

Joseph L. Ackerman, Jr.

February 25, 2011

VIA EMAIL AND FIRST CLASS MAIL

Robert B. Carney,
Special Master
2281 Saratoga Lane
West Palm Beach, FL 33409

Re: In re: Rothstein, Rosenfeldt Adler, P.A.
U.S. Bankruptcy Court, Southern District of Florida, Fort Lauderdale Division;
Case No. 09-34791-BKC-RBR
Our File NO. 80743

Dear Judge Carney:

As a supplement to my February 25, 2011 letter, below are Epstein's further objections to the Farmer Jaffe Privilege Log as follows:

1. The Privilege Log consists of 159 pages with each page containing approximately eight to fifteen entries on average. The individual entries are not numbered which renders discussion of individual items difficult since the items do not appear to be in date order or bates number order.

2. Each page of the Log contains six columns which consist of the Bates number, the date of the item, the sender, the recipient, the so-called "description" of the item, and the nature of the objection. The Log does not contain the information required by Rule 1.280(b)(5) of the Florida Rules of Civil Procedure as that Rule has been interpreted by the Fourth District Court of Appeal.

3. In *TIG Insurance Corp. v. Johnson*, 799 So. 2d 339 (Fla. 4th DCA 2001), the court denied a writ of certiorari sought from an order requiring a party to produce documents because the claims of privilege had been, it concluded, waived by the claimant's failure sufficiently to identify the documents which it claimed were privileged. *Id.* at 340. In that case, the court relied upon the federal rule after which Florida rule 1.280(b)(5) was patterned and cases construing it, in reaching the conclusion that the "type of document" must be identified (whether it is a letter, email, instrument, etc.), and that "where not apparent, the relationship of the author and addressee" must be included, as well as the general subject matter, the date, and such other information as is sufficient to identify the document for a subpoena, including the author and addressee where appropriate. *Id.* at 341. Moreover, the description of the document "must be

sufficiently detailed to allow the court to determine whether the discovery opponent has discharged its burden of establishing the requirements expounded upon. . . . Accordingly, descriptions such as 'letter re claim,' 'analysis of claim,' or report in anticipation of litigation'" . . . will be insufficient." Id. (citing *Abbott Laboratories v. Alpha Therapeutic Corp.*, 2000 U.S. Dist. LEXIS 20834, 2000 WL 1863543 (N.D. Ill. Dec. 14, 2000).

4. In this Log, there is no identification whatsoever of the type of document (e.g., letter, email, attorneys' note, etc.) for any item. Nor is there any explanation of the relationship of the sender (who may or may not be the author) and the addressee. Are the two co-workers? Is one an attorney and the other a member of his staff or an investigator? In many cases, there is no way to know whether the sender or the addressee was even employed by RRA.

5. The descriptions of many are woefully inadequate by any standard. See, e.g., page 38 describing all eight documents as "Litigation strategy."

6. Furthermore, the descriptions of the documents, if accurate are on their face, not privileged. For example, on page 1, Bates No. 10069 is reported to be a deposition transcript which shows no indication that it was filed under seal or is otherwise non-public. Further such examples appear on pages 2, 4, 5 and throughout.¹

7. Without specific descriptions of the documents for which privilege is claimed and some description of the sender and the addressee on most, the defendant has failed to meet his burden of establishing the applicability of any privilege.

Reiterating our prior letter requesting an extension, we reserve the right to supplement these objections, if necessary.

Respectfully submitted,



Joseph L. Ackerman, Jr.

JLA/nat

cc: Jack Scarola, Esquire (via email and U.S. Mail)
Gary Farmer, Jr., Esquire (via email and U.S. Mail)
Seth Lehrman, Esquire (via email and U.S. Mail)

¹ Counsel has been unable to analyze the entire 159 pages in the time afforded, but it is obvious from the most cursory review that the descriptions of most of the documents are insufficient under *TIG*.

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Bcc: Christopher E. Knight, Esquire
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Susan April, Esquire