

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

CASE NO.: 09-34791-BKC-RBR

ROTHSTEIN ROSENFELDT ADLER, P.A., CHAPTER 11

Debtor.

**TRUSTEE'S SECOND SET OF PROPOSED PROTOCOLS  
FOR SCOTT ROTHSTEIN SECOND DEPOSITION**

Herbert Stettin, Chapter 11 Trustee ("Trustee") for Rothstein Rosenfeldt Adler, P.A. ("RRA") submits the following second set of proposed protocols for use in the Second Deposition of Scott Rothstein (the "Deposition"):

**I. EXISTING ADMINISTRATIVE ISSUES TO RESOLVE.**

1. The Trustee's proposed Deposition order of cases is attached as Exhibit A.
2. The Court needs to determine the procedure for questioning and use of a Rule 2004 examination or a Rule 7030 deposition for generic questions prepared by "Defense Lawyers" (previously appointed by the Court.) The purpose of this questioning was to establish 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 has a similar obligation to prepare his own list of questions on issues common to all adversary cases. At the Deposition, one lawyer selected by the Defense Lawyers or the Court will ask all such questions on behalf of all adversary defendants. The Court will also need to determine the **use of such transcripts**, with a goal of being consistent with the issues raised pertaining to use of the first Rothstein deposition transcripts.

3. 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 three week deposition. Mr. Nurik's fees will be broken down into 1/4 hour increments, consistent with his total \$500.00 per hour rate, which the Court finds to be a reasonable fee. Present issue – if time is allocated and a defense lawyer participates in the deposition, he should pay his entire allocated share of time, not just a portion that he ends up using, which would be unfair to Nurik and cause massive administrative headache in calculating fees owed per attorney. Otherwise, the time can be reallocated to other cases. Payment must be made by each lawyer prior to the Deposition. Mr. Nurik's costs need to be kept confidential because receipts would disclose Rothstein's location.

4. All parties participating in the Deposition must acknowledge their responsibility and pay in advance their *pro rata* share of the \$16,000 in 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.

5. Release of transcripts to the press per paragraph 23 below.

## **II. PRE-DEPOSITION ISSUES.**

6. 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.

7. At such time that the Trustee's counsel learns the South Florida location of the

Deposition, he shall file a Notice of Location of Rothstein Deposition in this case forthwith, which location shall also be included in the Notice of Deposition referenced below.

**III. FIRST ROTHSTEIN DEPOSITION TRANSCRIPT USE.**

8. 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.

9. 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 adversary proceeding subject to this order, in accordance with applicable rules of evidence, and subject to the trial judge in each particular case making final evidentiary rulings. 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.**

10. Counsel for all parties shall be allowed to bring laptops, i-Pads and cell phones to the Deposition, subject to any other rules imposed by the United States Marshal. All cell phones shall be turned off and put away during the Deposition. There shall be no attempt by any person to photograph Rothstein.

11. All attorneys shall arrive at the Deposition location at least 30 minutes prior to their scheduled Deposition.

12. The Trustee shall file a Notice of Deposition in each adversary case in which Rothstein's Deposition will be taken. It shall be presumed that all parties to that action have automatically cross-noticed the Deposition without needing to file such notice.

13. Swearing Rothstein in as a witness by the court reporter from the Deposition location in South Florida shall be valid, and any objection to his lack of actual physical presence is waived.

14. Given that the Deposition will occur by video-conference, no documents other than those timely produced pursuant to this Court's Second Order Respecting Participation in and Protocols for Scott Rothstein's Second Deposition (D.E. #3038), can be used as exhibits in the Deposition. If counsel wishes to refer to a document during the Deposition not timely tendered for submission for pre-deposition distribution, counsel shall bring an extra copy of such document to the deposition for opposing counsel. Such document should be referenced by a bate stamp designation consistent with the aforementioned order.

15. All counsel shall pre-mark all exhibits using Plaintiff or Defendant stickers, with identification of the exhibit for Rothstein and opposing counsel by reference to the special bate stamp tag for each document.

16. 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.

17. 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.)

18. 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.

19. Speaking objections, continuous improper objections or other conduct that disrupts the Deposition to prevent an attorney from asking questions or to slow down the Deposition may subject the abusive attorney to sanctions, post-deposition, at the discretion of court.

20. As to the allocated total amount of time per Deposition as provided on Exhibit A, the allotted time shall be split evenly between the parties, i.e. plaintiff and defendants. 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.

21. 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.

22. 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.

23. This Court defers to each trial judge the issue of determining whether or how to tax the costs each party shall pay for both the Government and Marc Nurik's legal fees and expenses, as provided above, at the conclusion of each such matter and in accordance with law.

24. 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. 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. The transcripts shall be the posted to the Trustee's website, after resolution of an objection.

Dated: May 23, 2012.

BERGER SINGERMAN LLP  
Attorneys for the Trustee, Herbert Stettin

By: /s/ Charles H. Lichtman  
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**EXHIBIT A**



MONDAY JUNE 18	9:00 – 2:00 / Kent 2:00 – 3:30 / Brauser 3:30 – 5:00 / Emess Capital
TUESDAY JUNE 19	9:00 – 3:00 / Regent Capital
WEDNESDAY JUNE 20	9:00 – 3:00 / Levy Family/Renato Watches 3:00 – 4:00 / Brian Levy
THURSDAY JUNE 21	9:00 – 5:00 / Insurers/Banyon Trustee
FRIDAY JUNE 22	9:00 – 2:00 / Pearson 2:00 – 5:00 / Banyon Trustee

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