

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

IN RE:

CASE NO. 502012CP004391XXXXNBJH

ESTATE OF SIMON L. BERNSTEIN,

**PR'S STATEMENT OF ITS POSITION THAT THERE IS NO CONFLICT
AND HIS WAIVER OF ANY POTENTIAL CONFLICT**

I, Brian O'Connell, am the court-appointed Personal Representative ("PR") of The Estate of Simon L. Bernstein ("Estate"). Based upon the Will upheld during a probate trial conducted last December, resulting in a Final Judgment dated December 16, 2015, Simon Bernstein's children are the named devisees of certain personal property, but the sole residuary beneficiary of the Estate is the current trustee of the Simon L. Bernstein Amended and Restated Trust dated July 25, 2012 ("Trust"). That role is currently being fulfilled by Ted S. Bernstein, as Successor Trustee ("Trustee").

There are certain persons who have asserted potential claims against the Estate. The largest such claim is an independent action styled *William E. Stansbury, Plaintiff, v. Estate of Simon L. Bernstein and Bernstein Family Realty, LLC, Defendants*, in the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida, Case No.: 50 2012 CA 013933 MB AN (the "Stansbury Lawsuit"). In that action, Stansbury is suing the Estate for more than \$2.5 million, asserting claims for breach of oral contract; fraud in the inducement; civil conspiracy; unjust enrichment; equitable lien; and constructive trust. Each of these claims arises from Stansbury's employment with and involvement in an insurance business in which the principal shareholders were Ted Bernstein and Simon Bernstein.

The Stansbury Lawsuit was filed in July 2012, while Simon was alive. After Simon died, the Estate was substituted as the party defendant, and the former personal representatives hired counsel to defend the Estate. The primary defendant in that action was LIC Holdings, Inc. ("LIC"), along with its wholly-owned company, Arbitrage International Management, LLC, f/k/a Arbitrage International Holdings, LLC ("AIM"). Stansbury also maintained claims against the Shirley Bernstein Trust Agreement Dated May 20, 2008 ("Shirley Trust"), and Ted S. Bernstein, Individually ("Ted").

The law firm of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. ("Mrachek") served as counsel for LIC, AIM, Shirley Trust and Ted Mrachek beginning in April 2013, formally appearing on April 15, 2013. As I was not appointed PR until sometime in July of 2014, I had no involvement or knowledge of this matter at that time.

I have been advised that Mrachek represented those defendants and the position taken is not in conflict or adverse to the Estate's position. After mediation in June 2014, LIC, AIM, Shirley Trust and Ted settled with Stansbury. The Estate, then under the control of a Curator, did not settle with Stansbury. After my appointment, to avoid unnecessary expense, settlement efforts were made. Those efforts, including through a mediation held on July 25, 2016, were unsuccessful.

Some of the direct and indirect beneficiaries of the Estate I am administering advised me, in light of the Mrachek firm's prior and extensive involvement in the Stansbury Lawsuit, the beneficiaries wanted Mrachek to represent the Estate in the Stansbury Lawsuit. I agreed to that request, and agreed that Mrachek was retained to represent the Estate.

Additionally, I agreed to Trustee, Ted, being appointed to serve as administrator ad litem with regard to overseeing the defense of the Estate in the Stansbury Lawsuit for at least three two reasons: (i) Ted agreed to serve in that role for no additional compensation, whereas any time I spend will cost the Estate a reasonable fee for my services; (ii) Ted has direct knowledge of the facts and circumstances surrounding the Stansbury lawsuit, because he was part of LIC and AIM at the relevant time, he was Simon's son, and he was extensively involved in the Stansbury Lawsuit already as a defendant and as a corporate representative of LIC and AIM; (iii) I have no personal knowledge or involvement in this matter; and (iv) there is no reason to believe Mrachek and Ted will not adequately and vigorously defend the Estate's interests.

It is also in the best interest of the Estate (not only the beneficiaries but any creditors and claimants with the possible exception of Stansbury) to have the Stansbury Lawsuit resolved as quickly and efficiently as possible, because this Estate administration must remain open and ongoing until the Stansbury Lawsuit is resolved, and the expenses of defending the claim will cost the Estate money and time until the case is finally determined.

To the extent there is a waivable conflict of interest, as PR of the Estate I would waive any such conflict.

BRIAN O'CONNELL, Personal Representative