those timely produced, can be used as exhibits in the Deposition.

9. Trustee's counsel shall facilitate all issues with the USA on matters including, but not limited to timing for producing discs of documents or hard paper documents for Rothstein's use in the Deposition, including possibly getting the documents to Rothstein well in advance of his Deposition for his pre-Deposition review, to save time during the actual Deposition. If this is possible, it may move up the May 25, 2012 document production date stated in paragraph 8. Trustee's counsel shall also work and communicate with the USA on all security related protocols, cost issues and any other matters related to the Deposition, and report back to Defense Lawyers and the Court regarding matters that need to be incorporated into these protocols.

III. FIRST ROTHSTEIN DEPOSITION TRANSCRIPT USE.

10. The transcript from the December 2011 deposition of Rothstein, which includes the Trustee's Rule 2004 examination of Rothstein, may be used for any purpose in any pending litigation in accordance with applicable rules of evidence. No party shall have to establish

Rothstein's unavailability to appear to testify before a court, as long as the proposed use of the deposition is permitted in accordance with Bankruptcy Rule 7032, Federal Rule of Civil Procedure 32 and Rule 1.330, Fla. R. Civ. P., and the applicable rules of evidence.

IV. THE SECOND ROTHSTEIN DEPOSITION PROTOCOLS.

11. In any existing federal court action, and in any other bankruptcy adversary proceeding that is scheduled in compliance with this Court's orders, the Deposition shall be taken in accordance with the Federal Rules of Civil Procedure as applicable pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7030. The Deposition in any proceeding pending in the United States District Court shall be taken in accordance with Rules 26 and 30 of the Federal Rules of Civil Procedure. The Deposition in any Florida state court proceeding shall be taken in accordance with Rules 1.280 and 1.310 of the Florida Rules of Civil Procedure.

12. Any party participating in the Deposition may have no more than three representatives present in the Deposition, which may either be the party's attorneys or other professionals, party representatives themselves, or any combination thereof. The RRA Creditors' Committee may be represented by its lead counsel at any RRA related adversary case deposition. (This may need to be reduced to two persons per side, due to possible space limitations.)

13. The objection of one counsel or party to a question shall not need to be repeated by another counsel to preserve that objection on behalf of such other party or counsel. Any objection to the form of a question shall be deemed to have been made on behalf of all other parties.

14. Once the Court allocates the total amount of time per deposition, the allotted time shall be split evenly between the parties. However, if one side finishes their examination of

Rothstein before their allotted time is completed, the other side shall not have the remaining unused time for a longer interrogation, and there shall be no re-direct or re-cross examination of Rothstein.

15. When each individual Deposition is concluded, the transcript from that examination shall be deemed closed, and a separate transcript for the next Deposition of Rothstein in each of the adversary proceedings and other cases shall commence.

16. The Deposition may be used in court proceedings without the necessity of establishing Rothstein's unavailability to appear to testify before a court as long as the proposed use of the deposition is permitted in accordance with Bankruptcy Rule 7032, Federal Rule of Civil Procedure 32 and Rule 1.330, Fla. R. Civ. P., and the applicable Rules of Evidence.

17. Members of the press shall not be permitted to attend the Deposition. Upon completion of the Deposition, the Trustee shall order a transcript of the Deposition. The other parties to the Deposition may order a copy of the transcripts at their own cost. The transcripts shall be provided to representatives of the press who agree to pay for the costs of the transcripts. (The Court will need to determine whether or not the Trustee or a party should post the transcripts to a website?) If any party has an objection to providing the transcripts to the press, such party shall file an objection with the Court within 7 days of completion of that day's Deposition, and such objections shall need to be resolved before any transcripts are provided to the press.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Court's CM/ECF system to all registered users in this case, as indicated on the attached Service List, on this 19th day of April, 2012.

Dated: April 19, 2012.

BERGER SINGERMAN LLP
Attorneys for the Trustee, Herbert Stettin

By: /s/ Charles H. Lichtman
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