IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION AG
CASE NO. 502009CA040800XXXXMB
Judge David F. Crow

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

SCOTT ROTHSTEIN, individually, and
BRADLEY J. EDWARDS, individually,

Defendants/Counter-Plaintiffs.

_____/

PLAINTIFF JEFFREY EPSTEIN'S MOTION TO CONTINUE HEARING ON EDWARDS' RENEWED MOTION FOR SUMMARY JUDGMENT

Plaintiff, Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to this Court's Order and the Florida Rules of Civil Procedure, move this Court for an Order Continuing the hearing on February 23, 2012 on Edwards' Renewed Motion for Summary Judgment. The grounds for this motion are as follows:

1. On February 13, 2012, the Honorable Judge James I. Cohn, United States District Court for the Southern District of Florida entered an Order granting motions of the Trustee and Jeffrey Epstein for the issuance of a Writ of Habeas Corpus Ad Testificandum for a second deposition of Scott Rothstein. A copy of the Order is attached as Exhibit "1". Pursuant to §90.202(2)(6) and (12), of the Fla. Statutes, Epstein requests this Court take judicial notice of the Order of the District Court Judge James Cohn.

2. The Court has ordered that the second deposition of Scott Rothstein take place from June 4th through June 15, 2012.

3. Fla.R.Civ.P. 1.510(f) provides that the Court may refuse the application for summary judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken as is just. It is well established that summary judgment should not be granted until all discovery has been completed. *SICA v. Sam Caliendo Designing*, 623 So.2d 859 (Fla. 4th DCA 1993).

4. Up until December 1, 2011, Scott Rothstein was not available for deposition. District Court Judge Cohn had sustained objections of the United States Government to efforts to depose Scott Rothstein prior to that date. See Exhibit "2". Pursuant to §90.202(2)(6) and (12), of the Fla. Statutes, Epstein requests this Court take judicial notice of Exhibit "2".

5. Presently, pursuant to this Court's Order setting the hearing for Renewed Motion for Summary Judgment, submission papers by both parties are due February 16, 2012. In addition, Edwards seeks to re-depose Epstein prior to the February 23, 2012 hearing.

6. Given that it is not possible, nor has it been possible for Epstein to take Scott Rothstein's deposition until February 13, 2012 and since the deposition can not occur before the dates set by District Court Judge James Cohn, Epstein respectfully submits that the hearing scheduled for February 23, 2012 on the Renewed Motion for Summary Judgment should be postponed until after the deposition of Scott Rothstein takes place in June, 2012. Rothstein is a party in this case and his testimony is necessary and material to an adjudication of the claims especially Edwards' claim for Summary Judgment.

7. The undersigned certifies that he has contacted counsel for the Defendant/Counter-Plaintiff, Bradley J. Edwards, Jack Scarola, in an effort to resolve this matter without the need of a hearing and will continue to do so.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail and U.S. Mail on this 13th day of February, 2012 to: Jack Scarola, Esq., Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, FL 33409; Jack Alan Goldberger, Esq., Atterbury, Goldberger & Weiss, P.A., 250 Australian Ave. South, Suite

1400, West Palm Beach, FL 33401-5012; and Marc S. Nurik, Esq., Law Offices of Marc S. Nurik, One East Broward Blvd., Suite 700, Fort Lauderdale, FL 33301.

Joseph L. Ackerman, Jr.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-61338-CIV-COHN

In Re: ROTHSTEIN ROSENFELDT ADLER, P.A.,

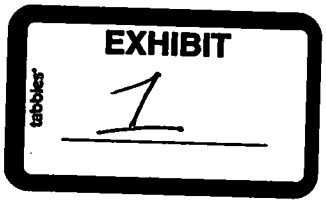
Debtor.
_____/

ORDER GRANTING THE MOTIONS OF THE TRUSTEE AND JEFFREY EPSTEIN TO ISSUE A WRIT OF HABEAS CORPUS AD TESTIFICANDUM

THIS CAUSE is before the Court upon Trustee Herbert Stettin's Motion for Writ of Habeas Corpus Ad Testificandum for Second Deposition of Scott Rothstein [DE 104], Brian Levy's Motion to Take the Deposition of Scott Rothstein [DE 107], Jeffrey Epstein's Motion for a Writ of Habeas Corpus Ad Testificandum to Depose Scott Rothstein and to be included in the Next Session of Rothstein's deposition [DE 120], the responses to the Trustee's Motion of the Brauser Adversary Defendants [DE 108], the Insurance Companies [DE 109],[1] Emess Capital, LLC [DE 110], Ballamor Capital Management, Inc. (and LLC) and Barry Bekkedam [DE 111], National Union Insurance Company of Pittsburgh [DE 112], SFS Funding, LLC, Frank Preve, and Preve and Associates, LLC [DE 113], SPD Group, Inc. [DE 114], Michael Kent and Mikent, Inc. [DE 115], the Regent Defendants [DE 116],[2] H&N Associates, Jacob Mussry, Nassim Mussry, Scott Morgan, Harvey Wolinetz, Viceroy Global Investments, Inc., and Concorde Capital, Inc. [DE 118]

[1] These companies are RLI Insurance Company, Columbia Casualty Company, Zurich American Insurance Company, Ironshore Indemnity Co., Westchester Insurance Company, and St. Paul Fire and Marine Insurance Company.

[2] The Regent Defendants are Regent Capital Partners, LLC, Laura Huberfeld, Murry Huberfeld, Naomi Bodner, David Bodner, the Bodner Family Foundation, Dahlia Kalter and Mark Nordlicht.



and Razorback Funding, LLC ("Razorback Victims") [DE 119], along with the Government's Reply [DE 124] and the Trustee's Reply [DE 125]. The Court has carefully considered all of these filings and the entire record in this action, has heard the argument of counsel at today's hearing, and is otherwise fully advised in the premises.

I. BACKGROUND[3]

Scott Rothstein ("Rothstein"), the central figure in a criminal action brought by the United States of America regarding fraudulent activities undertaken by Rothstein while he controlled the now bankrupt law firm of Rothstein, Rosenfeldt & Adler, P.A. ("RRA"), was examined in the RRA bankruptcy proceeding and deposed by various parties in some of the related civil actions pending in federal and state courts from December 12 through December 22, 2011, by Order of this Court. These parties previously had filed motions to depose Rothstein in the RRA bankruptcy proceeding, resulting in the Bankruptcy Court Order certifying the Order to this Court for its approval, as Rothstein is currently serving a sentence imposed by this Court in Case No. 09-60331-CR.

Just prior to the deposition, in conjunction with its statutory duties and deadlines, the Trustee filed additional adversary actions against numerous parties. Some of those parties sought to be included in the December deposition of Scott Rothstein, but due to the time needed to complete security protocols, those parties were not able to be accommodated. On November 28, 2011, this Court denied the Trustee's motion to

[3] For additional background, the Court refers the parties to its Orders entered at docket entries 32, 50, and 85, available at In re RRA, 2011 WL 2620187 (S.D. Fla. July 1, 2011); In re RRA, 2011 WL 3903567 (S.D. Fla. Sept. 6, 2011); In re RRA, 2011 WL 5914242 (S.D. Fla. Nov. 28, 2011), respectively.

continue the December deposition and deferred ruling on the motion to bifurcate the deposition, stating:

> Any party who demonstrates a need to participate in a deposition of Scott Rothstein who is unable to participate in the December session because of the security restrictions imposed by the Marshal's Service, shall be afforded an opportunity to make a separate application for another deposition in early spring of 2012. Simply being sued by the Trustee in an adversary action is not by itself sufficient cause. Those parties who believe that they have sufficient cause to participate in a second deposition of Scott Rothstein shall coordinate their requests with the Trustee, who shall file a motion for such relief by January 18, 2012.

The Trustee, along with two other parties, have now moved the Court to issue a writ for a second deposition of Scott Rothstein.

II. DISCUSSION

The Trustee proposes a ten day deposition of Scott Rothstein, broken up into smaller depositions pertaining to 29 of the 122 bankruptcy adversary actions. Upon agreement with the Government, the second deposition would take place from June 4 through June 15, 2012, will be taken by video-conference and will not be videotaped. No party opposes the deposition taking place. As the Court stated in today's hearing, before addressing the objections to the manner in which the Trustee and Government propose to take the deposition (by video-conferencing without videotaping), the time limits to be placed upon the parties' time to question Rothstein, and whether particular parties will be part of this deposition, the Court first concludes that it will grant the Trustee's motion and will set the deposition of Scott Rothstein for the ten business day period from June 4 through June 15, 2012.

A. No Video-taping

Various parties filed responses and presented oral argument objecting to the lack of videotaping of the depositions. These objections focused on the importance of a jury seeing critical non-verbal credibility information about Rothstein's demeanor in answering questions. While the Court recognizes the validity of this argument, as previously stated in its September 6 Order, the Government has shown good cause and specifically identified a serious harm to justify elimination of videotaping of Rothstein's deposition. The Court incorporates its prior analysis and conclusion on this issue. In re RRA, 2011 WL 3903567, *2 (S.D. Fla. Sept. 6, 2011).

B. Use of Video-Conference

Although some parties raised an objection to the use of video-conference in their responses to the Trustee's motion, no further argument was made on this point at the hearing. The logistics of allowing an in-person deposition, such as took place in December at the first deposition of Scott Rothstein, are significant and create a substantial financial and resource burden on the United States Marshal's Service. The Court finds that no party will be prejudiced by using video-conferencing, which allows the witness to remain in an undisclosed location. As for the issue regarding how to get documents to the witness ahead of the deposition, the Government states that it will facilitate counsel's sending of documents to Rothstein for use in questioning him during the deposition.[4] This Court leaves the logistics of any deadline for identification of such

[4] One party raised an issue not addressed by the Trustee or the Government or brought up at the hearing, which is who else is going to be with Rothstein at his end of the video-conference. The Court assumes that the only person who could possibly be there would be Rothstein's counsel. The Court will leave that decision up to Rothstein's

documents to the parties to negotiate and for Judge Ray to include in a protocol governing the deposition.

C. Time Limits

The Insurers, National Union, the Ballamor Defendants, Frank Preve and SFS Funding, the Brauser Adversary Defendants, and the Regent Defendants all object to the time limits placed upon their questioning of Rothstein as violations of Fed. R. Civ. P. 30 or infringements on their due process rights. The Trustee proposes that the ten days be broken up into 29 separate depositions – one for each adversary case, although some of those cases can be consolidated. The Trustee proposed that the questioning attorneys rotate into the video-conference room, so that each deposition is separate from the others.

The Insurers argue that their opponents in a separate coverage action involving their insured, Banyon,[5] had the opportunity to question Rothstein in person and at length in December and therefore the Insurers should have the same opportunity. They seek a total of 11.5 hours among the eight insurance companies. They contend that Judge Ray, in denying without prejudice their motion to depose Rothstein, signaled that he believed that no court would deny due process to such defendants. See DE 109 at pp. 2-3. The Trustee notes that counsel for the Insurers were present in December at the first deposition, but agrees they were not able to ask questions. If they are able to

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counsel. The Court does not expect either the Government's counsel or the stenographer to be at Rothstein's location.

[5] There are two actions pending between these parties before other courts, both of which are stayed because Banyon is in involuntary bankruptcy.

participate, the Trustee contends that their time should be limited further by having one counsel ask questions for all the insurance companies, and be directed not to repeat areas already covered in the first deposition. The Trustee contends that a full transcript of the first deposition should be deemed admissible for use in their litigation.

At the hearing, the Insurers contended that they are each entitled to question Rothstein, as conflict among the insurers is possible. They note that collectively there is $80 million of exposure at stake. As the Court made clear, it does not have the authority to make evidentiary rulings that extend to other cases before other courts.

The Government's Reply addresses the time limit issue by stating that the first deposition resulted in 2,900 pages of testimony, and that repetitive testimony should not be allowed if the litigants all agree that the deposition can be utilized in all proceedings. The Government cites to In re Katrina Canal Breaches Consolidated Litigation, 2008 WL 4936734 (E.D. La. 2008), in which the district court cited Fed. R. Civ. P. 26(b)(2) as giving it the authority to impose limitations on the length of depositions allowed under Rule 30. That case involved a 50 year history of alleged Army Corps negligence leading up to the catastrophic loss of life and property after Hurricane Katrina. That court limited the depositions to 8 business days.

Given that Rothstein has already sat for ten days of deposition, albeit with regard to other litigation beyond the scope of the parties presently before the Court on this motion, an additional ten day period is more than sufficient for questioning of Rothstein on all of the adversary actions and non-bankruptcy actions involving the parties before the Court. While this Court will not rule on how to parcel out the hours included in the ten day period, the Court is confident that the parties can either work together to divide

the time in a fair manner, or the matter is referred to Judge Ray to impose a schedule within any protocol adopted to govern the second deposition.

D. Who Can Participate

The remaining issue involves who can participate in this second deposition. The Trustee states in his reply that he has no objection to the inclusion of SFS, Frank Preve and the Regent Defendants (Reply at 9); SPD Group (Reply at § VI, p.11); and, the Brauser Defendants, Ballamore Defendants, and Michael Kent (Reply at § VII, p.11). Therefore, those parties shall be included in the second deposition.[6]

The Trustee opposes the participation of the Insurer Defendants, stating that their action involving claims against Banyon has nothing to do with the Trustee's bankruptcy adversary actions. The Trustee contends that he should not have to give up his deposition time to these private litigants in his efforts to obtain assets to benefit the creditors and victims of RRA . However, as noted above, the insurers' opponents were able to question Rothstein in the first action. This Court concludes that under these circumstances, the insurers have demonstrated a need to depose Scott Rothstein. However, as stated in the prior section, their participation is subject to time limitations imposed by Judge Ray in the protocols to be worked out by the parties and Judge Ray.

[6] The Court notes that the Trustee did not file any objection to Brian Levy's motion to be included in the second deposition. Mr. Levy asserts that he sold his business to RRA and has been sued by the Trustee to return the proceeds of that transaction. He alleges that the Trustee asked Rothstein questions about this transaction at the first deposition. Mr. Levy also references February discovery deadlines in his adversary action before Judge Ray. This Court concludes that it is best to defer a decision on Mr. Levy's motion to Judge Ray, who is in a better position to manage his docket. The Court has no objection to Mr. Levy's participation in the second deposition if Judge Ray and/or the Trustee finds it necessary based upon due process grounds.

As to Emess Capital [DE 110] and certain Razorback Defendants [DE 118], the Trustee states in his reply that he "may be open to a very limited, collective deposition involving these parties." Reply at 10. This Court believes that these adversary defendants have demonstrated a need to participate, although that participation is subject to significant limitation in conjunction with this Court's referral to Judge Ray of the need for a scheduling protocol to divide the ten day period among the parties.

As for parties who participated in the first deposition, such as the Razorback victims [DE 119], the Trustee contends that further participation would open the door to several other parties who participated in the first deposition to seek additional involvement. The Razorback victims only seek further participation if their opponents in their private actions, the Insurers, are allowed to participate. However, because the Razorback victims already participated, the Court will grant them access to the deposition to observe the Insurers' questioning of Rothstein, but absent a demonstration of specific need, the Razorback victims will not be allowed to further question Rothstein.

Finally, the Trustee opposes the participation of Jeffrey Epstein on the grounds that his action has nothing to do with the bankruptcy actions and will open the floodgates to request by private parties to depose Rothstein. Mr. Epstein filed his own motion for writ of habeas corpus ad testificandum to question Rothstein regarding his separate state court action in Palm Beach County Circuit Court against Rothstein and former RRA partner Bradley Edwards for abuse of process. Epstein was the defendant in the cases that Rothstein used to create structured settlements that were used to perpetuate his Ponzi scheme. Epstein reports that he attempted to secure a deposition through his state court action, but the state court judge concluded he did not have the authority to

issue a writ. The Government confirmed that while a state court judge can issue a writ, compliance with such a writ by the federal Bureau of Prisons is discretionary under federal regulations. Epstein recognizes that absent this ongoing bankruptcy proceeding, his chances of obtaining access to depose Rothstein are small.

Upon a review of the record, Epstein's motion is supported by specific evidence that Rothstein had personal involvement in the civil actions filed against Epstein, which supported the Ponzi scheme. Epstein has also undertaken all the steps he could take to secure Rothstein's deposition. While it is somewhat fortuitous for him that the Trustee is seeking a second deposition for Rothstein at this time, the Court concludes that Epstein has met his burden to be included in this second deposition of Scott Rothstein. Epstein's participation shall be subject to time limits set by the parties and Judge Ray.

III. CONCLUSION

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Trustee Herbert Stettin's Motion for Writ of Habeas Corpus Ad Testificandum for Second Deposition of Scott Rothstein [DE 104] is hereby **GRANTED**;
2. Brian Levy's Motion to Take the Deposition of Scott Rothstein [DE 107] is hereby **DENIED without prejudice**, and to be decided by United States Bankruptcy Judge Raymond B. Ray;
3. Jeffrey Epstein's Motion for a Writ of Habeas Corpus Ad Testificandum to Depose Scott Rothstein and to be included in the Next Session of Rothstein's deposition [DE 120] is hereby **GRANTED**;
4. The Trustee shall prepare and forward to the Court a form of a Writ for Habeas Corpus Ad Testificandum;

5. The deposition of Scott Rothstein shall proceed for ten business days by video conference commencing June 4, 2012;

6. The deposition of Scott Rothstein shall NOT be videotaped;

7. The Trustee shall be responsible for coordinating the establishment of acceptable and appropriate protocols for the procedures and scheduling of the deposition subject to approval by United States Bankruptcy Judge Raymond B. Ray.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, on this 13th day of February, 2011.

JAMES I. COHN
United States District Judge

cc: copies to counsel of record on CM/ECF
(Trustee's counsel shall forward this Order to any party not receiving notice via CM/ECF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-61338-CIV-COHN

In Re: ROTHSTEIN ROSENFELDT ADLER, P.A.,

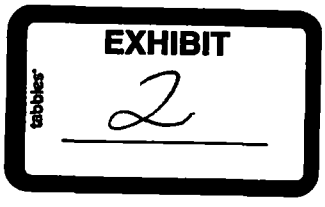
Debtor.
_____/

ORDER GRANTING STAY OF BANKRUPTCY COURT'S ORDER GRANTING THE MOTION OF TRUSTEE TO ISSUE A WRIT OF HABEAS CORPUS AD TESTIFICANDUM

THIS CAUSE is before the Court upon the Bankruptcy Court's certification of its Order Granting in Part: the Motion of Trustee Herbert Stettin to Issue a Writ of Habeas Corpus Ad Testificandum, Gilbraltar Private Bank & Trust's ("Gilbraltar") Motion for Leave to Depose Scott Rothstein, and Razorback Creditors' Motion for Issuance of Writ of Habeas Corpus Ad Testificandum to Depose Scott Rothstein in State Court Litigation [DE 1] (the "Bankruptcy Court Order"), the Government's Objection to the Order and Motion to Stay Taking of Deposition [DE 12], the Trustee's Response [DE 18], the Responses of Gilbraltar, TD Bank, Razorback Victims, and Platinum Partners Value Arbitrage Fund LP ("Platinum") [DE 19, 22-24], and the Government's Reply [DE 29]. The Court has carefully considered the Bankruptcy Court's Order, the Government's Objection and Motion to Stay, the various Responses, and the Reply, has heard the argument of counsel at today's hearing, and is otherwise fully advised in the premises.[1]

Scott Rothstein ("Rothstein"), the central figure in a criminal action brought by the

[1] The Court has also considered the Government's Ex Parte Submission in Support of its Objection and Motion to Stay [DE 26 (filed under seal)]. This Court authorized the filing under seal as the submission contains specific information regarding the Government's pending criminal investigation that is subject to grand jury rules.



United States of America regarding fraudulent activities undertaken by Rothstein while he controlled the now bankrupt law firm of Rothstein, Rosenfeldt & Adler, P.A. ("RRA"), is sought to be deposed in various civil actions pending in federal and state courts. The bankruptcy court-appointed Trustee for RRA, plaintiff victims, and defendants in separate actions brought by the Trustee and fraud victims all seek to examine or depose Rothstein regarding his knowledge of events related to the operations of RRA and those civil actions. The parties filed motions to depose Rothstein in the RRA bankruptcy proceeding, resulting in the Bankruptcy Court Order certifying the Order to this Court for its approval, as Rothstein is currently serving a fifty (50) year sentence imposed by this Court in Case No. 09-60331-CR. The United States Government seeks to stay any deposition of Rothstein for a period of at least six months.

I. BACKGROUND

On November 10, 2009, an involuntary petition for bankruptcy was filed regarding the RRA law firm. A trustee was appointed shortly thereafter by the bankruptcy court. On December 1, 2009, the United States, by way of an information, charged Rothstein with RICO, money laundering, and mail and wire fraud conspiracies in violation of 18 U.S.C. §§ 1962(d), 1956(h), and 1349, and with substantive wire fraud in violation of 18 U.S.C. § 1343. The Information also contained criminal forfeiture allegations.

On January 27, 2010, Rothstein pled guilty to all of the charges contained in the Information. Rothstein also agreed to forfeit his right in the properties described in the Information and the Bill of Particulars. See DE 69 at 3. Thus, on April 19, 2010, the Court entered a Preliminary Order of Forfeiture. The Preliminary Order of Forfeiture

forfeited all of Rothstein's right, title and interest in all property involved in the RICO and money laundering conspiracies and all property derived from the mail and wire fraud offenses. See id. Significant litigation then ensued in this Court in the criminal action regarding various third-party claims in the forfeiture action and restitution proceeding, ultimately leading to the First Final Order of Forfeiture on February 1, 2011.

While the criminal matter and related proceedings progressed in this Court, civil litigation surrounding RRA, Rothstein's victims, and RRA's creditors and business partners abounded in bankruptcy court, state court, and other federal district courts. Several of these other actions have upcoming filing and discovery deadlines.[2] Thus, the Trustee and other parties understandably seek to examine and depose Rothstein. However, according to the recent Motion to Reduce Sentence filed by the Government in the criminal action, Rothstein is continuing to cooperate in the Government's criminal investigation [DE 767 in Case No 09-60331-CR].

II. DISCUSSION

This Court is once again asked to balance the conflicting needs of the Government prosecuting alleged criminal acts, the Bankruptcy Trustee charged with marshaling assets of a defunct law firm and distributing funds to RRA's creditors, victims of Rothstein's fraud schemes, and parties litigating civil actions with potentially millions of dollars of liability at issue.

[2] For example, one of the civil actions in federal district court is set for trial in late October; the Trustee has a November deadline to file additional adversary actions in bankruptcy court; and discovery deadlines in both state court and federal court actions are also set for the fall of this year.

A. Balancing Test Factors

Federal courts have long recognized that discovery in civil actions should sometimes be stayed pending completion of parallel criminal prosecutions in the interest of justice. United States v. Kordel, 397 U.S. 1, 12, n.27 (1970) (collecting cases). The decision, as Justice Cardozo noted, "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." Landis v. North American Co., 299 U.S. 248, 254-55 (1936). Each decision should be made on a case by case basis, though several factors to be weighed include:

> 1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of the public in the pending civil and criminal litigation.

Keating v. Office of Thrift Supervision, 45 F.3d 322, 325 (9th Cir. 1995).[3]

The Government contends that it requires a six month stay of any deposition of Rothstein to alleviate the burden upon it to complete its criminal investigation of the numerous co-conspirators in Rothstein's wide-ranging criminal activity, including mail and wire fraud, campaign finance fraud, tax fraud, extortion, payments of unlawful gratuities, bank fraud, money laundering and other crimes. Due to the use of a law firm

[3] A United States Magistrate Judge in the District of Columbia stated that the movant is required to "1) make a clear showing, by direct or indirect proof, that the issues in the civil action are 'related' as well as 'substantially similar' to the issues in the criminal investigation; 2) make a clear showing of hardship or inequality if required to go forward with the civil case while the criminal investigation is pending; and 3) must establish that the duration of the requested stay is not immoderate or unreasonable." Horn v. District of Columbia, 210 F.R.D. 13, 15 (D.D.C. 2002) (quoting St. Paul Fire & Marine Ins. Co v. United States, 24 Cl. Ct. 513, 515 (1991)).

as Rothstein's criminal enterprise, the Government has had two different teams of law enforcement personnel reviewing the more than 850,000 potentially relevant e-mail messages found on RRA's computers, in order to avoid prosecutors viewing any attorney-client communications. The Government anticipates that "a deposition of Rothstein would disclose the evidence which forms the basis of the government's proposed case to putative defendants and other targets of the criminal investigation, some of whom are parties to this action," and therefore, "corroborating evidence could be concealed, altered or destroyed." The Government asserts that its criminal investigation will be harmed by allowing the deposition to go forward at this time.

The Government relies in part on the fact that civil discovery rules are more liberal than those in place in criminal cases. Campbell v. Eastland, 307 F.2d 478, 487 (5th Cir. 1962).[4] Courts must "be sensitive to the difference" and not allow criminal defendants to obtain discovery through a civil action that they would not otherwise be allowed. Id.; S.E.C. v. Downe, 1993 WL 22126, *11 (S.D.N.Y. 1993). The Government also contends that allowing the criminal matter to proceed will moot and clarify issues in civil actions or increase the possibility of settlement of those actions, leading to a more efficient use of judicial resources. Finally, the Government suggests that the public interest in bringing to justice additional wrongdoers supports their request for a six-month stay of the deposition.

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[4] The decisions of the United States Court of Appeals for the Fifth Circuit, as that court existed on September 30, 1981, handed down by that court prior to the close of business on that date, shall be binding as precedent in the Eleventh Circuit, for this court, the district courts, and the bankruptcy courts in the Circuit. Bonner v. Pritchard, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

The Trustee responds to the Government's Motion by noting its statutory deadline of November 10, 2011, to file additional adversary actions to obtain more assets for creditors and victims cannot be extended by law. The Trustee argues that it requires access to Rothstein to avoid irreparable harm to its investigation of RRA's activities. The Government proposes to alleviate this burden by making Rothstein available to the Trustee for an interview to avoid this harm. Gilbratar and TD Bank oppose any kind of special access that provides an advantage to the Trustee or the Razorback Plaintiffs in the related civil actions.[5]

With regard to the stay of Rothstein's deposition, Gilbraltar, TD Bank, and Platinum Partners argue that under the line of cases cited by the Government, all civil discovery in the related cases should be stayed, as defendants in those actions will be prejudiced by having to defend those civil actions without the opportunity to depose Rothstein and gain potentially exculpatory evidence (or having to continue with discovery and then redo certain depositions after Rothstein's December deposition). These parties argue that the Government has completely ignored the burdens and prejudice faced by these parties in the other litigation. In its Reply, the Government confirms that it is only seeking to stay Rothstein's deposition, and whether other civil actions will need to be continued will be up to those courts presiding over those cases.

This Court agrees with the Government and will only decide whether to stay Rothstein's deposition.[6] In that regard, the Court concludes that under the unique

[5] The Court will separately address this proposal in the next section.

[6] This Court recognizes the inconvenience this decision may have on those courts presiding over the other civil actions. Whether Gilbraltar, TD Bank, or Platinum

circumstances of this case, where a wide-ranging criminal conspiracy operated from a functioning law firm with 70 attorneys plus support staff, was unraveled and dropped at the Government's front door in early November of 2009, the Government's request to delay Rothstein's deposition for six months is reasonable, despite the hardship such an extension may impose on the Trustee and private parties. The Court reaches this decision upon consideration of all the factors courts have used to weigh the compelling yet competing interests on all sides of this dispute.

B. Trustee Special Access

Gilbraltar and TD Bank oppose the Government's proposed accommodation of allowing the Trustee to interview Rothstein in lieu of a Bankruptcy Rule 2004 examination. They argue that such preferential treatment to a party that is in litigation against other interested parties is grossly unfair. The Trustee and the Government suggest that the Trustee would limit its interview "to investigate the possibility of bringing actions against new parties, not to gather further evidence in pending cases." Government's Reply at 3. In fact, following argument by TD Bank counsel seeking safeguards if access to Rothstein is allowed, counsel for the Trustee confirmed in open court that the Trustee and his counsel will treat their notes of an interview with Rothstein as work-product, will not obtain an affidavit or declaration from Rothstein to use against the adversary case defendants, and will not share the information gleaned from Rothstein with the plaintiffs in the civil cases. The Trustee is granted this access solely because of his statutory obligations to bring new claims, properly supported

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are entitled to a complete stay of discovery or a continuance of deadlines should be decided by those courts presiding over those cases.

under Rule 11, by early November.

III. CONCLUSION

In granting the Government's motion for a stay, the Court concludes that no further stay will be granted. The parties opposing the stay are rightly concerned that the Government could come back to this Court after it completes its investigation and potentially obtains further indictments to seek a further stay of Rothstein's deposition pending resolution of the new criminal cases. The Court shares that concern. For that reason, the Court is setting a specific week in December for the Rothstein deposition to take place. This definite time frame for the deposition will allow all parties, including the Government, to govern themselves accordingly, and allow the other courts presiding over related civil actions to have confidence that no further delays will occur in the taking of the deposition.

The Court intends to follow Judge Ray's protocol for Rothstein's deposition as contained in his June 2 Order, which the Court understands was negotiated by all the parties involved (except the Government). However, for security reasons, the Court will allow the Government time to file specific objections to portions of that Order.

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Government's Motion to Stay Taking of Deposition [DE 12] is hereby **GRANTED**;
2. The examination/deposition of Scott Rothstein shall take place commencing December 12, 2011, under the protocol described in Judge Ray's proposed Writ, except as modified by this Court in a future order. The United States

Government shall coordinate the time and location of Rothstein's deposition;

3. The Government shall file their objections and proposed revisions to particular portions of Judge Ray's Order by August 1, 2011, in a public filing, though the Government may attach a sealed filing containing any basis that must remain sealed due to security concerns;

4. By August 31, 2011, all parties, including the Government, shall file a joint proposed Writ of Habeas Corpus Testificandum.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, on this 1st day of July, 2011.

JAMES I. COHN
U.S. DISTRICT JUDGE

Copies provided to:
Counsel of record on CM/ECF