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On Fifth Anniversary Of Rothstein's \$1.2 Billion Ponzi Scheme, Questions Remain

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“ It was ego fueled. We were rolling, you know, we were — we were all, me, Stu, Lippman, Adler, Boden, we were living like rock stars; private jets, massive amounts of money. There were lots of things that kept fueling that. As I'm sure you realize from looking at everything, there came a point in time when the only portion about it, which was money, was keeping the Ponzi going. We had more than enough money to fuel our lifestyles. It was the power that got ahold of us and kept pulling this forward; the more power, the more money, the more money the more power, it kept going back and forth until it exploded.

- Scott Rothstein 2011 deposition testimony

Five years ago on a late October night, prominent lawyer Scott Rothstein hurried down an empty tarmac towards a waiting Gulfstream plane bound for Morocco — a country that lacked an extradition agreement with the United States. Rothstein's once-extravagant lifestyle was collapsing before his eyes, with hundreds of investors soon to learn that Rothstein had masterminded a massive \$1.2 billion Ponzi scheme. Carrying a duffel bag stuffed with over

\$500,000 and with \$16 million sitting in a Moroccan bank account, Rothstein had little intention of returning to the U.S. to face the music.



But Rothstein's conscience somehow got the best of him and, with the cajoling of friends and family, he returned several weeks later and immediately began cooperating with federal authorities. With the exception of testifying at depositions and appearing in court, his whereabouts are unknown and authorities have confirmed he is a participant in the federal witness protection program. [With credit for good behavior, Rothstein is scheduled to be released sometime in late 2052.](#)

Like the larger-than-life persona embraced by Rothstein during the pendency of the scheme, the five years following Rothstein's arrest have also yielded eye-popping figures. While Rothstein's victims initially had little hope to recoup any of their losses, the work of a court-appointed trustee (and arguably Rothstein's assistance) have yielded the unprecedented result that victims will recoup 100% of their losses. Amazingly, some victims even managed to turn a profit on their role in Rothstein's fraud through savvy lawyering. Rothstein's cooperation with federal authorities has also been extensive; more than two dozen of Rothstein's former acquaintances, co-workers, and family members (including his wife) previously served or are currently serving time in federal prison for their role in Scott's crimes.

Unsurprisingly, Rothstein's seemingly-limitless cooperation has not been entirely out of remorse; rather, he has been quite clear of his hope that those efforts might one day result in a reduction of his 50-year prison sentence that, if left unchanged, is likely a death sentence. That Rothstein might one day walk out of a federal prison on his own free will, rather than horizontally

surrounded by empaneled wood, could become a reality if U.S. District Judge James Cohn rewards the convicted Ponzi schemer's campaign of cooperation. Questions remain not only as to whether Rothstein's cooperation might lead to further arrests, but if Rothstein might be able to pull one final con: successfully reducing his 50-year sentence.

Florida's Largest Ponzi Scheme

Beginning as early as 2005, Rothstein touted lucrative returns to investors through the purchases of highly confidential legal settlements purportedly stemming from claims of sexual harassment, whistle-blower, and qui tam actions against large corporations. According to Rothstein, while the alleged settling defendant had already deposited the settlement funds with Rothstein's firm, an investor could "purchase" the right to payment of that settlement at a discount. With the investor sworn to secrecy and enamored by the prospect of an lucrative return, there was a built-in incentive for all parties to remain tight-lipped. Describing himself at times as a "Prince of Darkness," Rothstein took great lengths to keep the scheme afloat, including forging documents with the signatures of state and federal court judges, convincing others to impersonate judges and Florida bar officials, and utilizing corrupt law enforcement officers at his disposal.

“ Q: We see throughout this that you sometimes say T.P.O.F.D. We have a bet in my office about what that means.

A: I need money in my commissary, you want to put me in?

Q: No. I'm going to have a hard enough time. Prince of Darkness.

A: You left out the F word, but yes. It was actually a name given to me when I was at Gunther and Whitaker. It stuck.

- Scott Rothstein 2011 deposition testimony

Rothstein quickly settled into a flashy life of opulence and excess as his scheme thrived, purchasing millions of dollars in luxury homes and amassing a multi-million dollar collection of cars and timepieces. A regular on the charity circuit, Rothstein also made significant political contributions to well-known Republican candidates including John McCain and ex-Governor Charlie Crist. This over-the-top benevolence had a twofold benefit: it not only greatly increased Rothstein's reputation and influence around town, but in doing so implicitly lent an air of legitimacy to Rothstein's scheme. Coupled with the fact that Rothstein was a lawyer at one of Fort Lauderdale's most prestigious firms, few doubted that Rothstein would have the audacity to live such a lie.

“ Q: How much do you think you devoted to your lifestyle and your partners and people in your firm’s avenue as opposed to passed along to Ponzi investors, the old investors with the new investors’ money; do you have any –

A: It would have to be hundreds and hundreds of millions of dollars. I know that I probably personally spent that myself over 200 million dollars, something close to it. You know, we were — between the money we were actually pulling out and the money we were spending for lavish parties, trips, dinners, presents, gifts for wives, gifts for mistresses, our mistresses, the numbers are astronomical.

- Scott Rothstein 2011 deposition testimony

But no one was immune to the subsequent downturn in the economy, and the scheme began running out of funds to pay investors in early 2009. Rothstein initially staved off scrutiny by claiming that he was experiencing temporary issues with the Florida Bar, and somehow even convinced acquaintances to raise an additional \$100 million. However, as Rothstein put it, the Ponzi scheme had “taken a life of its own,” and the decrease in new investors was fatal to the ability to pay returns to the existing investors – the lifeblood of a Ponzi scheme. After Rothstein fled to Morocco, his law firm was placed into involuntary bankruptcy, and life as Scott Rothstein once knew it was over.

“ At some point in time, all these crimes were going to be exposed. I made a conscious decision to find a nonextradition country and flee to it.

- Scott Rothstein 2011 deposition testimony

After several days in Morocco, Rothstein returned to Fort Lauderdale in early November 2009 and immediately began cooperating with federal authorities. He was formally [arrested](#) on December 1, 2009 and charged with five counts of racketeering, fraud, and money laundering. He pleaded guilty in January 2010, and was [sentenced](#) to a 50-year prison term later that year. Rothstein entered the federal witness protection at some point following his surrender, and has not been seen in public with the exception of several court appearances and court-ordered depositions.

Rothstein’s Extraordinary Cooperation

“ One thing I have learned over the course of this crime, and since coming back, is that I had the unfortunate experience of dealing with a lot of extremely, extremely bright people who did some very, very stupid things during the commission of a lot of very bad crimes.

- Scott Rothstein 2011 deposition testimony

Rothstein himself has acknowledged that his decision to return back to Florida from Morocco, which did not have a formal extradition treaty with the U.S., was not one he reached lightly given the strong possibility that he would likely face a significant prison sentence. Indeed, Rothstein faced a potential 100-year term for the five federal charges he pleaded guilty to in January 2010. Rothstein’s lawyers had requested that his crimes warranted a 30-year

term, while prosecutors sought a 40-year term with the acknowledgement that Rothstein's decision to return and cooperation merited a downward departure:

“ The government concedes that a variance in this case is supported by several salient factors. While the defendant's criminal activity in this case can only be described as reprehensible, it is beyond dispute that his post-offense conduct has been extraordinary...

However U.S. District Judge James Cohn rejected any leniency and handed down a 50-year sentence. In crafting the sentence, Judge Cohn referenced not only the extravagant lifestyle led by Rothstein but also the depths to which he carried on his fraud, which even included forging the signatures of federal and state judges. Observed Judge Cohn, “there can be no conduct more reviled.”

Following his sentencing, Rothstein disappeared for approximately 18 months. He made his first public appearance in December 2011 when he sat for 12 days of court-ordered depositions conducted by a consortium of lawyers representing various clients that had filed suit against Rothstein. Sporting polo shirts and jeans purchased by his lawyer from Target, Rothstein's transformation from high-flying socialite to federal inmate had come full circle. And, true to his word, Rothstein sang like a canary. In those depositions, Rothstein dished out juicy details on dozens of former attorneys, acquaintances, and accomplices, interrupted only by an observing federal prosecutor in certain sensitive areas that often included reference to public and political corruption.

The extent of Rothstein's cooperation is likely unsurpassed. According to his lawyer, Marc Nurik, who was formerly with Rothstein's law firm before quitting to represent Rothstein, “nobody to my knowledge has provided as much cooperation” in a similar investment fraud. And the results speak for themselves; Rothstein's cooperation has resulted in over 60 years of prison sentences for his former acquaintances. Below is a list of the nearly 30 individuals that have been arrested or convicted based on their connection to Rothstein:

Name	Date	Sentence	Link	Involvement
Scott Rothstein	6/9/10	50 years	http://articles.sun-sentinel.com/2010-06-09/news/fl-rothstein-sentence-20100608_1_scott-rothstein-rothstein-s-parents-ponzi-scheme	\$1.2 billion Ponzi Scheme
Frank Preve	10/12/2014		http://criminaldefenselawventura.com/man-arrested-connection-rothstein-ponzi-scam/	
Christina Kitterman	8/30/13	5 years	http://articles.sun-sentinel.com/2013-08-30/news/fl-scott-rothstein-lawyer-arrests-20130830_1_scott-rothstein-rothstein-rosenfeldt-adler-christina-kitterman	Impersonated Florida Bar officials
Doug Bates	8/30/13	5 years	http://articles.sun-sentinel.com/2013-08-30/news/fl-scott-rothstein-lawyer-arrests-20130830_1_scott-rothstein-rothstein-rosenfeldt-adler-christina-kitterman	Signed fake letters
Roberto Settineri	2009?	4 years	http://www.fbi.gov/miami/press-releases/2010/mm110310.htm	Helping Rothstein to allegedly launder Ponzi proceeds
David	4/25/14	5 years	http://www.bizjournals.com/southflorida/blog/picking_up_the_pieces/2014/04/two-	Sheriff that

Benjamin			broward-sheriff-s-deputies-charged-in.html?page=all	served as Rothstein's personal bodyguard
Jeff Poole	4/25/14	1 year	http://www.bizjournals.com/southflorida/blog/picking_up_the_pieces/2014/04/two-broward-sheriff-s-deputies-charged-in.html?page=all	Detective that carried out illegal arrest at Rothstein's behest
Stuart Rosenfeldt	5/23/14	33 months	http://www.whdh.com/story/25600062/ex-partner-of-fla-ponzi-schemer-rothstein-charged	Rothstein's former partner
Steven Lippman	4/10/12	3 years	http://www.huffingtonpost.com/2012/04/10/steven-lippman-rothstein_n_1414510.html	illegal campaign contributions
David Boden	9/19/14		http://www.justice.gov/usao/fls/PressReleases/140919-02.html	
Richard Pearson	9/19/14		http://www.justice.gov/usao/fls/PressReleases/140919-02.html	
Debra Villegas	2010	10 years	http://www.justice.gov/usao/fls/PressReleases/2010/101008-01.html	Known as Rothstein's right-hand woman
William Boockvor	12/1/2010	4 years	http://www.justice.gov/usao/fls/PressReleases/2011/111201-01.html	Rothstein's uncle, played part in duping investors
Marybeth Feiss	12/1/2010	6 months	http://www.justice.gov/usao/fls/PressReleases/2011/111201-01.html	Illegal campaign contributions
Russell Adler	3/7/14	2.5 years	http://articles.sun-sentinel.com/2014-03-07/news/fl-russell-adler-charged-20140307_1_scott-rothstein-christina-kitterman-russell-adler	Illegal campaign contributions
Kim Rothstein	9/6/12	18 months	http://www.huffingtonpost.com/2012/09/06/kim-rothstein-scott-arrested-jewelry_n_1862079.html	Concealed ownership of jewelry ultimately sold
Frank Spinosa	10/10/14		http://www.miamiherald.com/news/local/crime/article2653221.html	
Curtis Renee	9/28/2011	37 months	http://articles.sun-sentinel.com/2011-09-28/news/fl-rothstein-employee-sentencings-20110928_1_william-j-corte-stephen-caputi-rothstein-s-ponzi	Created fake bank websites
William J. Corte	9/28/2011	37 months	http://articles.sun-sentinel.com/2011-09-28/news/fl-rothstein-employee-sentencings-20110928_1_william-j-corte-stephen-caputi-rothstein-s-ponzi	Created fake bank websites
Howard Kusnick	9/2/11	24 months	http://www.bizjournals.com/southflorida/blog/picking_up_the_pieces/2011/09/attorney-kusnick-gets-2-years-for.html	Authoring fake settlement letters
Stephen Caputi	8/24/2011	5 years	http://www.bizjournals.com/southflorida/blog/picking_up_the_pieces/2011/08/scott-rothstein-pal-stephen-caputi.html	Posed as banker during investor meetings
Eddy Marin	3/21/14	10 months	http://www.bizjournals.com/southflorida/news/2014/03/21/miami-businessman-sentenced-in-rothstein.html	Helping Kim Rothstein sell concealed jewelry
Patrick Daoud	4/11/14	10 months of house arrest	http://articles.sun-sentinel.com/2014-04-11/news/fl-patrick-daoud-sentenced-20140411_1_patrick-daoud-stacie-weisman-kim-rothstein	Helping Kim Rothstein sell concealed jewelry
Irene Stay	8/29/14	5 years	http://articles.sun-sentinel.com/2014-08-29/news/fl-rothstein-irene-stay-shannon-20140827_1_scott-rothstein-law-firm-fraud-scheme	Moving money around for Rothstein's

Scott Saidel	10/7/13	3 years	http://articles.sun-sentinel.com/2013-10-07/news/fl-kim-rothstein-attorney-sentencing-20131007_1_kim-rothstein-eddy-marin-patrick-daoud	scheme Helping Kim Rothstein conceal jewelry
Stacie Weisman	11/12/13	3 months	http://www.fbi.gov/miami/press-releases/2013/two-individuals-sentenced-in-plot-to-conceal-and-dispose-of-assets-in-connection-with-rothstein-case	Helping Kim Rothstein conceal jewelry

With some legal statutes of limitation expiring and prosecutors running out of individuals to charge, Rothstein's role as government witness is likely nearing its twilight. Rothstein has remained unapologetic for his cooperation; indeed, he has been quite vocal that it is his only chance to one day walk out of prison on his own free will:

“ I have been sentenced to 50 years in prison. The only chance that I have to be released early, the only chance is I must tell the truth about everything that I know.

- *Scott Rothstein 2011 Deposition testimony*

And he has a point. With Rothstein's help, prosecutors have imprisoned dozens of individuals who played varying roles in Rothstein's fraud. Perhaps more importantly, it was Rothstein's testimony that colorfully illustrated the extraordinary role that TD Bank played in Rothstein's scheme. The bank has since paid dearly; it has paid out hundreds of millions of dollars to investors that sued the bank, and its large settlement with the court-appointed bankruptcy trustee was a significant factor in fully compensating Rothstein's victims - a feat accomplished only one other time in recent memory. Indeed, some investors were able to profit from Rothstein's scheme due to savvy lawyering. Odds are, Rothstein would likely claim at least a share of the extraordinary success Trustee Herbert Stettin and his team have been able to accomplish.

Expiring Statute of Limitations....Or Not?

“ There are a lot of armchair lawyers and armchair prosecutors who think that they know what the legal theories are that we can pursue and what statute of limitations issues are and often they are quite wrong,

- *Preet Bharara, U.S. Attorney for Southern District of New York*

Many have theorized that the expiring five-year statute of limitations accompanying most crimes committed by Rothstein co-conspirators, such as mail fraud, wire fraud, and securities fraud, will be the main reason for the halt in any remaining prosecutions attributable to Rothstein's fraud. Not so, warn authorities. The Dodd-Frank Act, passed in 2010, contained provisions that extended the statute of limitations for such crimes. This includes the ability to bring securities fraud charges up to six years later, as well as extending the statute of limitations for mail fraud and wire fraud up to ten years if the crime affected a financial institution.

While not addressing any specific individuals or offenses, the U.S. Attorney's Office for the Southern District of Florida [issued](#) a statement that "Given that the crimes affected a financial institution, the 10-year statute of limitations arguably would apply," said Marlene A. Fernandez-Karavetsos, spokeswoman for the U.S. attorney's office." While the touchstone of such an analysis will depend on how loosely any crime "affected" a financial institution (in this case TD Bank), it certainly cannot be ruled out that prosecutors view the five-year anniversary of Rothstein's arrest as little more than a date on a calendar.

But Does Cooperation Translate To A Reduced Sentence?

“ Q: Good answer. So, you hope that that's what is going to happen, but other than that no promises by the government or anybody?

A: I'm hopeful at the end of all this, the government will see fit to ask Judge Cohn to reduce my sentence. There's no promise made to me.

- *Scott Rothstein 2011 deposition testimony*

Rule 35 of the Federal Rules of Criminal Procedure governs the correction and reduction of a federal criminal sentence. Subsection (b) provides that,

“ (1) *In General.* Upon the government's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person.

Unsurprisingly, one day before the first anniversary of Rothstein's sentence, prosecutors filed a Motion for Reduction of Sentence and Stay of Ruling. The Motion stated that Rothstein's cooperation, which had begun before he entered his guilty plea, was ongoing and would not be complete until a future time. Upon the completion of Rothstein's cooperation, the Motion indicated that a subsequent motion would be filed requesting a hearing at which Rothstein's nature, extent, and value of such cooperation would be detailed.

“ In the overall scheme of things, he's already received a significant reduction.

- *Chuck Malkus, [Author of The Ultimate Ponzi: The Scott Rothstein Story](#)*

While the prosecution will be able to tout an expanding list of the fruits of Rothstein's cooperation, not all in the south Florida community share this sentiment. Chuck Malkus, who [penned](#) "The Ultimate Ponzi: The Scott Rothstein Story," believes that Rothstein's expected cooperation may have already been considered at his original sentencing given that Rothstein could have faced a 100-year prison sentence. Further, Malkus noted Rothstein's attempt to conceal jewelry he had given to his wife:

“ Rothstein's cooperation, however, is tainted due to the fact that he was not completely honest with the feds about his wife Kim her million dollars of hidden jewelry, obtained with stolen money. Because Scott Rothstein was not truthful with investigators, it probably will cost him receiving any sentence reduction.

Rothstein himself acknowledged that his failure to come clean about the hidden jewelry that ultimately resulted in his wife's incarceration may ultimately doom his quest for a sentence reduction. Called as a witness at the trial of his former colleague Christina Kitterman, Rothstein [stated](#) on the witness stand that:

“ I understand that there's been an issue concerning my failure to disclose what I did with my wife and the jewelry. My hope is that at the end of the day that the government, they will see that I did a lot more good than bad.

[David Mandel](#) is a well-known Miami attorney who [obtained](#) a \$67 million verdict against TD Bank – including \$35 million in punitive damages – on behalf of a group of defrauded Rothstein investors. When asked about the possibility of a sentence reduction, Mr. Mandel expressed faith in Judge Cohn, who is a seasoned federal judge, and noted that a reduction was certainly not a given considering “Rothstein's transgressions...[which] involved forging the signature of a federal judge on a court order!” Mr. Mandel also questioned “what benefit Rothstein's so-called cooperation was to us or the other victims.”

“ Q: What do you hope your sentence is?

A: Whatever is fair. I mean, I would love to get out as soon as possible. Prison is a very bad place. Okay. I know there's a lot of talk about where I am and stuff, and I can't talk about that; but make no mistake about it, I'm in prison, okay. It's a very bad place, and I can tell you with 100 percent certainty there is nobody in there that does not want to go home today. I would like to go home today. That is wholly unrealistic. Okay. I would like to go home today.

- Scott Rothstein 2011 deposition testimony

How Does Rothstein's Sentence Fit In Ponzi Scheme Jurisprudence?

Finally, while not necessarily significant, it should also be examined whether Rothstein's sentence warrants reduction based on the implicit sentencing rubric utilized in sentencing Ponzi schemers in recent years. For example, Bernard Madoff's Ponzi scheme stands as the longest Ponzi scheme in history, and deservedly earned him a 150-year prison term that ranks as the longest sentence handed down in Ponzi scheme jurisprudence. Allen Stanford's \$6 billion Ponzi scheme ranks next on the list, and resulted in a 110-year prison sentence. In third place, Rothstein's 50-year sentence is tied with Thomas Petters's \$3.2 billion scheme, which is the third-largest Ponzi scheme in history. However, a closer look shows that the estimated initial losses from Rothstein's scheme, ranging from \$400 million and \$500 million, paled in comparison to [estimates](#) that “the total lost in the Petters fraud is \$1.94 billion.”

Thus, Rothstein's victims not only suffered losses of approximately 75% less than those similarly situated Petters victims, but more importantly will emerge in a much better position than Petters investors, who are expected to ultimately [recoup](#) no more than pennies on the dollar of their losses. As noted above, Rothstein investors will join an infamous group that recovered 100% of their losses.

Whatever the decision on Rothstein's sentence reduction may be, it will be clear in the near future that each side will have ample arguments supporting their position.

In Closing

“ Rothstein is the quintessential greedy, deceitful, self-promoting bully. A poster boy for corruption. Lawyers are going to be spending quite a while digging out from the dirt Rothstein buried us with, simply by being a former member of our profession.

- David Mandel

The name Scott Rothstein is one that will not only live in infamy, but which has already secured a place in the history books regardless of his ultimate fate. Rothstein is not only the sole Ponzi schemer in recent memory to join the Witness Protection Program, but also one of only two Ponzi schemers whose victims were ultimately fully compensated for their losses. And it is Rothstein who can boast that his post-arrest cooperation ultimately resulted in the convictions of over two dozen of his former friends. The man who once owned over 100 high-end watches and multiple Lamborghinis will soon have his counsel appear in Court (pro bono, of course with the hopes that Rothstein might one day be able to emerge from prison as a penniless, yet free, man.

Will Scott Rothstein be able to pull off one final con? You'd be wise not to bet against him.

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