



ORDERED in the Southern District of Florida on June 1, 2012.


Raymond B. Ray, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:

CASE NO.: 09-34791-BKC-RBR

ROTHSTEIN ROSENFELDT ADLER, P.A.,

CHAPTER 11

Debtor.
_____ /

**ORDER ESTABLISHING SECOND SET OF PROTOCOLS
FOR SCOTT ROTHSTEIN SECOND DEPOSITION**

This cause came before the Court on May 23, 2012 for a status conference hearing to determine the protocols that will govern all parties in the Second Deposition of Scott Rothstein ("Rothstein"), scheduled to commence June 4, 2012 (the "Deposition"). The Court has reviewed the Second Set of Proposed Protocols (D.E. # 3079) filed by Herbert Stettin, Chapter 11 Trustee

("Trustee") for Rothstein Rosenfeldt Adler, P.A. ("RRA"), heard argument of counsel and being otherwise fully advised,

DOES HEREBY ORDER:

1. The sequence and timing of the respective depositions for each adversary case and other litigation approved to participate in the Deposition is set forth on the Deposition Schedule, attached as Exhibit A to this Order. The Court recognizes the possibility, if not the likelihood that circumstances respecting the timing for taking individual depositions listed on the Deposition Schedule may require modification after entry of this Order, including even during the three-week period while the Deposition is taking place. Should this be necessary, Trustee's counsel, Charles Lichtman ("Lichtman") shall revise the schedule appropriately, acting in good faith and in consultation with the parties whose schedules may be so affected, to reallocate time to parties, or change the designated times on the Deposition Schedule to accommodate the interests or personal schedules of parties, so as to maximize the time allotted during each Deposition day to assure that there is no wasted time during the Deposition. The Court reserves jurisdiction to continue to oversee this scheduling process and address the concerns of any party who believes it is prejudiced by a change in the Deposition Schedule, by motion, after entry of this Order.

2. The Deposition shall commence with a Rule 2004 Examination ("Examination") whereby all testimony procured from Rothstein during the Examination shall be deemed as if taken in each pending adversary case filed by the Trustee under the main bankruptcy case of In re: Rothstein, Rosenfeldt Adler, P.A. Case No. 09-34791-BKC-RBR. The time allotted for questioning Rothstein during the Examination shall be split evenly between the Trustee and all other parties. The Trustee shall commence the Examination and when his allotted time has

ended, the "Defense Lawyers" previously appointed by the Court shall continue with the defense side of the Examination. The Court notes that while the attorneys who comprise the Defense Lawyers are not necessarily technically counsel of record for each of the defendants in an adversary proceeding listed on Exhibit A, this protocol has been instituted by the Court to assure the maximum use of time available for the Deposition, and that all have had the right and opportunity to submit cross-examination questions and to work with the Defense Lawyers to protect their own respective client's interest. Notwithstanding the universal set of deposition questions that shall be used by the Trustee and Defense Lawyers with the intention that such questions and answers shall serve as evidence in every adversary case, any party may utilize their time as they deem appropriate to ask any other questions of Rothstein that were covered by any party in the Examination, subject to the Federal Rules of Evidence. So that all parties promptly will know of the content and testimony taken in the Examination, the Examination transcript shall be produced by the court reporter as daily copy and posted by the Trustee on his website forthwith after the transcript has been received by the Trustee. Each party shall be responsible for purchasing their own copy of the Examination transcript from the court reporter for their own future use.

3. All parties participating in the Deposition shall be responsible for paying Marc Nurik ("Nurik"), Rothstein's attorney, an hourly fee proportionate to the amount for attorneys' fees incurred in representing Rothstein through the Deposition. Nurik's fee will be broken down into 1/4 hour increments, based upon his \$500.00 hourly rate, which the Court finds to be a reasonable fee. By way of example, if a deposition is scheduled for 30 minutes, the Trustee and the respective defendant shall be each responsible to pay Nurik \$125.00 of the total \$250.00 bill. The amount of the bill to be paid for Nurik's time is based upon the time allocated to a particular

side of the case. Therefore, if a defendant concludes he does not need the full time allotted pursuant to this Order, that defendant shall forthwith notify Lichtman, so that the deposition schedule can be modified. Lichtman shall file with this court of Notice of Assessment of Attorneys Fees which shall list by case the amounts due by each party. All parties shall pay Nurik's fees by delivery to Lichtman of a check for same, payable to Nurik, by June 4, 2012. The failure of any party to timely pay Nurik's attorneys fees shall preclude such party from asking questions during that defendant's allotted Deposition time, and Lichtman may accordingly re-allocate any such unpaid Deposition time either to that case or any other case. The Trustee shall promptly pay Nurik's reasonable costs, after tender of redacted receipts that delete the location of the cost service provided, and which shall include coach class airfare, hotel lodging expense, rental car and meals. These costs may be taxed proportionately pursuant to law at the conclusion of a particular adversary case, as provided below.

4. All parties participating in the Deposition shall also pay their *pro rata* share of the \$16,000 in costs incurred by the United States Government in connection with issues related to Rothstein and taking the Deposition. To assist in facilitating the Deposition, the Trustee shall advance these costs. Lichtman shall include in the Notice of Assessment of Attorneys Fees and Government Costs each parties *pro rata* designated share of these costs and each party shall pay its designated proportionate share to the Trustee delivered to Lichtman, by June 4, 2012. The failure of any party to timely pay the Government's costs shall preclude a party from asking questions during that defendant's allotted deposition time, and Lichtman may accordingly re-allocate any such unpaid time to either that case or any other case.

5. To assure consistent transcription availability for the entire Deposition, the Friedman Lombardi court reporting agency will serve as court reporters for the entire Deposition,

including the Examination. 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.

6. At such time that Lichtman 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 stated in the Notice(s) of Deposition referenced below.

7. Each party shall be responsible for obtaining their own copy of Rothstein's first deposition transcript from that 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. 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 to either the December 2011 deposition or this Deposition, as long as the proposed use of the transcript 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. The determination of admissibility of evidence as described in this paragraph is reserved for final decision by each trial judge.

8. Counsel for all parties shall be allowed to bring laptops, i-Pads and cell phones to the Deposition, subject to any rules governing their use 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.

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

10. 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, except for (a) Ballamor Capital Management, LLC, Ballamor Capital Management, Inc. and Barry Bekkedam, and, (b) Preve & Associates, Frank Preve and SFS Capital Funding, LLC, whose counsel has advised that they do not want their client's cases to be deemed cross-noticed.

11. 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, or any defect in the administration of the oath, is waived.

12. 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 intends 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 court order.

13. 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.

14. In the adversary proceedings or other state or federal cases listed on Exhibit A, the Deposition shall be taken in accordance with the Federal Rules of Bankruptcy Procedure, the

Federal Rules of Civil Procedure and the Florida Rules of Civil Procedure. The Deposition in any such proceeding pending in the (i) United States Bankruptcy Court shall be taken in accordance with Federal Rules of Bankruptcy Procedure 7026 and 7030; (ii) United States District Court shall be taken in accordance with Federal Rules of Civil Procedure 26 and 30; and (iii) Florida state courts shall be taken in accordance with Florida Rules of Civil Procedure 1.280 and 1.310.

15. 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 provision shall be deemed flexible and the number of parties present in the deposition room either may be expanded or reduced, depending on the room size.

16. 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.

17. 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.

18. 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.

19. 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, and Rothstein shall be resworn as a witness for each new transcript.

20. 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's expenses and Nurik's legal fees and costs, as provided above, at the conclusion of each such matter and in accordance with law.

21. 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. 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. Any portion of a transcript not objected to shall be posted to the Trustee's website promptly after its receipt from the court reporter. Any objections to posting a segment of a transcript shall be resolved before posting that portion of the transcript.

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Copy furnished to:

Charles H. Lichtman, Esq.

(Charles H. Lichtman is directed to serve this Order to all parties of interest and to file a Certificate of Service.)

EXHIBIT A

SCOTT ROTHSTEIN DEPOSITION SCHEDULE

Depositions scheduled for 4 hours or more will include a 1/2 hour break for lunch. All parties participating in depositions that cover a lunch period are encouraged to bring limited lunch food and drink to the deposition.

MONDAY JUNE 4 9:00 – 1:30 / Rule 2004 Examination
1:30 – 3:30 / Concorde Capital, Viceroy, Wolinetz, Morgan,
Mussry, H&N Associates
3:30 – 4:30 / Aran Development

TUESDAY JUNE 5 9:00 – 3:00 / Albert Peter
3:00 – 4:30 / Sabrina Kurzman

WEDNESDAY JUNE 6 9:00 – 2:30 / Casa Casuarina
2:30 – 4:30 / Maple Leaf Drilling Partners

THURSDAY JUNE 7 9:00 – 2:30 / Ballamor
2:30 – 4:00 / Birks & Mayors
4:00 – 4:30 / *V. Georgio and Gibralt (Defaults)

FRIDAY JUNE 8 9:00 – 3:30 / Ron Picou & Mooring Capital
3:30 – 4:30 / OPMONIES, GGTW, FDS, BWS, New Miami, Caro
Group, Network Resources, Exito, Marmaser, Pirulin

MONDAY JUNE 11 9:00 – 3:30 / Tonacchio - Lipsitz
3:30 – 4:30 / Africat Marine

TUESDAY JUNE 12 9:00 – 3:00 / VRLP1 - Armoyan
3:00 – 4:30 / David Boden

WEDNESDAY JUNE 13 9:00 – 11:00 / Brauser
11:00 – 4:30 / Preve - SFS

THURSDAY JUNE 14 9:00 – 2:30 / Epstein
2:30 – 4:30 / Intracoastal Asset

FRIDAY JUNE 15 9:00 – 10:30 / SPD Group (JR Dunn)
10:30 – 11:30 / Michael Ashton
11:30 – 12:30 / Watch-U-Want
1:00 – 1:50 / Recovery Racing
1:50 – 2:40 / Thunder Cycle
2:40 – 3:30 / Euro Motocars
3:30 – 4:30 /Ultimate Cigars

MONDAY JUNE 18 9:00 – 2:00 / Kent
2:00 – 4:30 / FEP

TUESDAY JUNE 19 9:00 – 10:30 / Emess Capital
10:30 – 4:30 / Regent Capital

WEDNESDAY JUNE 20 9:00 – 3:30 / Levy Family/Renato Watches
3:30 – 4:30 / Brian Levy

THURSDAY JUNE 21 9:00 – 5:00 / Insurance Litigation. Direct exam by insurers from 9:00 – 2:30 and cross-examination by Banyon Trustee from 2:30- 4:30.

FRIDAY JUNE 22 9:00 – 12:00 / Banyon Trustee, which may include continued cross-examination from Insurance Litigation, and will include Rule 2004 examination.
1:30 – 4:30 / Pearson

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