

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM
BEACH, FL 33401

CASE NO.: 4D16-3314
L.T. No.: 502014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

Appellant / Petitioner(s)

V.

Ted Bernstein, acting as alleged Trustee of the Shirley Bernstein Trust,
Appellee / Respondent(s)

**APPELLANT'S MOTION FOR ADDITIONAL REASONABLE
EXTENSION-STAY-CONTINUANCE BASED ON NEWLY DISCOVERED
EVIDENCE AND NEW HEARINGS IN THE LOWER TRIBUNAL**

1. I am the Appellant in this case acting pro se.
2. I make this motion for an additional reasonable extension of time and for a Stay and/or continuance based upon newly discovered evidence and new hearings in the lower tribunal and assert this motion and request is made in good faith and in the interests of judicial economy as the newly discovered evidence and new hearings in the Lower Tribunal before Judge Scher may render this appeal Moot.
3. This Court has been previously advised that new hearings are ongoing in the Lower Tribunal.

4. I have obligations to the Lower Tribunal to submit a “Closing Statement” on just parts of these new hearings that are due this week, March 9th, 2017 with additional hearings scheduled for next week March 16th, 2017.
5. I have already advised the Lower Tribunal that I was under Doctor’s orders and serious prescription pain medication and muscle relaxers for a significant period of time leading up to these new Hearings which began Feb. 16th, 2017 and in fact this comprised approximately 28 days of the 45 days since this Court issued its Order on Jan. 20th, 2017 granting 45 days to file the Initial Brief.
6. Today being the 45th day since the Order, this motion for an Extension is timely and is not made to unnecessarily delay any proceedings nor is there any cognizable prejudice to any party ***and is made as part of diligently prosecuting my rights in these cases within reasonable standards given the pervasive Fraud which has now just further started to unravel in the Lower Tribunal and which may likely in fact lead to Orders which may render this entire Appeal Moot after further motions to Vacate are filed in the lower Tribunal.***
7. The conduct of both PR Brian O’Connell, Esq. of Ciklin Lubitz Martens & O’Connell as PR of the Simon Bernstein Estate and the conduct of Alan B. Rose, Esq. of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. is now necessarily intertwined in substantial ongoing fraud in these proceedings as shown by newly discovered evidence in the Lower Tribunal with the difference being now

that some of the further Fraud has been Admitted to and there is now Testimony from these Fiduciaries that bear out the many claims of Fraud that Appellant has brought to the attention of this Court with no action taken as of this date to remedy the Frauds on the Court and the Frauds by Court Appointed Officers (attorneys at law/fiduciaries and guardian) in these matters.

8. While the Lower Tribunal significantly curtailed and limited Appellant's time to Examine these Fiduciaries in the context of hearings, it is now clear in the Lower Tribunal that I, Eliot I. Bernstein am in fact a Beneficiary of the Estate of Simon Bernstein and an "interested person" with Standing in the Estate of Simon Bernstein part of which is embodied by a recent Order by Lower Tribunal Judge Scher and is reflected in part by one of the several Transcripts from recent hearings below. See, Order of Judge Scher of March 3, 2017 (Exhibit 1) and Transcripts of Feb. 16th, 2017 (Exhibit 2).
9. Appellant is awaiting production of a further Transcript in the Lower Tribunal from March 2, 2017.
10. Prior to the March 2, 2017 date, Appellant had put the following email to the Lower Tribunal and ultimately in the Record below as an Exhibit:

Hon. Judge Scher,
North Branch of Palm Beach County
Estate of Simon Bernstein Case No. No. 502012CP4391XXXXNB

Judge Scher:

In case you missed it in consideration of my Urgent Motion to Reschedule filed yesterday March 1, 2017 after speaking with your JA, I have attached the Consent and Joinder of William Stansbury and his Attorney Peter Feaman who not only Consented to the Rescheduling of the Hearings tomorrow which were scheduled by your Honor after further and ongoing direct frauds upon the Court by Ted Bernstein and his attorney Alan Rose which are now finally starting to unravel by the recent Testimony of one William O'Connell as "PR" of the Simon Bernstein Estate who admitted under oath that I am in fact a Beneficiary of the Estate of Simon Bernstein being a natural child of Simon Bernstein who are Devisees in the very first paragraph of the Will of 2012 alleged as Valid by Ted Bernstein and Alan Rose while of course Ted Bernstein and Alan Rose have perpetrated many frauds upon the Courts of Palm Beach County in the 15th Judicial for over a year specifically including but not limited to Falsely claiming that I am Not a Beneficiary of anything on multiple occasions and filing False and Fraudulent paperwork with prior Judge Phillips falsely claiming the Judge had already made Determinations on beneficiaries while knowing that Judge Phillips had never done so and in fact all hearings on "Construction" had been stayed and to this very day have never been held. In fact, a simple review of the Dispositive Documents that Judge Phillips claimed are Valid will show that in each instance I am a named beneficiary of the Wills and Trusts of Simon and Shirley Bernstein and should have full standing in all cases at this time. Further, there is no proper proof in the record in any case that limits my interests to \$20,000.00 or the "TPP" being valued at \$100,000.00, in fact, part of the "Construction" hearings that have NEVER OCCURRED EVER IN THESE CASES is what the TPP relates to.

I have re-attached my Urgent Motion for Rescheduling based upon Medical reasons attaching a licensed Dentist's letter and have further re-attached my Feb. 16th, 2017 Motion to Vacate, Amend, Modify your prior Case Management Order which goes into more details of the Frauds of Alan Rose and Ted Bernstein which again include and are not limited to me "Losing Standing" and the Opportunity to Be Heard consistent with Due Process of the US Constitution for a year or so now in this case with such motion of course referencing the fact that the Estate Planning Attorneys Robert Spallina and Donald

Tescher had filed a Sworn Notice of Administration which specifically Named me as a Beneficiary and did NOT Name ANY of the Grandchildren at all, one of many facts and Motions Summarily Disregarded and Not heard by Judge Phillips while there is no explanation in the Record of any of these proceedings about how this Occurred as part of the Fraud that is unraveling is the fraud that lead to the Validity Trial itself that was orchestrated such that not only did I get denied opportunity to get an attorney admitted Pro Hac Vice for this alleged Trial but the proceeding was further orchestrated such that there was clearly insufficient time to Examine Donald Tescher and of course the other pre-trial due process violations such as No Uniform Pre-Trial Scheduling Order and no Order at all in that regard.

As you will see, I have directly sent this message to SPECIAL AGENT OF THE FBI MICHELLE PICKELS OF THE NEWARK, NEW JERSEY Office of the FBI where I have been informed previously that there is an Open Investigation into Robert Spallina who I now seek to have Deposed by your Order and be one of the Witnesses necessary for these Hearings after finally obtaining Proper Discovery I have petitioned this Court to finally grant and the denial of which is another Due Process Constitutional violation that has gone on in these proceedings. I am sure you are aware that the FBI is the primary Federal Agency for Investigating Civil Rights violations and also has jurisdiction to investigate Public Corruption as well. As you will also see I have copied a Washington, DC contact who has provided guidance in many areas of my cases including the Patent Fraud and Technologies which is just part of the Records and matters being covered up by some of the parties now before you trying to get your Honor to "move quickly" to swallow up the Fraud in one bite and remove me from the cases and continue the fraud. Your Honor may be petitioned at a proper date to bring this DC contact in under Subpoena but this contact has recently communicated being available to testify if called upon.

Upon information and belief this Washington, DC contact has been very close and involved with ongoing Federal Corruption matters in NY many brought by US Attorney of the Southern District of New York Preet Bharara where many of the Patent Fraud attorneys in my Technology case have offices, with Simon Bernstein of course having been the largest Shareholder in my Technologies owning initially

approximately 30% and this DC contact who I will call "DC No. 1" has provided guidance that I get a volume of material and information from these cases in Florida and the alleged suicide of one Mitchell Huhem which occurred at my parent's Estate Home last year to FBI Special Agent Pickels as well and please note as I respectfully remind your Honor of your Judicial obligations concerning fraud upon the Court that I regularly copy or send case information to these Federal authorities and others. This alleged suicide occurred within days of a THE FRAUDULENT SHELL company LIONS HEAD LAND TRUST INC. being exposed at the Florida Secretary of State's office in the days after learning the property was sold.

Thus, please Note that I have also attached a Corrected Notice of Hearing so that I may fully and properly be heard tomorrow on March 2, 2017 again requesting that the Case Order be Modified as 10 Minutes with NO DISCOVERY is not a proper manner in which to Examine and cross-examine PR O'Connell who already has given enough Admissions for this Court to change the Schedule and address my Feb. 16, 2017 motion in its entirety.

Of course just as part of that motion I attached as Exhibits for your Honor multiple documents reflecting "Missing Millions", literally Millions in Simon Bernstein's accounts and businesses and name just days and weeks before his untimely passing which was alleged by Ted Bernstein on the day of passing as a "poison" and possible murder which then began a SERIES of FRAUDS in the Courts including Fraud to attempt to collect the Life Insurance in Illinois, proven and admitted Forgeries in the Estate of Shirley Bernstein and a Deliberate and ongoing Pattern of Denying myself Proper Documents as a Beneficiary and where your Honor is now in an Estate Case of my father who earned Millions in his lifetime and had Business Records stored in many ways and yet your Honor is led to believe by Alan Rose and Ted Bernstein and now Brian O'Connell that he was a virtual pauper at death and somehow, magically there are NO ORIGINAL DOCUMENTS provided in these cases. I note that at least one source will come forward to claim that the DC contact has claimed to work with the IRS and other federal and state agencies and where PR Brian O'Connell has failed and refused to get the IRS Records in this Estate which are directly relevant to the hearings before Your Honor.

Thus, I also suggest that March 9th is a viable date to Continue actual Hearings and if your Honor can confirm prior to '11 am tomorrow on March 2nd that March 2nd will ONLY be used as a Scheduling date with No Live Testimony continued until After Discovery and Depositions are held or at minimum Discovery then I would appear tomorrow by telephone due to my medical reasons.

Also, I do not understand this process of Alan Rose and other parties putting these substantive "Letters" into your Honor which do not appear to be part of the Docketed Record for Appeal so I will also be submitting this Email by Exhibit and ask that the other parties be required to File their various letters, many which contain fraud, into the Record to be Docketed.

Thank you.

Eliot I. Bernstein

CC: Special Agent Michelle Pickels, US Attorney Preet Bharara,
Corrupt Courts Administrator, etc

11. Appellant had also filed a Motion to Vacate the Order of the new hearings as of Feb. 16th, which is attached hereto as Exhibit 3 which outlines in further detail some of the Frauds upon the Court by Fiduciary Brian O'Connell, Esq. and Court Appointed Attorneys, Alan Rose, Esq. and Brian O'Connell, Esq. both who are part of the Motion and Order that is the subject of this Appeal.

12. Upon Appellant gaining even the most basic amount of time for actual Examination of these parties, the Fraud has begun to unravel at a rapid pace and is directly relevant to this Appeal as unraveling the fraud should include the correction of the loss of my "Standing" to have objected to the very Order which is

now on Appeal and the correction of the fraud which would have allowed me to fully participate in the Motion hearing that gave rise to this Order on Appeal.

13. Even Attorney Peter Feaman had attempted to notify the prior Lower Tribunal of Judge Phillips of Misconduct, Fraud and Theft of Missing Assets by Fiduciaries, yet unresolved, as part of the Motion hearing that gave rise to the Order on Appeal stating on Sept. 1, 2017 as follows: Pages 4 and 5

14 MR. FEAMAN: Good morning, Your Honor. Peter
15 Feaman on behalf of William Stansbury.
16 Mr. Stansbury is a claimant against the estate.
17 You may recall he has a separate action pending in
18 division AA against the estate for a significant
19 claim.
20 We are glad, Your Honor, that this
21 additional money is coming into the estate.
22 THE COURT: There you go.
23 MR. FEAMAN: Because that helps our position.
24 And we're sorry, however, that the personal
25 representative's representative is not here

1 because there are continuing issues about missing
2 property in this estate, not just jewelry, that I
3 mentioned last week. But the property that was in
4 the condo was insured at the time of Shirley
5 Bernstein's death for a hundred thousand dollars.

14. It is further noted for this Court that Hearings to the Objections to various accountings which are implicated by this Order on Appeal have yet to be scheduled and is another basis to Stay and Continue these proceedings at this time where it is asserted further fraud and misconduct by these involved fiduciaries will be shown by clear and convincing evidence.

15. It is also noted that while continuing hearings are scheduled in the Lower Tribunal, Ted Bernstein was conspicuously absent from the last hearing date when it was requested by Appellant that he be called to the Stand and Examined under Oath.

16. Appellant will be moving that Ted Bernstein take the stand in the upcoming hearings as well.

17. Because it is reasonably likely and possible that the Removal of these Fiduciaries will be mandated by law by the outcome of new hearings, it is respectfully prayed for an Order "staying" and or "continuing" this Appeal for at least 30 days pending the outcome of current Hearings and issuance of Orders.

18. Additionally and alternatively, I respectfully remind this Court of the multitude of filed motions and matters that Appellant has had to address which was raised in the

last motion for extension and remind this Court that the nature of the Fraud on the Court by these parties is such that as Appellant I am continuously in a process of going back through each of these filings as the level of contradictions is also pervasive with an ever changing and ongoing new narrative story proffered to support the fraudulent actions by these fiduciaries thus consuming large amounts of time while on medication and only able to do limited amounts each day and thus a reasonable Extension of time is thus proper to grant should a Stay and Continuance not be issued. See Exhibit 4 Extension of Time Request 4th DCA Case No. 4d-3314 List of current, recent Motions actions for Appellant to address.

WHEREFORE, it is respectfully prayed for an Order granting a reasonable Stay and or Continuance for at least 30 days pending the outcome of new and ongoing hearings in the lower Tribunal or alternatively a reasonable extension of at least 15 days to file the brief herein and such other and further relief as may seem just and proper.

Respectfully submitted,

Dated: March 6th, 2017

/s/ Eliot Ivan Bernstein
Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
561-245-8588
iviewit@iviewit.tv

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the within has been served upon all parties on the attached Service List by E-Mail Electronic Transmission, Court ECF on this 6th day of March, 2017.

SERVICE LIST

John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 (561) 833-0766-Telephone (561) 833-0867 -Facsimile Email: John P. Morrissey (john@jrnoiTisseylaw.com)	Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 lisa@friedsteins.com
Peter M. Feaman, Esq. Peter M. Feaman, P.A. 3695 West Boynton Beach Blvd., Suite 9 Boynton Beach, FL 33436 (561) 734-5552 -Telephone (561) 734-5554 -Facsimile Email: service@feamanlaw.com: mkoskey@feamanlaw.com	Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com
Gary R. Shendell, Esq. Kenneth S. Pollock, Esq. Shendell & Pollock, P.L. 2700 N. Military Trail, Suite 150 Boca Raton, FL 33431 (561)241-2323 - Telephone (561)241-2330-Facsimile Email: gary@shendellpollock.com ken@shendellpollock.com estella@shendellpollock.com britt@shendellpollock.com grs@shendellpollock.com	Counter Defendant Robert Spallina, Esq. Donald Tescher, Esq. Tescher & Spallina 925 South Federal Hwy., Suite 500 Boca Raton, Florida 33432
Brian M. O'Connell, Esq. Joieille A. Foglietta, Esq. Ciklin Lubitz Martens & O'Connell	Counter Defendant John J. Pankauski, Esq. Pankauski Law Firm PLLC

<p>515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900-Telephone 561-833-4209 - Facsimile Email: boconnell@ciklinlubitz.com; ifoglietta@ciklinlubitz.com; service@ciklinlubitz.com; slobdell@ciklinlubitz.com</p>	<p>120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 courtfilings@pankauskilawfirm.com john@pankauskilawfirm.com</p>
<p>Counter Defendant Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net</p>	<p>Counter Defendant Donald Tescher, Esq., Tescher & Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein 880 Berkeley Boca Raton, FL 33487 tberNSTEIN@lifeinsuranceconcepts.com</p>	<p>Counter Defendant TESCHER & SPALLINA, P.A.. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein Life Insurance Concepts, Inc. 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 tberNSTEIN@lifeinsuranceconcepts.com</p>	<p>Counter Defendant Alan B. Rose, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 561-355-6991 arose@pm-law.com arose@mrachek-law.com</p>
<p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	<p>Counter Defendant L. Louis Mrachek, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 561-355-6991 lmrachek@mrachek-law.com</p>
<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>	<p>Counter Defendant Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401</p>

<p>Lisa Sue Friedstein 2142 Churchill Lane Highland Park, IL 60035 lisa.friedstein@gmail.com lisa@friedsteins.com</p>	<p>Dennis McNamara Executive Vice President and General Counsel Oppenheimer & Co. Inc. Corporate Headquarters 125 Broad Street New York, NY 10004 800-221-5588 Dennis.mcnamara@opco.com info@opco.com</p>
<p>Dennis G. Bedley Chairman of the Board, Director and Chief Executive Officer Legacy Bank of Florida Glades Twin Plaza 2300 Glades Road Suite 120 West – Executive Office Boca Raton, FL 33431 info@legacybankfl.com DBedley@LegacyBankFL.com</p>	<p>Hunt Worth, Esq. President Oppenheimer Trust Company of Delaware 405 Silverside Road Wilmington, DE 19809 302-792-3500 hunt.worth@opco.com</p>
<p>James Dimon Chairman of the Board and Chief Executive Officer JP Morgan Chase & CO. 270 Park Ave. New York, NY 10017-2070 Jamie.dimon@jpmchase.com</p>	<p>Neil Wolfson President & Chief Executive Officer Wilmington Trust Company 1100 North Market Street Wilmington, DE 19890-0001 nwolfson@wilmingtontrust.com</p>
<p>William McCabe Oppenheimer & Co., Inc. 85 Broad St Fl 25 New York, NY 10004 William.McCabe@opco.com</p>	<p>STP Enterprises, Inc. 303 East Wacker Drive Suite 210 Chicago IL 60601-5210 psimon@stpcorp.com</p>
<p>Charles D. Rubin Managing Partner Gutter Chaves Josepher Rubin Forman Fleisher Miller PA Boca Corporate Center 2101 NW Corporate Blvd., Suite 107 Boca Raton, FL 33431-7343 crubin@floridatax.com</p>	<p>Ralph S. Janvey Krage & Janvey, L.L.P. Federal Court Appointed Receiver Stanford Financial Group 2100 Ross Ave, Dallas, TX 75201 rjanvey@kjllp.com</p>
<p>Kimberly Moran Teschner & Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432</p>	<p>Lindsay Baxley aka Lindsay Giles Life Insurance Concepts 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487</p>

kmoran@tescherspallina.com	lindsay@lifeinsuranceconcepts.com
Gerald R. Lewin CBIZ MHM, LLC 1675 N Military Trail Fifth Floor Boca Raton, FL 33486	CBIZ MHM, LLC General Counsel 6480 Rockside Woods Blvd. South Suite 330 Cleveland, OH 44131 ATTN: General Counsel generalcounsel@cbiz.com (216)447-9000
Albert Gortz, Esq. Proskauer Rose LLP One Boca Place 2255 Glades Road Suite 421 Atrium Boca Raton, FL 33431-7360 agortz@proskauer.com	Heritage Union Life Insurance Company A member of WiltonRe Group of Companies 187 Danbury Road Wilton, CT 06897 cstrroup@wiltonre.com
Estate of Simon Bernstein Brian M O'Connell Pa 515 N Flagler Drive West Palm Beach, FL 33401 boconnell@ciklinlubitz.com	Counter Defendant Steven Lessne, Esq. Gray Robinson, PA 225 NE Mizner Blvd #500 Boca Raton, FL 33432 steven.lessne@gray-robinson.com
Byrd F. "Biff" Marshall, Jr. President & Managing Director Gray Robinson, PA 225 NE Mizner Blvd #500 Boca Raton, FL 33432 biff_marshall@gray-robinson.com	Steven A. Lessne, Esq. Gunster, Yoakley & Stewart, P.A. 777 South Flagler Drive, Suite 500 East West Palm Beach, FL 33401 Telephone: (561) 650-0545 Facsimile: (561) 655-5677 E-Mail Designations: slessne@gunster.com jhoppel@gunster.com eservice@gunster.com
T&S Registered Agents, LLC Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com	David Lanciotti Executive VP and General Counsel LaSalle National Trust NA CHICAGO TITLE LAND TRUST COMPANY, as Successor 10 South LaSalle Street Suite 2750 Chicago, IL 60603 David.Lanciotti@ctt.com
Joseph M. Leccese Chairman	Brian Moynihan Chairman of the Board and Chief Executive Officer

<p>Proskauer Rose LLP Eleven Times Square New York, NY 10036 jleccese@proskauer.com</p>	<p>100 N Tryon St #170, Charlotte, NC 28202 Phone:(980) 335-3561</p>
<p>ADR & MEDIATIONS SERVICES, LLC Diana Lewis 2765 Tecumseh Drive West Palm Beach, FL 33409 (561) 758-3017 Telephone Email: dzlewis@aol.com (Fla. Bar No. 351350)</p>	

EXHIBIT 1

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA
PROBATE DIVISION "IH"

Case No. 50 2012-CP-4391 XXXX NB

IN RE: THE ESTATE OF:
SIMON BERNSTEIN,
Deceased.

ORDER SETTING MARCH 16, 2017 HEARING FROM 2:00 TO 4:00 AND
ESTABLISHING PROCEDURE

THIS MATTER came before the Court February 16, 2017 and March 2, 2017 on the following matters:

1. October 7, 2016, D.E. 496, Stansbury's Motion to Vacate in Part the Court's Ruling on September 7, 2016, and/or Any Subsequent Order, Permitting the Estate of Simon Bernstein to Retain Alan Rose and Page, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. as Legal Counsel and Motion for Evidentiary Hearing to Determine Whether Rose and Page, Mrachek are Disqualified from Representing the Estate Due to an Inherent Conflict of Interest.
2. November 28, 2016, D.E. 507, Stansbury's Motion to Disqualify Alan Rose and Page, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. as Legal Counsel for the Estate of Simon Bernstein Due to an Inherent Conflict of Interest.

Present before the Court were Peter Feaman, Esquire on behalf of William Stansbury; Alan Rose, Esquire on behalf of Ted Bernstein, Trustee, Brian O'Connell as Personal Representative, Eliot Bernstein as interested party.

At the beginning of the February 16, 2017 the Court advised from this point forward pleadings and filings shall consist only of a Motion / Petition; Response; and, Reply. No additional filings shall be presented without leave of court.

At the conclusion of the hearing March 2, 2017 the Court ordered closing arguments of no more than 10 double spaced pages should be submitted to the Court no later than March 9, 2017 on the above two issues.

The Court is also ordering no further pleadings or filings exceed 10 double spaced pages without requesting leave of Court.

In open Court the Court advised that on March 16, 2017 the Court shall hear the following matters:

1. Trustee's Motion to Approve Retention of Counsel and to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim Against Estate by William Stansbury [D.E. 471]
2. Stansbury's Motion of Creditor for Discharge from Further Responsibility for the Funding of the Estate's Participation in the Chicago Life Insurance Litigation and for Assumption of Responsibility by the Estate and for Reimbursement of Advanced Funds [D.E.448], seeking to vacate, alter or amend Judge Colin's Order [D.E. 133: Order Appointing Administrator Ad Litem to Act on Behalf of Estate of Simon Bernstein etc.]

No other matters shall be heard by this Court on March 16, 2017 without Court approval and a revised order being issued.

The Court has previously given all parties and counsel opportunity to provide materials on the above issues to the Court. Since these matters have been set two other times, and the Court has received no less than one large binder from each party, the Court will receive no further filings / pleadings / case law on these matters prior to March 16, 2017.

DONE AND ORDERED in Palm Beach Gardens, Palm Beach County, Florida this 3rd day of March, 2017.



Copies furnished:

Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3095 W. Boynton Beach Bvda., Suite 9, Boynton Beach, FL 33436, pfeaman@seamanlaw.com; service@seamanlaw.com;

Brian M. O'Connell, Esq., CIKLIN, LUBITZ, MARTENS & O'CONNELL, 515 No. Flagler Drive, 20th Floor, West Palm Beach, FL 33401, boconnell@ciklinlubitz.com; slobdell@ciklinlubitz.com; service@ciklinlubitz.com

Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mcandler@pm-law.com;

Gary Shendell, Esq., SHENDELL & POLLOCK, P.L., 2700 North Military Trail, Suite 150, Boca Raton, FL 33431; gary@shendellpollock.com; ken@shendellpollock.com; britt@shendellpollock.com; grs@shendellpollock.com

Diana Lewis, Guardian Ad Litem, 2765 Tecumseh Drive, West Palm Beach, FL 33409; d.lewis@aol.com

Jeffrey Friedstein and Lisa Friedstein, 2142 Churchill Lane, Highland Park, IL 60035; lisa@friedsteins.com; lisa.friedstein@gmail.com

Pamela Beth Simon, 950 North Michigan Avenue, #2603, Chicago, IL 60611; psimon@stpcorp.com

EXHIBIT 2

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO: 502012CP004391XXXXNBIH

IN RE:
ESTATE OF SIMON L. BERNSTEIN,

/

Proceedings before the Honorable
ROSEMARIE SCHER

Thursday, February 16, 2017
3188 PGA Boulevard
North County Courthouse
Palm Beach Gardens, Florida 33410
2:38 p.m. - 4:46 p.m.

Reported by:
Lisa Mudrick, RPR, FPR
Notary Public, State of Florida

1 APPEARANCES:

2 On behalf of William E. Stansbury:
3 PETER M. FEAMAN, P.A.
3 3695 West Boynton Beach Boulevard
4 Suite 9
4 Boynton Beach, Florida 33436
5 BY: PETER M. FEAMAN, ESQUIRE
5 (Mkoskey@feamanlaw.com)
6 JEFFREY T. ROYER, ESQUIRE
6 (Jroyer@feamanlaw.com)
7 NANCY E. GUFFEY, ESQUIRE
7 (Nguffeyappeals@bellsouth.net)

8
9 On behalf of Ted Bernstein:
9 MRACHEK FITZGERALD ROSE KONOPKA
10 THOMAS & WEISS, P.A.
10 505 South Flagler Drive, Suite 600
11 West Palm Beach, Florida 33401
11 BY: ALAN B. ROSE, ESQUIRE
12 (Arose@mrachek-law.com)
12 MICHAEL W. KRANZ, ESQUIRE
13 (Mkranz@mrachek-law.com)

14 On behalf of the Personal Representative of the
15 Estate of Simon Bernstein:
15 CIKLIN LUBITZ MARTENS & O'CONNELL
16 515 North Flagler Drive, 19th Floor
16 West Palm Beach, Florida 33401
17 BY: BRIAN M. O'CONNELL, ESQUIRE
17 (Boconnell@ciklinlubitz.com)

18 On behalf of Eliot Bernstein's minor children:
19 ADR & MEDIATION SERVICES, LLC
20 2765 Tecumseh Drive
20 West Palm Beach, Florida 33409
21 BY: THE HONORABLE DIANA LEWIS
21 (Dzlewis@aol.com)

22 On behalf of Eliot Bernstein:
23 ELIOT I. BERNSTEIN, pro se
24 (Iviewit@iviewit.tv)

1 - - -
2 I N D E X
3 - - -

4 EXAMINATIONS

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5 Witness:

6 BRIAN O'CONNELL

7 BY MR. FEAMAN 66

8 BY MR. ROSE 84

9 BY MR. ELIOT BERNSTEIN 97

10

11

12 OPENING STATEMENTS

13 BY MR. FEAMAN 11

14 BY MR. ROSE 20

15

16

17 EXHIBITS MARKED

18 No: Claimant Stansbury's Exhibits

19 1 Complaint, United States District 56

20 Court Northern District of

21 Illinois

22 2 Motion to Intervene, United 57

23 States District Court Northern

24 District of Illinois

25

1	3	Complaint for Declaratory	59
2		Judgement by Intervenor, United	
3		States District Court Northern	
4		District of Illinois	
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6		Intervene, United States District	
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8		Illinois	
9	5	Answer to Intervenor Complaint,	60
10		United States District Court	
11		Northern District of Illinois	
12	6	Deposition of Ted Bernstein	61
13		5-6-15, United States District	
14		Court Northern District of	
15		Illinois	
16	7	E-mail, 1-31-2017, Theodore	65
17		Kuypers to Brian O'Connell, etc	
18	8	E-mail, 2-14-2017, James Stamos	65
19		to Brian O'Connell, etc	
20			
21	No:	Trustee's Exhibits	
22	1	Personal Representative Position	92
23		Statement	
24			
25			

1 P R O C E E D I N G S

2 - - -

3 BE IT REMEMBERED that the following
4 proceedings were had in the above-styled and
5 numbered cause in the Palm Beach County Courthouse
6 north branch, City of Palm Beach Gardens, County of
7 Palm Beach, in the State of Florida, by Lisa
8 Mudrick, RPR, FPR, before the Honorable ROSEMARIE
9 SCHER, Judge in the above-named Court, on
10 February 16, 2017, to wit:

11 - - -

12 THE COURT: The first thing we are going
13 to do, and this is more for the Court, starting
14 to the left in the first pew behind, we are
15 going to make our appearances and go around,
16 and ending with Judge Lewis.

17 MR. FEAMAN: Thank you, Your Honor. Peter
18 Feaman on behalf of the movant William
19 Stansbury. With me today is Jeff Royer from my
20 office and also Nancy Guffey.

21 THE COURT: Okay.

22 MR. ROSE: Good afternoon, Your Honor.
23 Alan Rose. I represent Ted S. Bernstein as
24 successor trustee of Simon's trust and
25 Shirley's trust.

1 THE COURT: Okay.

2 MR. ROSE: I represent him as the movant
3 seeking to be appointed as administrator ad
4 litem to defend the estate in the independent
14:39:47 5 action.

6 And Mr. O'Connell is here. And with me is
7 Michael Kranz, my associate, at the end. And I
8 will let Mr. O'Connell introduce himself.

9 MR. O'CONNELL: Good afternoon, Your
14:39:58 10 Honor. Brian O'Connell, PR of the Simon
11 Bernstein Estate.

12 JUDGE LEWIS: Diana Lewis, guardian ad
13 litem for the Eliot Bernstein children.

14 THE COURT: Okay. A few ground rules. I
14:40:18 15 have my order on this case management
16 conference, and that's the order in which we
17 will proceed, okay? Does everyone have a copy
18 of that order? I also have an extra copy in
19 case somebody needs it.

14:40:35 20 So we will begin with Stansbury's motion
21 to vacate in part the Court's ruling on
22 September 7, 2016, and/or any subsequent order
23 permitting the Estate of Simon Bernstein to
24 retain Alan Rose.

14:40:53 25 And I am just verifying the correct docket

1 entry. And it is noted on the case management
2 conference as docket entry 497. That is
3 incorrect. That's why I was double checking.
4 It's 496. And I knew that because I just
14:41:21 5 looked it up.

6 All right. In the order one of the things
7 I had said was to get all materials to me by
8 February 9th. Thank you. You can see I am
9 surrounded by notebooks. I received a ton of
14:41:35 10 materials. The only thing I would request is
11 from now on when I say February 9th, I mean
12 February 9th. I received two more -- from
13 everybody, from both sides, just so everybody
14 knows, I received documents Monday. From now
14:41:51 15 on if you don't meet the deadline you will have
16 to come into court with them and provide them
17 and tell me why you didn't meet the deadline.

18 I am going to put some firm rules on these
19 parties, and I don't think I will have to
14:42:02 20 explain why, just going through some of this
21 case.

22 Number two, from this point forward, and I
23 plan to include this in any order I issue, in
24 preparing for this it was very difficult to get
14:42:16 25 a grasp as to when the pleadings to the same

7 Petition or motion, response, reply, end.
8 If you desperately feel that there must be
9 something you must bring to the Court's
14:42:40 10 attention prior to the hearing, come in and ask
11 me for permission.

12 Because, quite frankly, the Court read as
13 much as humanly possible given the fact that
14 with all due respect it's not my only case.
14:42:51 15 And I am very compulsive, so I read as much as
16 I could. But some of it was -- if I thought
17 every single new piece of paper had some gem of
18 nuance that was different from all the other
19 prior, I might not be putting this rule. But a
14:43:05 20 lot of it was just repeating the same thing.

21 And I know a lot of it, which is why I
22 completely understand, had to do with the fact
23 that we need to get this judge up to speed,
24 which I appreciate. Okay. From this point now
14:43:18 25 I will be the original judge reading, all

1 sides, petition or motion, response, reply.

2 Okay.

14:43:42

3 Last and final housekeeping. I will make
4 no -- how do I put this? You all know that the
5 other half of my division is family and
6 divorce, an area where people get truly bent
7 out of shape as well and can be exceedingly
8 nasty to each other because you are going
9 through a horrible time.

14:44:01

10 You all are lawyers. I do not expect from
11 this point forward to see any direct -- now, an
12 appropriate motion is an appropriate motion. I
13 am excluding in a motion something you feel
14 justified to do. But in the pleadings, state
15 the facts. I don't want the adjectives, okay?
16 I can figure -- you know, state the facts, tell
17 me what happened. And I don't want the
18 adjectives that are following back and forth,
19 which I won't deal with. Anyone who has
20 practiced in front of me knows me. You can do
21 anything on your position within the bounds of
22 the law. I will not accept unprofessionalism
23 even in pleadings, even though you are
24 professional personally here.

14:44:45

25 Okay. That takes care of that. And

1 that's kind of a general rule I set forth in
2 all of my box cases in family too. So don't
3 anyone take it personally. That's something I
4 say at the get-go because as things proceed
14:44:57 5 people get mad. Remember, you are the lawyers,
6 not the clients, although I do know we have
7 some clients here.

8 Okay. So since it is, let me pull up on
9 Cap, Mr. Feaman's motion to vacate, he will
14:45:10 10 begin to have the floor.

11 MR. FEAMAN: Thank you, Your Honor.

12 THE COURT: Sorry, I just hit something
13 bad on my computer. I do take notes on my
14 computer. The reason we must end at 4:30 is
14:45:24 15 because I do not look at my e-mail or my
16 emergency motions, and I am signing judge,
17 which must be sent in before 5:00, okay? So I
18 give you my full attention, but we end prompt
19 at 4:30 because I am signing judge. Yesterday
14:45:37 20 I think I had four by the time I got back
21 there.

22 So let me -- here it is. Perfect. Thank
23 you again for the notebooks with the tab
24 indexes. Truly a time saver for the Court.

14:45:48 25 You may proceed, Mr. Feaman, thank you.

1 MR. FEAMAN: Thank you, Your Honor. May
2 it please the Court. Peter Feaman on behalf of
3 William Stansbury. My remarks are by way of an
4 opening statement at this time, Your Honor, in
14:45:59 5 connection with Your Honor's order, case
6 management conference and order specially
7 setting hearings.

8 As Your Honor noted, we are dealing with
9 Stansbury's motion, docket entry 496, and
14:46:13 10 Stansbury's related motion to disqualify Alan
11 Rose and his law firm, docket entry 508.

12 The story and premise, Your Honor, for
13 this is that the personal representative of the
14 Simon Bernstein estate, Brian O'Connell, has a
14:46:37 15 fiduciary duty to all interested persons of the
16 estate. And that's found in Florida Statute
17 733.602(1) where it states a personal
18 representative is a fiduciary, and in the last
19 sentence, a personal representative shall use
14:46:56 20 the authority conferred by this code, the
21 authority in the will, if any, and the
22 authority of any order of the Court, quote, for
23 the best interests of interested persons,
24 including creditors, close quote.

14:47:13 25 Mr. Stansbury is an interesting --

1 interested person to the Estate of Simon
2 Bernstein as well as a claimant in this case.

3 Interesting -- interested persons -- yes,
4 he is an interesting person. But interested
14:47:28 5 persons is defined, Your Honor, in Florida
6 Statute 731.201(23) which states that an
7 interested person means, quote, any person who
8 may reasonably be expected to be affected by
9 the outcome of the particular proceeding
14:47:51 10 involved.

11 The evidence will show that Mr. Stansbury
12 clearly falls into that category.

13 The second part of our presentation, Your
14 Honor, will then involve the presentation of
14:48:04 15 evidence to show that in fact there is a
16 conflict of interest. And then part three --
17 of conflict of interest of Mr. Rose and his law
18 firm representing the estate in this case.

19 And thirdly, that the conflict of
14:48:21 20 interest, the evidence will show, is not
21 waivable.

22 The parties' chart, which we did and
23 submitted to Your Honor with our package last
24 week, is the color chart, I have an extra copy
14:48:33 25 if Your Honor does not have it.

1 THE COURT: I believe it is --

2 MR. FEAMAN: For the Court's convenience.

3 THE COURT: I believe it is in -- I know I
4 have it. And I know I had it. Oh, got it. I
14:49:06 5 knew it was in one of my notebooks. Thank you.

6 MR. FEAMAN: Thank you.

7 Now, the summation of the position of the
8 parties in connection with what the evidence
9 will show, Your Honor, shows that we are here
14:49:17 10 obviously on the Estate of Simon Bernstein, and
11 the proposed attorney is Alan Rose. That's the
12 box at the top. The two proceedings that are
13 engaged with regard to the estate right now is
14 the Stansbury litigation against the estate
15 which is wherein it is proposed that Mr. Rose
16 and his law firm defend the estate in that
17 case.

18 And more significantly, Your Honor,
19 because it really wouldn't matter what the
14:49:49 20 other litigation is that Mr. Rose is being
21 asked to defend, because more significantly is
22 the orange box on the right, which I will call
23 for the purposes of this litigation the Chicago
24 litigation. And in that action there are a
14:50:05 25 number of plaintiffs, one of whom is Ted

1 Bernstein individually. And the evidence will
2 show in this case that Alan Rose represents Ted
3 Bernstein individually, not only in other
4 matters, but he actually appeared in a
14:50:27 5 deposition on behalf of Mr. Bernstein
6 individually in that Chicago litigation, made
7 objections to questions. And the evidence will
8 show that he actually on a number of occasions
9 instructed Mr. Bernstein not to answer certain
14:50:47 10 questions that were directed to Mr. Bernstein
11 by counsel for the Estate of Simon Bernstein.

12 In that Chicago litigation we will present
13 to Your Honor certified copies of pleadings
14 from the Chicago litigation that shows the
14:51:04 15 following: That Ted Bernstein, among others,
16 sued an insurance company to recover
17 approximately \$1.7 million dollars of life
18 insurance proceeds. Mr. Stansbury became aware
19 that that litigation was going on, and moved to
14:51:23 20 intervene in that lawsuit. Mr. Stansbury was
21 denied.

22 So the evidence will show that he was able
23 to prevail upon Ben Brown, and Ben Brown moved
24 on behalf of the estate when he was curator to
14:51:37 25 intervene. And in fact the Estate of Simon

1 Bernstein --

2 MR. ROSE: May I object for a second?

3 THE COURT: Legal objection?

4 MR. ROSE: That he is completely
14:51:48 5 misstating the record of this Court and the
6 proceedings before Judge Colin.

7 THE COURT: You will have an opportunity
8 to respond and explain it to me.

9 MR. FEAMAN: Thank you, Your Honor.

10 And the evidence will show that the Estate
11 of Simon Bernstein is now an intervenor
12 defendant, and they filed their own intervenor
13 complaint seeking to recover that same \$1.7
14 million dollars that Ted Bernstein is seeking
14:52:13 15 to recover as a plaintiff in that same action.

16 So the evidence will show that Mr. Rose
17 represents Ted Bernstein. Ted Bernstein is
18 adverse to the estate. And now Mr. Rose seeks
19 to represent the estate to which his present
20 client, Ted Bernstein, is adverse in the
21 Stansbury litigation, which is why we are
22 there. Now --

23 THE COURT: Wait. Slow down one second.

24 MR. FEAMAN: Sure.

25 THE COURT: That is something you repeated

1 several times in your motion, but I want you to
2 state it one more time for me slowly.

3 MR. FEAMAN: Yes. The Chicago litigation
4 one of the plaintiffs is Ted Bernstein
14:52:54 5 individually. The Estate of Simon Bernstein
6 has now intervened in that action. And Ted
7 Bernstein as plaintiff is seeking to recover
8 \$1.7 million dollars.

9 Adversely, the Estate of Simon Bernstein
14:53:09 10 seeks to recover that same \$1.7 million dollars
11 and is arguing up there that it should not go
12 to the plaintiffs but should go to the estate.

13 So they are one hundred percent adverse,
14 that would be Ted Bernstein and the Estate of
14:53:27 15 Simon Bernstein.

16 And Mr. Rose represents Ted Bernstein, and
17 now seeks to represent the estate in a
18 similar -- in an action against the estate, and
19 they are both going on at the same time. Thus,
14:53:44 20 the conflict is an attorney cannot represent a
21 plaintiff in an action, whether he is counsel
22 of record in that action or not, that's adverse
23 to the Estate of Simon Bernstein, and at the
24 same time defend the Estate of Simon Bernstein
14:54:03 25 when he has a client that is seeking to deprive

1 the estate of \$1.7 million dollars.

2 Now, if Ted Bernstein and the other
3 plaintiffs in that case were monetary
4 beneficiaries of the estate, I suppose it could
14:54:21 5 be a waivable conflict. However, that's not
6 the case.

7 That drops us to the third box on the --
8 the fourth box on the chart, which is the green
9 one, which deals with the Simon Bernstein
14:54:33 10 Trust. The Simon Bernstein Trust is the
11 residual beneficiary of the Simon Bernstein
12 estate. And once the estate captures that
13 money as a result of the Chicago litigation, if
14 it does, then the trust will eventually accede
14:54:54 15 to that money after payment of creditors, one
16 of which would be or could be my client.

17 And who are the beneficiaries of the
18 trust? So we have the one beneficiary of the
19 Simon Bernstein estate, the Simon Bernstein
14:55:06 20 Trust, and who are the beneficiaries of the
21 trust? Not the children of Simon Bernstein.
22 Not Ted Bernstein. But the grandchildren of
23 Simon Bernstein, some of whom are adults and
24 some of whom are minors in this case. Such
14:55:22 25 that if the estate prevails in the Chicago

1 litigation, even assuming Mr. Stansbury wasn't
2 around making his claim against the estate, if
3 all of the distributions were finally made when
4 the estate wins that Chicago litigation, none
14:55:37 5 of it will ever end up in the hands of Ted
6 Bernstein as plaintiff. The only way
7 Mr. Bernstein can get that money is to prevail
8 as a plaintiff in the Chicago litigation.
9 Mr. Rose represents Mr. Bernstein, and
14:55:54 10 therefore there's a conflict, and it's a
11 non-waivable conflict.

12 And in my final argument when I discuss
13 the law, I will suggest to the Court that the
14 conflict that's presented before the Court is
14:56:11 15 in fact completely non-waivable.

16 THE COURT: Before you sit down, I want
17 you to address one thing that's been raised in
18 their responses. And that is why did it take
19 you so long to file it?

14:56:25 20 MR. FEAMAN: I filed it as soon as I
21 became aware that there was a conflict. For
22 example, when the order that we are seeking to
23 set aside was entered, I was not aware that the
24 Rose law firm represented Ted Bernstein in that
14:56:40 25 Chicago action. My client then brought it to

1 my attention. And as soon as we did that, I
2 moved to set aside the order because it became
3 apparent that there was a clear conflict.

4 Because initially, as I told Brian
14:56:54 5 O'Connell, Mr. Stansbury can't dictate who the
6 estate wishes to hire as its attorneys unless,
7 as it turns out, that attorney represents
8 interests that are adverse to the estate. And
9 that's when we filed our motion to set aside.

10 I got possession of the deposition that
11 will be offered today. The deposition revealed
12 to me what I have summarized here today, this
13 afternoon, and then we moved to set aside the
14 order. And then we thought that wasn't enough,
14:57:30 15 we should do a formal motion to disqualify,
16 which we did.

17 The chronology of the filings, the motion
18 to vacate, I am not sure exactly when that was
19 filed, but it wasn't too long after the entry
14:57:46 20 of the September 7th order, and then the motion
21 to disqualify came after that. And --

22 THE COURT: It was filed October 7th.

23 MR. FEAMAN: Pardon me?

24 THE COURT: It was filed October 7th.

14:57:56 25 MR. FEAMAN: Okay. The motion to vacate?

1 THE COURT: Yes.

2 MR. FEAMAN: Correct. We had to do our
3 due diligence. We got the copy of the
4 deposition, and moved. Because we don't get
14:58:10 5 copies of things that go on up there on a
6 routine basis.

7 THE COURT: Okay. I just wanted to ask
8 what your position was. Okay. All right.
9 Thank you.

14:58:21 10 Opening?

11 MR. ROSE: As a threshold matter, I think
12 even though this is an evidentiary hearing, you
13 are going to receive some documentary evidence,
14 I don't think there's a real need for live
14:58:34 15 testimony, in other words, from witnesses. No,
16 no.

17 THE COURT: Okay.

18 MR. ROSE: I am advising you. I am not
19 asking your opinion of it.

14:58:42 20 THE COURT: Thank you.

21 MR. ROSE: I am advising you. I have
22 spoken to Mr. Feaman.

23 THE COURT: Okay.

24 MR. ROSE: So I don't know there's going
14:58:53 25 to be live witnesses.

1 THE COURT: Okay.

2 MR. ROSE: He has seven documents or eight
3 documents he would like to put in evidence, and
4 I would be happy if they just went into
14:58:59 5 evidence right now.

6 THE COURT: He can decide how he wants to
7 do his case.

8 MR. ROSE: Okay.

9 THE COURT: You can do your opening.

10 MR. ROSE: I think we are going to be
11 making one long legal argument with documents,
12 so.

13 THE COURT: Okay. Well, let's do an
14 opening and then.

14:59:14 15 MR. ROSE: Let me start from the beginning
16 then.

17 THE COURT: Okay.

18 MR. ROSE: So we are here today, and there
19 are three motions that you said you would try
20 to do today. And I don't have any doubt you
21 will get to do all three today given how much
22 time we have and progress we are making and the
23 amount of time Mr. Feaman and I think this will
24 take.

14:59:31 25 THE COURT: Okay.

1 MR. ROSE: The three are completely
2 related. They are all the same. They are
3 three sides of the same coin.

4 Am I blocking you?

14:59:44 5 MR. O'CONNELL: Your Honor, could I step
6 to the side?

7 THE COURT: Yes, absolutely.

8 MR. ROSE: You can have the chart.

9 MR. O'CONNELL: Okay.

14:59:53 10 THE COURT: Mr. Rose, I have to ask you.
11 I received a, I think it was a flash drive, and
12 it had proposed orders on matters that were not
13 necessarily going to be heard today. I don't
14 think I got a flash dive with a proposed order.
15:00:07 15 I did receive Mr. Feaman's on these particular
16 orders.

17 MR. ROSE: I don't think I sent you a
18 flash drive that I recall.

19 THE COURT: Okay. But I did on the other
20 ones. That's what seemed odd to me.

21 MR. ROSE: I am not aware, I am sorry.

22 THE COURT: Okay. That's okay. You may
23 proceed.

24 MR. ROSE: There's three matters today and
15:00:27 25 they are sort of related, and they involve how

1 are we going to deal with the claim by
2 Mr. Stansbury against the Estate of Simon
3 Bernstein.

4 And there are currently three separate
5 proceedings. There's a proceeding in Illinois.
6 It's all taking place in Illinois. There's the
7 probate proceeding which we are here on which
8 is the Estate of Simon Bernstein. And there's
9 the Stansbury litigation that is pending in
10 circuit court. It's just been reassigned to
11 Judge Marx, so we now have a judge, and that
12 case is going to proceed forward. It's set for
13 trial, I believe, in July to September
14 timeframe.

15:01:12 15 So the first thing you are asked to do
16 today is to reconsider a valid court order
17 entered by Judge Phillips on September the 7th.
18 We filed our motion in August, and they had 30
19 days, more than 30 days before the hearing to
20 object or contest the motion to appoint us.

21 The genesis of the motion to appoint us
22 was what happened at mediation. We had a
23 mediation in the summer. The parties signed a
24 written mediation settlement agreement. We
15:01:43 25 have asked Your Honor at next week's hearing to

1 approve the mediation settlement agreement. It
2 is signed by every single one of the ten
3 grandchildren or their court-appointed guardian
4 ad litem, Diana Lewis, who has now been
15:02:02 5 approved by this Court, upheld by the 4th
6 District, and upheld by the Supreme Court this
7 week. So I think it's safe to say that she's
8 going to be here.

9 So the settlement agreement is signed by
15:02:12 10 all of those people. It's signed by my client
11 as the trustee. It's also signed by four of
12 the five children, excluding Eliot Bernstein.

13 And as part of this, once we had a
14 settlement, there was a discussion of how do we
15:02:29 15 get this relatively modest estate to the finish
16 line. And the biggest impediment getting to
17 the finish line is this lawsuit. Until this
18 lawsuit is resolved, his client is something.
19 We can debate what he is. He claims to be an
15:02:46 20 interested person. I think technically under
21 law he is a claimant. Judge, I think even
22 Judge Colin ruled he was not a creditor and
23 denied his motion to remove and disqualify Ted
24 Bernstein as trustee. That was pending and
15:03:03 25 there's an order that does that a long time

1 ago. If I could approach?

2 THE COURT: Sure.

3 MR. ROSE: I don't have the docket entry
4 number. This is in the court file. This was
15:03:12 5 Judge Colin on August 22nd of 2014.

6 THE COURT: I saw it.

7 MR. ROSE: He has been trying to remove me
8 and Mr. Bernstein for like almost three or four
9 years now. But that's only significant because
15:03:24 10 he is not a creditor. He is a claimant. So
11 what we want to do is we want to get his claim
12 to the finish line.

13 So I am not talking about anything that
14 happened at mediation. Mediation is now over.
15:03:35 15 We have a signed settlement agreement.

16 Mr. Stansbury participated in the mediation,
17 but we did not make a settlement with him.
18 Okay.

19 So as a result of the mediation, all the
20 other people, everybody that's a beneficiary of
21 this estate coming together and signing a
22 written agreement, those same people as part of
23 the written agreement said we want this case to
24 finish, and how are we going to do that.

15:03:59 25 Well, let's see. Mr. Stansbury is the

1 plaintiff represented by Mr. Feaman. The
2 estate was represented by -- do you?

3 THE COURT: No.

4 MR. ROSE: I can give you one to have if
15:04:16 5 you want to make notes on.

6 THE COURT: I would like that. I would
7 like that very much.

8 MR. ROSE: That's fine. I have two if you
9 want to have one clean and one with notes.

15:04:22 10 THE COURT: Thank you.

11 MR. ROSE: You will recall -- I don't want
12 to talk out of school because we decided we
13 weren't going to talk out of school. But I got
14 Mr. Feaman's -- like I didn't have a chance to
15 even get this to you because I hadn't seen his
16 until after your deadline, but.

17 THE COURT: This is demonstrative.

18 MR. ROSE: Okay.

19 THE COURT: He can pull up something new
15:04:39 20 demonstrative as well.

21 MR. ROSE: Mr. -- originally the defendant
22 here originally was assigned when he was alive.
23 When he died his estate was substituted in. He
24 hired counsel. His counsel didn't do much in
15:04:54 25 the case because I did all the work because I

1 was representing the companies, Ted Bernstein
2 and another trust. And in January of 2014 the
3 PRs of the estate resigned totally unrelated to
4 this.

15:05:13 5 So in the interim between the original PRs
6 and the appointment of Mr. O'Connell, we had a
7 curator. The curator filed papers, which I
8 filed, it's in the file, but I have sent it to
9 Your Honor, where he admits, he states that he
15:05:27 10 wanted to stay the litigation but he states
11 that I have been doing a great job representing
12 him and he hasn't even had to hire a lawyer yet
13 because he is just piggybacking on the work I
14 am doing.

15:05:36 15 I represented in this lawsuit the very one
16 that Mr. O'Connell wants to retain my firm to
17 handle. And he wants it with the consent --
18 and one thing he said was that there's some
19 people that aren't here. Every single person
15:05:47 20 who is a beneficiary of this estate wants my
21 firm to handle this for the reasons I am about
22 to tell you. And I don't think there's any
23 dispute about it.

24 I was the lawyer that represented the main
15:05:56 25 company LIC and AIM. Those are the shorthands

1 for the two companies. Mr. Stansbury was at
2 one point a ten percent stockholder in these
3 companies. He gave his stock back. Ted
4 Bernstein who is my client, and the Shirley
15:06:11 5 Bernstein trust, I represented all these people
6 in the case for about 15 or 18 months before we
7 settled. I could be off on the timing. But I
8 did all the documents, the production,
9 interviewed witnesses, interviewed everybody
15:06:23 10 you could interview. Was pretty much ready to
11 go to trial other than we had to take the
12 deposition of Mr. Stansbury, and then he had
13 some discovery to do.

14 We went and we settled our case. Because
15:06:33 15 we had a gap, because we didn't have a PR at
16 the time, we were in the curator period,
17 Mr. Brown was unwilling to do anything, so we
18 didn't settle the case.

19 So Mr. O'Connell was appointed, so he is
15:06:45 20 now the personal representative. He doesn't
21 know the first thing about the case. No
22 offense. I mean, he couldn't. You know, it's
23 not expected for him to know the first thing
24 about it. I don't mean the first thing. But
15:06:57 25 he doesn't know much about the case or the

1 facts.

2 We had discussions about hiring someone
3 from his law firm to do it. I met someone from
4 his law firm and provided some basic
15:07:07 5 information, but nothing really happened. We
6 were hopeful we'd settle in July. We didn't
7 settle.

8 So they said the beneficiaries with
9 Mr. O'Connell's consent we want Mr. Rose to
15:07:19 10 become the lawyer and we want Mr. Ted Bernstein
11 to become the administrator ad litem.

12 Now, why is that important? That's the
13 second motion you are going to hear, but it's
14 kind of important.

15:07:28 15 THE COURT: That's the one Phillips
16 deferred?

17 MR. ROSE: Well, what happened was
18 Mr. Feaman filed an objection to it timely.
19 And in an abundance of caution because it might
15:07:39 20 require an evidentiary or more time than we
21 had, Judge Phillips deferred. That was my
22 order. And my main goal was I wanted to get
23 into the case and so we could start going to
24 the status conferences and get this case
15:07:48 25 moving. And what happened was as soon as we

1 had the first status conference and we started
2 the case moving, until we got the motion to
3 disqualify, and stopped and put the brakes on.

4 And this is a bench trial, so there's
5 not -- this is like maybe argument, but it's a
6 little bit related. I believe that Mr. -- this
7 is the case they want to happen first and
8 they're putting the brakes on this case because
9 they want this case to move very slowly.
10 Because the only way there's any money to
11 pay --

12 MR. FEAMAN: Objection.

13 THE COURT: Legal objection?

14 MR. FEAMAN: What counsel believes is not
15 appropriate for --

16 THE COURT: Sustained.

17 MR. ROSE: Okay. So this case -- so
18 anyway. Mr. Bernstein, Ted Bernstein, Ted,
19 Simon and Bill, that's Ted, the dead guy Simon
20 and his client Bill, were the three main
21 shareholders of a company.

22 THE COURT: I got it.

23 MR. ROSE: Ted and Simon started it. They
24 brought Bill in and gave him some stock for a
25 while. Bill is suing for two and a half

1 million dollars. The only person alive on this
2 planet who knows anything about this case is
3 Ted. He has got to be the representative of
4 the estate to defend the case. He has got to
15:09:00 5 be sitting at counsel table. If he is not at
6 counsel table, he is going to be excluded under
7 the exclusionary rule and he will be out in the
8 hallway the whole trial. And whoever is
9 defending the estate won't be able to do it.
15:09:11 10 This guy wants Ted out and me out because we
11 are the only people that know anything about
12 this case.

13 So why is that important? Well, it makes
14 it more expensive. It makes him have a better
15:09:21 15 chance of winning. That's what this is about.
16 And at the same time the Illinois case is
17 really critical here because unless the estate
18 wins the money in Illinois, there's nothing in
19 this estate to pay him.

15:09:33 20 THE COURT: I understand.

21 MR. ROSE: Mr. O'Connell, I proffer, he
22 advised me today there's about \$285,000 of
23 liquid assets in the estate. And we are going
24 to get some money from a settlement if you
15:09:46 25 approve it.

1 Now, Eliot and Mr. Stansbury will probably
2 object to that. It's not for today. So we
3 have a settlement with the lawyers, the ones
4 that withdrew. So we got a little bit of money
15:09:56 5 from that. But there's really not going to be
6 enough money in the estate to defend his case,
7 pay all, do all the other things you got to do.
8 So this is critical for Mr. Stansbury.

9 So the original PR, the guys that
15:10:10 10 withdrew, they refused to participate in this
11 lawsuit because they knew the facts. They knew
12 the truth. They met with Simon. They drafted
13 his documents. So they were not participating
14 in this lawsuit.

15:10:21 15 Mr. Feaman stated in his opening that his
16 client tried to intervene. So Bill tried to
17 intervene directly into Illinois, and the
18 Illinois judge said, no thank you, leave.

19 So when these guys withdrew we got a
15:10:38 20 curator. The curator I objected --

21 THE COURT: Mr. Brown?

22 MR. ROSE: Ben Brown. He was a lawyer in
23 Palm Beach, a very nice man. He passed away in
24 the middle of the lawsuit at a very young age.
15:10:52 25 But he -- the important thing -- I interrupted,

1 and I apologize for objecting. I didn't know
2 what to do. But Mr. Brown didn't say, hey, I
3 want to get in this lawsuit in Illinois; let me
4 jump in here. Mr. Feaman and Mr. Stansbury
15:11:06 5 filed a motion to require Mr. Brown to
6 intervene in the case.

7 THE COURT: In the federal case?

8 MR. ROSE: In the federal case in
9 Illinois. Because it's critical for
15:11:17 10 Mr. Stansbury, it's critical for Mr. Stansbury
11 to get this money into the estate.

12 THE COURT: Into the estate, I understand.

13 MR. ROSE: Okay. So we had a hearing
14 before Judge Colin, a rather contested hearing
15:11:26 15 in front of Judge Colin. Our position was very
16 simple -- one of the things you will see, my
17 client's goals on every one of these cases are
18 exactly the same. Minimize time, minimize
19 expense, maximize distribution. So we have the
20 same goal in every case.

21 All the conflict cases you are going to
22 see all deal with situations where the lawyers
23 have antagonistic approaches and they want --
24 like in one case he has, it's one lawsuit the
15:11:54 25 lawyer wants two opposite results inside the

1 same lawsuit for two different clients. That's
2 completely different. And even that case,
3 which is the Staples case, it was two to one.
4 There was a judge that dissented and said,
15:12:05 5 look, I understand what you are saying, but
6 there's still not really a conflict there.

7 But our goals are those goals.

8 So what we said to Judge Colin is we think
9 the Illinois case is a loser for the estate.
15:12:20 10 We believe the estate is going to lose. The
11 lawyer who drafted the testamentary documents
12 has given an affidavit in the Illinois case
13 saying all his discussions were with Simon.
14 The judge in Illinois who didn't have that when
15 he first ruled had that recently, and he denied
16 their summary judgment in Illinois. So it's
17 going to trial. But that lawyer was the
18 original PR, so he wasn't bringing the suit.

19 Mr. Brown says, I am not touching this.
15:12:45 20 So we had a hearing, and they forced Mr. Brown
21 to intervene with certain conditions. And one
22 of the conditions was very logical. If our
23 goal is to save money and Mr. Stansbury,
24 Mr. Feaman's client, is going to pay the cost
15:12:59 25 of this, he will get it back if he wins, then

1 we got no objection anymore, as long as he is
2 funding the litigation. He is the only guy who
3 benefits from this litigation. None of the --
4 the children and the grandchildren they don't
15:13:12 5 really care.

6 Judge Lewis represents Eliot's three kids
7 versus Eliot. The money either goes to Eliot
8 or his three kids. She's on board with, you
9 know, we don't want to waste estate funds on
15:13:25 10 this. Our goal is to keep the money in the
11 family. He wants the money.

12 This is America. He can file the lawsuit.
13 That's great. But these people should be able
14 to defend themselves however they choose to see
15:13:36 15 fit. But the critical thing about this is
16 Mr. Brown didn't do anything in here. Judge
17 Colin said, you can intervene as long as he is
18 paying the bills. And that's an order. Well,
19 that order was entered a long time ago. It was
15:13:48 20 not appealed.

21 So one of the things, the third thing you
22 are being asked to do today is vacate that
23 order, you know. And I did put in my motion,
24 and I don't know if it was ad hominem toward
15:13:58 25 Mr. Feaman, it really was his client, his

1 client is driving this pace. He is driving us
2 to zero. I mean, we started this estate with
3 over a million dollars. He has fought
4 everything we do every day. It's not just
15:14:11 5 Eliot. Eliot is a lot of this. Mr. Stansbury
6 is driving us to zero as quickly as possible.

7 So in the Illinois case the estate is
8 represented by Stamos and Trucco. They are
9 hired by, I think, Ben Brown but was in
15:14:27 10 consultation with Mr. Feaman. They
11 communicated -- the documents will come into
12 evidence. I am assuming he is going to put the
13 documents on his list in evidence.

14 You will see e-mails from Mr. Stamos from
15:14:39 15 the Stamos Trucco firm, they e-mailed to
16 Mr. O'Connell, and they copied Bill Stansbury
17 and Peter Feaman because they are driving the
18 Illinois litigation. I don't care. They can
19 drive it. I think it's a loser. They think
20 it's a winner. We'll find out in a trial.

21 They are supposed to be paying the bills.
22 I think the evidence would show his client's in
23 violation of Judge Colin's orders because his
24 client hasn't paid the lawyer all the money
15:15:00 25 that's due. And Mr. O'Connell, I think, can

1 testify to that. I don't think it's a disputed
2 issue. But the lawyer's been paid 70 and he is
3 owed 40, which means Mr. Feaman's client is
4 right now technically in violation of a court
5 order.

6 I have asked numerous times for them to
7 give me the information. I just got it this
8 morning. But I guess I can file a motion to
9 hold him in contempt for violating a court
10 order.

11 But in the Chicago case the plaintiff is
12 really not Ted Bernstein, although he probably
13 nominally at some point was listed as a
14 plaintiff in the case. The plaintiff is the
15 Simon Bernstein 1995 irrevocable life insurance
16 trust. According to the records of the
17 insurance company, the only person named as a
18 beneficiary is a defunct pension plan that went
19 away.

20 THE COURT: Net something net something,
21 right?

22 MR. ROSE: Right. And then the residual
23 beneficiary is this trust. And these are
24 things Simon -- he filled out one designation
25 form in '95 and he named the 95 trust.

1 THE COURT: But there's no paperwork,
2 right?

3 MR. ROSE: We can't find the paperwork.

4 Not me. It was not me. I have nothing to do
15:16:01 5 with it. I said we. I wanted to correct the
6 record because it will be flown up to Illinois.

7 Whoever it is can't find the paperwork.

8 So there's a proceeding, and it happens in
9 every court, and there's Illinois proceedings
15:16:11 10 to determine how do you prove a lost trust.

11 This lawsuit is going to get resolved one
12 way or the other. But in this lawsuit the 95
13 trust Ted Bernstein is the trustee, so he
14 allowed, though under the terms of the trust in
15 this case, and we cited it to you twice or
16 three times, under Section 4J of the trust on
17 page 18 of the Simon Bernstein Trust, it says
18 that you can be the trustee of my trust, Simon
19 said you can be the trustee of my trust even if
15:16:41 20 you have a different interest as a trustee of a
21 different trust. So that's not really an
22 issue. And up in Chicago Ted Bernstein is the
23 trustee of the 95 trust. He is represented by
24 the Simon law firm in Chicago.

15:16:52 25 I have never appeared in court. He is

1 going to put in all kinds of records. My name
2 never appears -- I have the docket which he
3 said can come into evidence. I don't appear on
4 the docket.

15:17:02 5 Now, I have to know about this case though
6 because I represent the trustee of the
7 beneficiary of this estate. I've got to be
8 able to advise him. So I know all about his
9 case. And he was going to be deposed.

15:17:14 10 Guess who was at his deposition? Bill
11 Stansbury. Bill Stansbury was at his
12 deposition, sat right across from me. Eliot,
13 who is not here today, was at that deposition,
14 and Eliot got to ask questions of him at that
15 deposition. He wanted me at the deposition.
16 He is putting the deposition in evidence. If
17 you study the deposition, all you will see is
18 on four occasions I objected on what grounds?
19 Privilege. Be careful what you talk about; you
20 are revealing attorney/client privilege.
21 That's all I did. I didn't say, gee, don't
22 give them this information or that information.
23 And if I objected incorrectly, they should have
24 gone to the judge in Illinois. And I guarantee
15:17:50 25 you there's a federal judge in Illinois that if

1 I had objected improperly would have overruled
2 my objections. I instructed him to protect his
3 attorney/client privilege. That's what I was
4 there for, to advise him and to defend him at
15:18:00 5 deposition and to protect him. That's all I
6 did in the Illinois case. And that is over.

7 Now, I am rooting like crazy that the
8 estate loses this case in one sense because
9 that's what everybody that is a beneficiary of
15:18:18 10 my trust wants. But I could care less how that
11 turns out, you know, from a legal standpoint.
12 I don't have an appearance in this case. And
13 everyone up there is represented by lawyers.

14 So what we have now is we have this motion
15 which seeks to disqualify my law firm. We
16 still have the objection to Ted serving as the
17 administrator ad litem. And I think those two
18 kind of go hand in hand.

19 There's another component you should know
15:18:50 20 about that motion. But as I told you, our
21 goals are to reduce expense.

22 The reason that everybody wanted Ted to
23 serve as the administrator ad litem, so he
24 would sort of be the representative of the
15:19:03 25 estate, because he said he would do that for

1 free.

2 THE COURT: I remember.

3 MR. ROSE: Mr. O'Connell is a
4 professional. He is not going to sit there for
15:19:13 5 free for a one-week, two-week jury trial and
6 prepare and sit for deposition. That's enough
7 money -- just his fees alone sitting at trial
8 are enough to justify everything -- you know,
9 it's a significant amount of money.

15:19:27 10 So that's what's at issue today.

11 But their motion for opening statement,
12 and I realize this is going to overlap, my
13 other will be --

14 THE COURT: Which motion?

15:19:40 15 MR. ROSE: The disqualification.

16 THE COURT: I wasn't sure.

17 MR. ROSE: I got you. That was sort of
18 first up. All right. So I am back. That's
19 the background. You got the background for the
15:19:48 20 disqualification motion. This is an adversary
21 in litigation trying to disqualify me.

22 I think it is a mean-spirited motion by
23 Mr. Stansbury designed to create chaos and
24 disorder and raise the expense, maybe force the
15:20:04 25 estate into a position where they have to

1 settle, because now they don't have a
2 representative or an attorney that knows
3 anything about the case.

4 MR. FEAMAN: Objection.

15:20:11 5 THE COURT: Legal objection?

6 MR. FEAMAN: Comments on the motivation or
7 intention of opposing counsel in opening
8 statement is not proper.

9 THE COURT: I will allow it only -- mean
10 spirited I will strike. The other comments I
11 will allow because under Rule 4-1.7, and I may
12 be misquoting, but it is one of the two rules
13 we have been looking at under the Florida Bar,
14 the commentary specifically talks about an
15 adverse party moving to disqualify and the
16 strategy may be employed. So I will allow that
17 portion of his argument, striking mean
18 spirited.

19 MR. ROSE: Okay. If you turn to tab 2 of
20 the -- we, I think, sent you a very thin
21 binder.

22 THE COURT: Yes, you did.

23 MR. ROSE: We had already sent you the
24 massive book a long time ago.

15:20:59 25 THE COURT: Yes.

1 MR. ROSE: And I think all I sent you was
2 the very thin binder. If you turn to Tab 2.

3 THE COURT: In any other world this would
4 have been a nice sized binder. In this
15:21:06 5 particular case you are indeed correct, this is
6 a very thin binder.

7 MR. ROSE: Okay. If you flip to page
8 2240 --

9 THE COURT: I am just teasing you, sorry.
15:21:15 10 MR. ROSE: -- which is about five or six
11 pages in.

12 THE COURT: Yes.

13 MR. ROSE: This is where a conflict is
14 charged by opposing party.

15:21:22 15 THE COURT: Yes.

16 MR. ROSE: It's part of Rule 4-1.7. These
17 two rules have a lot of overlap.

18 And I would point for the record I did not
19 say that Mr. Feaman was mean spirited. I
15:21:32 20 specifically said mean spirited by his client.

21 THE COURT: Thank you.

22 MR. ROSE: So conflicts charged by the
23 opponent, and this is just warning you that
24 this can be used as a technique of harassment,
15:21:40 25 and that's why I am tying that in.

1 But the important things are I have never
2 represented Mr. Stansbury in any matter.
3 Generally in a conflict of interest situation
4 you will see I represented him. I don't have
15:21:56 5 any confidential information from
6 Mr. Stansbury. I have only talked to him
7 during his deposition. It wasn't very
8 pleasant. And if you disqualify me to some
9 degree my life will be fine, because this is
15:22:07 10 not the most fun case to be involved in. I am
11 doing it because I represent Ted and we are
12 trying to do what's right for the
13 beneficiaries.

14 THE COURT: Appearance for the record.
15:22:18 15 Someone just came in.

16 MR. ELIOT BERNSTEIN: Hi. Eliot Ivan
17 Bernstein.

18 THE COURT: Thank you.

19 MR. ELIOT BERNSTEIN: I am pro se, ma'am.

15:22:24 20 THE COURT: Thank you. You may proceed.
21 I just wanted the court reporter to know.

22 MR. ELIOT BERNSTEIN: Thank you, Your
23 Honor.

24 MR. ROSE: I don't have any confidential
15:22:28 25 information of Mr. O'Connell. He is the PR of

1 the estate. I don't know anything about
2 Mr. O'Connell that would compromise my ability
3 to handle this case. I am not sure he and I
4 have ever spoken about this case. But in
5 either case, I don't have any information.
15:22:39

6 So I can't even understand why they are
7 saying this is a conflict of interest. But the
8 evidence will show, if you look at the way
9 these are set up, these are three separate
10 cases, not one case. And nothing I am doing in
11 this case criticizes what I am doing in this
12 case. Nothing I am doing -- the outcome of
13 this case is wholly independent of the outcome
14 of this case. He could lose this case and win
15 this case. He could lose this case and lose
16 this case. I mean, the cases have nothing to
17 do with the issues.

18 Who gets the insurance proceeds? Bill
19 Stansbury is not even a witness in that case.
20 It has nothing to do with the issue over here,
21 how much money does Bill Stansbury get? So
22 you've got wholly unrelated, and that's the
23 other part of the Rule 4-1.9 and 4-1.7, it
24 talks about whether the matters are unrelated.
15:23:31 25 And I guess when I argue the statute I will

1 argue the statute for you.

2 At best what the evidence is going to show
3 you -- and I am not trying to win this on a
4 technicality. I want to win this like up or
15:23:43 5 down and move on. Because this estate can't --
6 this delay was torture to wait this long for
7 this hearing.

8 But if I showed up at Ted's deposition,
9 and I promise you I will never show up again, I
15:23:57 10 am out of that case, this is a conflict of
11 interest with a former client. I have ceased
12 representing him at his deposition. He is
13 never going to be deposed again. If it's a
14 conflict of interest with a former client, all
15:24:09 15 these things are the prerogative of the former
16 client. They are not the prerogative of the
17 new client. The new client it's not the issue.
18 So if I represented Ted in his deposition, I
19 cannot represent another person in the same or
15:24:21 20 a substantially related matter.

21 So I can't represent the estate in this
22 case because I sat at Ted's deposition, unless
23 the former client gives informed consent. He
24 could still say, hey, I don't care, you do the
15:24:35 25 Illinois case for the estate. I wouldn't do

1 that, but that's what the rule says. Use
2 information. There's no information. I am not
3 even going to waste your time. Reveal
4 information. So there's no information. If
15:24:46 5 this is the rule we are traveling under, you
6 deny the motion and we go home and move on and
7 get back to litigation. If we are traveling
8 under this rule, I cannot under 4-1.7 --

9 MR. FEAMAN: Excuse me, Your Honor, this
10 sounds more like final argument than it does
11 opening statement what the evidence is going to
12 show.

13 THE COURT: Overruled.

14 MR. ROSE: So under 4-1.7, except as in b,
15 and I am talking about b because that's maybe
16 the only piece of evidence we may need is the
17 waiver. I have a written waiver. I think it
18 has independent legal significance. Because if
19 I obtained his writing in writing, I think it's
15:25:30 20 admissible just because Mr. O'Connell signed
21 it. But they object, they may object to the
22 admission of the waiver, so I may have to put
23 Mr. O'Connell on the stand for two seconds and
24 have him confirm that he signed the waiver
15:25:40 25 document.

1 But except if it's waived, now let's put
2 that aside. We never even get to the waiver.
3 The representation of one client has to be
4 directly adverse to another client. So
15:25:53 5 representing Ted in his deposition is not --
6 has nothing to do -- first of all, Ted had
7 counsel representing him directly adverse. I
8 was there protecting him as trustee, protecting
9 his privileges, getting ready for a trial that
15:26:07 10 we had before Judge Phillips where he upheld
11 the validity of the documents, determined that
12 Ted didn't commit any egregious wrongdoing.
13 That's the December 15th trial. It's on appeal
14 to the 4th District. That's what led to having
15:26:23 15 Eliot determined to have no standing, to Judge
16 Lewis being appointed as guardian for his
17 children. That was the key. That was the only
18 thing we have accomplished to move the thing
19 forward was that, but we had that.
15:26:34 20 But that's why I was at the deposition,
21 but it was not directly adverse to the estate.
22 Number two, there's a substantial risk
23 that the representation of one or more clients
24 will be materially limited by my
15:26:52 25 responsibilities to another. I have asked them

1 to explain to me how might -- how what I want
2 to do here, which is to defend these people
3 that I have been doing -- I have asked
4 Mr. Feaman to explain to me how what I am doing
15:27:06 5 to defend the estate, like I defended all these
6 people against his client, could possibly be
7 limited by my responsibilities to Ted. My
8 responsibilities to Ted is to win this lawsuit,
9 save the money for his family, determine his
15:27:19 10 father did not defraud Bill Stansbury. So I am
11 not limited in any way.

12 So if you don't find one or two, you don't
13 even get to waiver. But if you get to waiver,
14 and this is evidence, it's one of the -- I only
15 gave you three new things in the binder. One
16 was the waiver. One was the 57.105 amended
17 motion.

18 I think the significance of that is after
19 I got the waiver, after I got a written waiver,
15:27:46 20 I thought that changed the game a little bit.
21 You know, if you are a lawyer and you file a
22 motion to disqualify -- so when I got the
23 written waiver --

24 MR. FEAMAN: Your Honor --

15:27:54 25 THE COURT: Legal objection.

1 MR. FEAMAN: Not part of opening statement
2 when you are commenting on a 57.105 motion --

3 THE COURT: Sustained.

4 MR. FEAMAN: -- that you haven't even seen
15:28:01 5 yet.

6 THE COURT: Sustained.

7 MR. FEAMAN: Thank you.

8 THE COURT: Sustained.

9 MR. ROSE: I got a waiver signed by
15:28:08 10 Mr. O'Connell. I had his permission, but I got
11 a formal written waiver. And it was after our
12 first hearing, and it was after -- so I sent it
13 to Mr. Feaman.

14 But if you look under the rule, it's a
15 clearly waivable conflict. Because I am not
16 taking an antagonistic position saying like the
17 work I did in the other case was wrong or this
18 or that.

19 And if you look at the rules of
15:28:31 20 professional conduct again, and we'll do it in
21 closing, but I am the one who is supposed to
22 decide if I have a material limitation in the
23 first instance. That's what the rules direct.
24 Your Honor reviews that. But in the first
15:28:44 25 instance I do not have any material limitation

1 on my ability to represent the estate
2 vigorously, with all my heart, with everything
3 my law firm's resources, and with Ted's
4 knowledge of the case and the facts to defend
15:29:01 5 his case, there is no limitation and there's no
6 substantial risk that I am not going to do the
7 best job possible to try to protect the estate
8 from this claim.

9 And I think we would ask that you deny the
15:29:12 10 motion to disqualify on the grounds that
11 there's no conflict, and the waiver for
12 Mr. O'Connell would resolve it.

13 And we also would like you to appoint Ted
14 Bernstein. There's no conflict of interest in
15:29:25 15 him defending the estate as its representative
16 through trial to try to protect the estate's
17 money from Mr. Stansbury. It's not like Ted or
18 I are going to roll over and help Mr. Stansbury
19 or sell out the estate for his benefit. That's
15:29:41 20 what a conflict would be worried about. We are
21 not taking a position in -- we are not in the
22 case yet, obviously. If you allow us to
23 continue in this case, we are not going to take
24 a position in this case which is different from
15:29:53 25 any position we have ever taken in any case

1 because all --

2 THE COURT: Just for the record, for the
3 record, I see you pointing. So you are not
4 taking a position in the Palm Beach circuit
5 court --

6 MR. ROSE: Case.

7 THE COURT: -- civil case --

8 MR. ROSE: Different than we've --

9 THE COURT: -- that's different than
10 probate or even the insurance proceeds?

11 MR. ROSE: Correct. Different from what
12 we did in the federal case in Illinois,
13 different from we are taking in the probate
14 case. Or more importantly, in fact most
15 importantly, we are not taking a position
16 differently than we took when I represented
17 other people in the same lawsuit.

18 You have been involved in lawsuits where
19 there are eight defendants and seven settled
20 and the last guy says, well, gee, let me hire
21 this guy's lawyer, either he is better or my
22 lawyer just quit or I don't have a lawyer. So
23 but I am not taking a position like here we
24 were saying, yeah, he was a terrible guy, he
25 defrauded you, and now we are saying, oh, no,

1 it's not, he didn't defraud you. That would be
2 a conflict. We have defended the case by
3 saying that Mr. Stansbury's claim has no merit
4 and we are going to defend it the same way.

15:30:49 5 And then that's what we'd like to do with
6 the Florida litigation, and then time
7 permitting we'd like to discuss the Illinois
8 litigation, because we desperately need a
9 ruling from Your Honor on the third issue you
15:31:00 10 set for today which is are you going to vacate
11 Judge Colin's order and free Mr. Stansbury of
12 the duty to fund the Illinois litigation.

13 Judge Colin entered the order. The issue
14 was raised multiple times before Judge
15 Phillips. He wanted to give us his ruling one
16 day, and we -- you know, he didn't. We were
17 supposed to set it for hearing. We had
18 numerous hearings set on that motion, the
19 record will reflect, and those were all
15:31:26 20 withdrawn. And now that they have a new judge,
21 I think they are coming back with the same
22 motion to be excused from that, and that's the
23 third thing you need to decide today.

24 THE COURT: All right.

15:31:36 25 MR. ROSE: Unless you have any questions,

1 I'll --

2 THE COURT: Give me one second to finish
3 my notes. Just one second, please. I have to
4 clean things up immediately or I go back and
15:33:38 5 look and sometimes my typos kill me. Just one
6 more second.

7 Mr. Feaman, back to you.

8 MR. FEAMAN: Thank you.

9 THE COURT: Feaman, forgive me.

15:34:17 10 MR. FEAMAN: No problem.

11 I would offer first, Your Honor, as
12 Exhibit 1 --

13 THE COURT: I am going to do a separate
14 list so I will keep track of all the exhibits.
15:34:31 15 So Exhibit 1, go ahead.

16 MR. FEAMAN: It's a --

17 THE COURT: Stansbury Exhibit 1?

18 MR. FEAMAN: Yes.

19 THE COURT: Go ahead.

15:34:41 20 MR. FEAMAN: May I approach, Your Honor?

21 THE COURT: You may. Has everybody seen a
22 copy?

23 MR. FEAMAN: Yes.

24 MR. ROSE: I have seen a copy. Do you
15:34:48 25 have an extra copy?

1 MR. FEAMAN: Sure. We have one for
2 everybody.

3 THE COURT: It appears to be United States
4 District Court Northern District of Illinois
5 Eastern Division.

6 15:35:03 MR. FEAMAN: There's exhibit stickers on
7 the back.

8 MR. ROSE: Just for the record, I have no
9 objection to the eight exhibits he has given,
10 and he can put them in one at a time.

11 THE COURT: Okay. Great.

12 MR. ROSE: But no objection.

13 THE COURT: Okay. This is the first one
14 in the complaint.

15 15:35:27 MR. FEAMAN: And we offer Exhibit 1, Your
16 Honor, for the purpose as shown on the first
17 page of the body of the complaint where it
18 lists the parties, that the plaintiffs are
19 listed, and Ted Bernstein is shown individually
20 as the plaintiff in that action.

21 THE COURT: Give me one second. I have to
22 mark as Claimant Stansbury's into evidence
23 Exhibit 1.

24 24 ///

25 25 ///

1 (Claimant Stansbury's Exb. No. 1,
2 Complaint, United States District Court Northern
3 District of Illinois.)

4 THE COURT: And you are saying on page
5 two?

6 MR. FEAMAN: Yes. After the style of the
7 case, the first page of the body under the
8 heading Claimant Stansbury's First Amended
9 Complaint, the plaintiff parties are listed.

0 THE COURT: Yes.

11 MR. FEAMAN: And it shows Ted Bernstein
12 individually as a plaintiff in that action.

13 | THE COURT: Okay.

14 MR. FEAMAN: May I approach freely, Your
15:36:20 15 Honor?

16 THE COURT: Yes, absolutely, as long as
17 you are no way mad.

18 MR. FEAMAN: And, Your Honor, William
19 Stansbury offers as Exhibit 2 a certified copy
15:36:41 20 of the motion to intervene filed by the Estate
21 of Simon Bernstein in the same case, the United
22 States District Court for the Northern District
23 of Illinois, the Eastern Division.

24 THE COURT: So received.

25 //

1 (Claimant Stansbury's Exb. No. 2, Motion
2 to Intervene, United States District Court Northern
3 District of Illinois.)

4 MR. FEAMAN: Thank you.

15:37:10 5 And the purpose for Exhibit 2, among
6 others, is shown on paragraph seven on page
7 four where it is alleged that the Estate of
8 Simon Bernstein is entitled to the policy
9 proceeds as a matter of law asserting the
15:37:36 10 estate's interest in the Chicago litigation.

11 THE COURT: Okay.

12 MR. FEAMAN: Next, Your Honor, I would
13 offer Stansbury's Exhibit 4.

14 | THE COURT: We have gone past Exhibit 3.

15:38:17 15 MR. FEAMAN: I am going to do that next.

16 THE COURT: Okay.

17 MR. FEAMAN: I think chronologically it
18 makes more sense to offer 4 at this point.

19 THE COURT: Sure.

15:38:25 20 MR. FEAMAN: Exhibit 4, Your Honor, is a
21 certified copy again in the same case, United
22 States District Court for the Northern District
23 of Illinois Eastern Division. It's a certified
24 copy of the federal court's order granting the
15:38:41 25 motion of the estate by and through Benjamin

1 Brown as the curator granting the motion to
2 intervene in that action.

3 And the purpose of this exhibit is found
4 on page three under the analysis section where
15:39:09 5 the court writes that why the estate should be
6 allowed to intervene, showing that the setting
7 up, I should say, a competing interest between
8 the Estate of Simon Bernstein and the
9 plaintiffs in that action, one of whom is Ted
15:39:36 10 Bernstein individually.

11 THE COURT: All right.

12 (Claimant Stansbury's Exb. No. 4, Order
13 Granting the Motion to Intervene, United States
14 District Court Northern District of Illinois.)

15:39:59 15 THE COURT: You may proceed.

16 MR. FEAMAN: Thank you.

17 THE COURT: I generally do with everybody,
18 I put all the evidence right here so if anybody
19 wants to approach and look.

15:40:22 20 Okay. This is now 3?

21 MR. FEAMAN: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. ELIOT BERNSTEIN: Excuse me, what did
24 you say?

15:40:29 25 MR. FEAMAN: She puts them there so if you

1 want to look at them you can see them.

2 THE COURT: The ones that have been
3 entered into evidence.

4 MR. ELIOT BERNSTEIN: Okay. He just gave
15:40:38 5 me a copy of everything.

6 THE COURT: Yes.

7 MR. FEAMAN: Exhibit 3, Your Honor, is
8 offered at this time it is a certified copy of
9 the, again in the same court United States
15:40:54 10 District Court Northern District of Illinois,
11 it is actual intervenor complaint for
12 declaratory judgment filed by Ben Brown as
13 curator and administrator ad litem of the
14 Estate of Simon Bernstein seeking the insurance
15:41:12 15 proceeds that are at issue in that case and
16 setting up the estate as an adverse party to
17 the plaintiffs.

18 THE COURT: So received.

19 (Claimant Stansbury's Exb. No. 3,
15:41:29 20 Complaint for Declaratory Judgement by Intervenor,
21 United States District Court Northern District of
22 Illinois.)

23 THE COURT: Thank you very much.

24 MR. FEAMAN: You are welcome.

15:41:47 25 Mr. Stansbury now offers as Exhibit 5 a

1 certified copy again for the United States
2 District Court Northern District of Illinois,
3 the answer to the intervenor complaint filed by
4 the estate, which was Exhibit 3. Exhibit 5 is
15:42:08 5 the answer filed by the plaintiffs.

6 And this is offered for the purpose as set
7 forth at page three, the plaintiff Simon
8 Bernstein -- excuse me -- the plaintiff's Simon
9 Bernstein irrevocable trust which is different
15:42:33 10 from the Simon Bernstein Trust that's the
11 beneficiary of the Simon Bernstein estate down
12 here, and Ted Bernstein individually and the
13 other plaintiffs answering the complaint filed
14 by the estate. And requesting on page seven in
15:42:54 15 the wherefore clause that the plaintiffs
16 respectfully request that the Court deny any of
17 the relief sought by the intervenor in their
18 complaint and enter judgment against the
19 intervenor and award plaintiffs their costs and
20 such other relief.

21 THE COURT: Just give me one second.

22 MR. FEAMAN: Thank you.

23 (Claimant Stansbury's Exb. No. 5, Answer
24 to Intervenor Complaint, United States District
15:43:56 25 Court Northern District of Illinois.)

1 THE COURT: I am sorry, I am having a
2 problem with my computer again. Give me just
3 one minute.

4 MR. FEAMAN: Exhibit 6 is a certified copy
5 of the -- I am sorry, are you ready?

6 THE COURT: Yes, I am.

7 MR. FEAMAN: Thank you.

8 THE COURT: Exhibit 6 is a certified copy?

9 MR. FEAMAN: Of the deposition taken by
10 the Estate of Simon Bernstein in the same
11 action, United States District Court for the
12 Northern District of Illinois of Ted Bernstein
13 taken on May 6, 2015.

14 THE COURT: Okay.

15 (Claimant Stansbury's Exb. No. 6,
16 Deposition of Ted Bernstein 5-6-15, United States
17 District Court Northern District of Illinois.)

18 MR. FEAMAN: And the highlights of that
19 deposition, Your Honor, are shown on the first
20 page showing the style of the case and noting
21 the appearances of counsel on behalf of Ted
22 Bernstein in that action, Adam Simon of the
23 Simon Law Firm, Chicago, Illinois, and Alan B.
24 Rose, Esquire of the Mrachek Fitzgerald law
25 firm of West Palm Beach, and James Stamos, the

1 attorney for the Estate of Simon Bernstein in
2 Chicago, Illinois.

3 I will not read it into the record. I
4 will just read three excerpts into the record
15:45:48 5 in the interests of time, although I am
6 offering the entire thing.

7 THE COURT: Okay.

8 MR. FEAMAN: So that we don't go back and
9 forth with I will read this, you read that. So
15:45:57 10 I am offering it entirely, but I would
11 highlight three excerpts.

12 MR. ROSE: Just with respect to the
13 documents coming into evidence, it has yellow
14 highlighting. Can he represent that he has
15:46:08 15 yellow highlighted everywhere where my name
16 appears?

17 MR. FEAMAN: Yes.

18 MR. ROSE: And therefore we don't have to
19 bother with places like searching the record.

15:46:15 20 MR. FEAMAN: That's correct. I
21 highlighted everybody's copy.

22 MR. ROSE: I have no objection.

23 THE COURT: Okay.

24 MR. ROSE: I just wanted the record to be
15:46:21 25 clear that the yellow highlighting reflects the

1 places where I either spoke or my name came up.

2 MR. FEAMAN: That's correct.

3 THE COURT: Okay.

4 MR. ROSE: Thank you, Your Honor.

15:46:28 5 MR. FEAMAN: The first subpart I was
6 reading into the record would be beginning at
7 page 63, line 20, statement by Mr. Rose. "This
8 is Alan Rose, just for the record. Since I am
9 Mr. Bernstein's personal counsel, he is not
15:46:54 10 asserting the privilege as to communications of
11 this nature as responded in your e-mail. He is
12 asserting privilege to private communications
13 he had one on one with Robert Spallina who he
14 considered to be his counsel. That's the
15:47:10 15 position for the record and that's why the
16 privilege is being asserted."

17 The second -- although the ones I am going
18 to read into the record are not all of them,
19 but just three different examples. The second
15:47:31 20 one would be at page 87, line six, statement by
21 Mr. Rose. "I am going to object, instruct him
22 not to answer based on communications he had
23 with Mr. Spallina. But you can ask the
24 question with regard to information that
15:47:59 25 Spallina disseminated to third parties or."

1 The next item is found on page 93, line
2 one, "Objection to form."

3 THE COURT: Okay.

4 MR. FEAMAN: Next I will offer Exhibits 7
5 and 8 at the same time because they are
6 related, and I will describe them for the
7 record.

8 THE COURT: Exhibit 7 is. Thank you. And
9 8.

10 MR. FEAMAN: You are welcome.

11 Exhibit 7 is an e-mail from
12 TheodoreKuyper@StamosTrucco.com, attorneys for
13 the estate in the Chicago action, to Brian
14 O'Connell or BOConnell@CiklinLubitz.com, with a
15 copy to Peter Feaman and William Stansbury,
16 enclosing a court ruling, dated January 31st,
17 2017, enclosing a court ruling. And in the
18 last line saying in the interim, quote, we
19 appreciate your comments regarding the Court's
20 ruling.

21 And then Exhibit 8 is an e-mail from James
22 Stamos, attorney for the estate in the Chicago
23 action, sent Tuesday, February 14th, 2017, to
24 Brian O'Connell, Peter Feaman, William
25 Stansbury, saying, quote, See below. What is

1 our position on settlement?, close quote. I
2 think he is right about the likely trial
3 setting this summer.

4 The e-mail response to an e-mail from
5 counsel for the plaintiffs in the Chicago
6 action that solicits information concerning a
7 demand for settlement.

8 And we'll save comment and argument on
9 those exhibits for final argument, Your Honor.

10 THE COURT: Okay.

11 (Claimant Stansbury's Exb. No. 7, E-mail,
12 1-31-2017, Theodore Kuypers to Brian O'Connell,
13 etc.)

14 (Claimant Stansbury's Exb. No. 8, E-mail,
15 2-14-2017, James Stamos to Brian O'Connell, etc.)

16 MR. ELIOT BERNSTEIN: Your Honor?

17 MR. FEAMAN: Next --

18 MR. ELIOT BERNSTEIN: Sorry, thought you
19 were done.

20 MR. FEAMAN: Next I would call Brian
21 O'Connell to the stand.

22 THE COURT: Okay.

23 - - -

24 Thereupon,

25 BRIAN O'CONNELL,

1 a witness, being by the Court duly sworn, was
2 examined and testified as follows:

3 THE WITNESS: I do.

4 THE COURT: Have a seat. Thank you very
15:52:20 5 much.

6 Before we start I need six minutes to use
7 the restroom. I will be back in six minutes.

8 (A recess was taken.)

9 THE COURT: All right. Call
15:58:54 10 Mr. O'Connell. I apologize. Let's proceed.

11 MR. FEAMAN: Thank you, Your Honor.

12 DIRECT (BRIAN O'CONNELL)

13 BY MR. FEAMAN:

14 Q. Please state your name.

15:58:59 15 A. Brian O'Connell.

16 Q. And your business address?

17 A. 515 North Flagler Drive, West Palm Beach,
18 Florida.

19 Q. And you are the personal representative,
15:59:09 20 the successor personal representative of the Estate
21 of Simon Bernstein; is that correct?

22 A. Yes.

23 Q. And I handed you during the break Florida
24 Statute 733.602. Do you have that in front of you?

15:59:22 25 A. I do.

1 Q. Would you agree with me, Mr. O'Connell,
2 that as personal representative of the estate that
3 you have a fiduciary duty to all interested persons
4 of the estate?

15:59:34 5 A. To interested persons, yes.

6 Q. Okay. Are you aware that Mr. Stansbury,
7 obviously, has a lawsuit against the estate,
8 correct?

9 A. Correct.

15:59:44 10 Q. And he is seeking damages as far as you
11 know in excess of \$2 million dollars; is that
12 correct?

13 A. Yes.

14 Q. Okay. And the present asset value of the
15 estate excluding a potential expectancy in Chicago
16 I heard on opening statement was around somewhere a
17 little bit over \$200,000; is that correct?

18 A. Correct.

19 Q. And --

16:00:11 20 A. Little over that.

21 Q. Okay. And you are aware that in Chicago
22 the amount at stake is in excess of \$1.7 million
23 dollars, correct?

24 A. Yes.

16:00:21 25 Q. And if the estate is successful in that

1 lawsuit then that money would come to the Estate of
2 Simon Bernstein, correct?

3 A. Correct.

4 Q. And then obviously that would quintuple,
16:00:35 5 if my math is correct, the assets that are in the
6 estate right now; is that correct?

7 A. They would greatly enhance the value of
8 the estate, whatever the math is.

9 Q. Okay. So would you agree that
16:00:45 10 Mr. Stansbury is reasonably affected by the outcome
11 of the Chicago litigation if he has an action
12 against the estate in excess of two million?

13 A. Depends how one defines a claimant versus
14 a creditor. He certainly sits in a claimant
16:01:04 15 position. He has an independent action.

16 Q. Right.

17 A. So on that level he would be affected with
18 regard to what happens in that litigation if his
19 claim matures into an allowed claim, reduced to a
16:01:19 20 judgment in your civil litigation.

21 Q. So if he is successful in his litigation,
22 it would -- the result of the Chicago action, if
23 it's favorable to the estate, would significantly
24 increase the assets that he would be able to look
16:01:33 25 to if he was successful either in the amount of

1 300,000 or in an amount of two million?

2 A. Right. If he is a creditor or there's a
3 recovery then certainly he would benefit from that
4 under the probate code because then he would be
16:01:48 5 paid under a certain priority of payment before
6 beneficiaries.

7 Q. All right. And so then Mr. Stansbury
8 potentially could stand to benefit from the result
9 of the outcome of the Chicago litigation depending
16:02:08 10 upon the outcome of his litigation against the
11 estate?

12 A. True.

13 Q. Correct?

14 A. Yes.

16:02:13 15 Q. So in that respect would you agree that
16 Mr. Stansbury is an interested person in the
17 outcome of the estate in Chicago?

18 A. I think in a very broad sense, yes. But
19 if we are going to be debating claimants and
16:02:26 20 creditors then that calls upon certain case law.

21 Q. Okay.

22 A. But I am answering it in sort of a general
23 financial sense, yes.

24 Q. Okay. We entered into evidence Exhibits 7
16:02:40 25 and 8 which were e-mails that were sent to you

1 first by an associate in Mr. Stamos's office and --

2 MR. FEAMAN: Could I approach, Your Honor?

3 THE COURT: Yes. Do you have an extra
4 copy for him so I can follow along?

16:02:56 5 MR. FEAMAN: I think I do.

6 THE COURT: Okay. If you don't, no
7 worries. Let me know.

8 Does anyone object to me maintaining the
9 originals so that I can follow along? If you
16:03:03 10 don't --

11 MR. FEAMAN: I know we do.

12 MR. ROSE: If you need my copy to speed
13 things up, here.

14 BY MR. FEAMAN:

16:03:24 15 Q. There's our copies of 7 and 8.

16 A. Which one did you want me to look at
17 first?

18 Q. Take a look at the one that came first on
19 January 31st, 2007. Do you see that that was an
16:03:41 20 e-mail directed to you from is it Mr. Kuyper, is
21 that how you pronounce his name?

22 A. Yes.

23 Q. Okay. On January 31st. Do you recall
24 receiving this?

16:03:53 25 A. Let me take a look at it.

1 Q. Sure.

2 A. I do remember this.

3 Q. All right. And did you have any
4 discussions with Mr. Kuyper or Mr. Stamos
16:04:19 5 concerning your comments regarding the Court's
6 ruling which was denying the estate's motion for
7 summary judgment?

8 A. There might have been another e-mail
9 communication, but no oral communication since
16:04:31 10 January.

11 Q. Did you send an e-mail back in response to
12 this?

13 A. That I don't recall, and I don't have my
14 records here.

16:04:38 15 Q. Okay.

16 A. I am not sure.

17 Q. Why don't we take a look at Exhibit 8, if
18 we could. That's the e-mail from Mr. Stamos dated
19 February 14th to you and me and Mr. Stansbury. Do
16:04:57 20 you see that?

21 A. Yes.

22 Q. And he says, "What's our position on
23 settlement?," correct?

24 A. Correct.

16:05:04 25 Q. Okay. And that's because Mr. Stamos had

1 received an e-mail from plaintiff's counsel in
2 Chicago soliciting some input on a possible
3 settlement, correct?

4 A. Yes.

16:05:19 5 Q. And when you received this did you respond
6 to Mr. Stamos either orally or in writing?

7 A. Not yet. I was in a mediation that lasted
8 until 2:30 in the morning yesterday, so I haven't
9 had a chance to speak to him.

16:05:34 10 Q. So then you haven't had any discussions
11 with Mr. Stamos concerning settlement --

12 A. No.

13 Q. -- since this?

14 A. Not -- let's correct that. Not in terms
16:05:44 15 of these communications.

16 Q. Right.

17 A. I have spoken to him previously about
18 settlement, but obviously those are privileged that
19 he is my counsel.

16:05:53 20 Q. Okay. And you are aware that -- would you
21 agree with me that Mr. Ted Bernstein, who is in the
22 courtroom today, is a plaintiff in that action in
23 Chicago?

24 A. Which action?

16:06:06 25 Q. The Chicago filed, the action filed by

1 Mr. Bernstein?

2 A. Can you give me the complaint?

3 Q. Sure.

4 MR. FEAMAN: If I can take a look?

16:06:14 5 THE COURT: Go ahead.

6 BY MR. FEAMAN:

7 Q. This is the --

8 MR. ROSE: We'll stipulate. The documents
9 are already in evidence.

16:06:25 10 THE COURT: Same objection?

11 MR. ROSE: I mean, we are trying to save
12 time.

13 BY MR. FEAMAN:

14 Q. Take a look at the third page.

16:06:33 15 (Overspeaking.)

16 THE COURT: Hold on. Hold on. Hold on.
17 I have got everybody talking at once. It's
18 Feaman's case. We are going until 4:30. I
19 have already got one emergency in the, we call
20 it the Cad, that means nothing to you, but I am
21 telling you all right now I said we are going
22 to 4:30.

23 THE WITNESS: Yes, sir, Ted Bernstein is a
24 plaintiff.

25 ///

1 BY MR. FEAMAN:

2 Q. Individually, correct?

3 A. Individually and as trustee.

4 Q. And Mr. Stamos is your attorney who
16:06:57 5 represents the estate, correct?

6 A. Correct.

7 Q. And the estate is adverse to the
8 plaintiffs, including Mr. Bernstein, correct?

9 A. In this action, call it the Illinois
16:07:09 10 action, yes.

11 Q. Correct.

12 A. Okay.

13 THE COURT: Hold on. One more time. Go
14 back and say that again. You are represented
16:07:16 15 by Mr. Stamos?

16 THE WITNESS: Right, in the Illinois
17 action, Your Honor.

18 THE COURT: Right.

19 THE WITNESS: And Ted Bernstein
16:07:22 20 individually and as trustee is a plaintiff.

21 THE COURT: Right, individually and as
22 trustee, got it.

23 THE WITNESS: And the estate is adverse to
24 Ted Bernstein in those capacities in that
16:07:32 25 litigation.

1 BY MR. FEAMAN:

2 Q. All right. And are you aware --

3 THE COURT: Thank you.

4 BY MR. FEAMAN:

16:07:37 5 Q. And are you aware that Mr. Rose represents
6 Mr. Ted Bernstein in various capacities?

7 A. Yes.

8 Q. Generally?

9 A. In various capacities generally, right.

16:07:52 10 Q. Including individually, correct?

11 A. That I am not -- I know as a fiduciary,
12 for example, as trustee from our various and sundry
13 actions, Shirley Bernstein, estate and trust and so
14 forth. I am not sure individually.

16:08:10 15 Q. How long have you been involved with this
16 Estate of Simon Bernstein?

17 A. A few years.

18 Q. Okay. And as far as you know
19 Mr. Bernstein has been represented in whatever
16:08:23 20 capacity in all of this since that time; is that
21 correct?

22 A. He is definitely -- Mr. Rose has
23 definitely represented Ted Bernstein since I have
24 been involved. I just want to be totally correct
16:08:34 25 about exactly what capacity. Definitely as a

1 fiduciary no doubt.

2 Q. Okay. And did you ever see the deposition
3 that was taken by your lawyer in the Chicago action
4 that was introduced as Exhibit 6 in this action?

16:08:53 5 A. Could I take a look at it?

6 Q. Sure. Have you seen that deposition
7 before, Mr. O'Connell?

8 A. I am not sure. I don't want to guess.

9 Because I know it's May of 2015. It's possible.
10 There were a number of documents in all this
11 litigation, and I would be giving you a guess.

12 Q. On that first page is there an appearance
13 by Mr. Rose on behalf of Ted Bernstein in that
14 deposition?

16:09:31 15 A. Yes.

16 Q. So would you agree with me that Ted
17 Bernstein is adverse to the estate in the Chicago
18 litigation? You said that earlier, correct?

19 A. Yes.

20 Q. Okay. And would you agree with me upon
21 reviewing that deposition that Mr. Rose is
22 representing Ted Bernstein there?

23 MR. ROSE: Objection, calls for a legal
24 conclusion.

16:09:55 25 THE WITNESS: There's an appearance by

1 him.

2 THE COURT: Sustained.

3 BY MR. FEAMAN:

4 Q. There's an appearance by him? Where does
5 it show that?

6 MR. ROSE: The objection is sustained.

7 THE COURT: I sustained the objection.

8 MR. FEAMAN: Oh, okay. Sorry.

9 | BY MR. FEAMAN:

10 Q. Now, you have not gotten -- you said that
11 you wanted to retain Mr. Rose to represent the
12 estate here in Florida, correct?

13 A. Yes. But I want to state my position
14 precisely, which is as now has been pled that Ted
15 Bernstein should be the administrator ad litem to
16 defend that litigation. And then if he chooses,
17 which I expect he would, employ Mr. Rose, and
18 Mr. Rose would operate as his counsel.

19 Q. Okay. So let me get this, if I understand
20 your position correctly. You think that Ted
21 Bernstein, who you have already told me is suing
22 the estate as a plaintiff in Chicago, it would be
23 okay for him to come in to the estate that he is
24 suing in Chicago to represent the estate as
25 administrator ad litem along with his attorney

1 Mr. Rose? Is that your position?

2 A. Here's why, yes, because of events. You
3 have an apple and an orange with respect to
4 Illinois. Mr. Rose and Ted Bernstein is not going
16:11:18 5 to have any -- doesn't have any involvement in the
6 prosecution by the estate of its position to those
7 insurance proceeds. That's not on the table.

8 THE COURT: Say it again, Ted has no
9 involvement?

16:11:30 10 THE WITNESS: Ted Bernstein and Mr. Rose
11 have no involvement in connection with the
12 estate's position in the Illinois litigation,
13 Your Honor. I am not seeking that. If someone
14 asked me that, I would say absolutely no.

16:11:43 15 BY MR. FEAMAN:

16 Q. I am confused, though, Mr. O'Connell.
17 Isn't Ted Bernstein a plaintiff in the insurance
18 litigation?

19 A. Yes.

16:11:52 20 Q. Okay. And as plaintiff in that insurance
21 litigation isn't he seeking to keep those insurance
22 proceeds from going to the estate?

23 A. Right.

24 Q. Okay.

16:12:00 25 A. Which is why the estate has a contrary

1 position --

2 Q. So if the estate --

3 (Overspeaking.)

4 THE COURT: Let him finish his answer.

16:12:11 5 THE WITNESS: It's my position as personal
6 representative that those proceeds should come
7 into the estate.

8 BY MR. FEAMAN:

9 Q. Correct.

16:12:17 10 A. Correct.

11 Q. And it's Mr. Bernstein's position both
12 individually and as trustee in that same action
13 that those proceeds should not come into the
14 estate?

16:12:25 15 A. Right.

16 Q. Correct? And Mr. Bernstein is not a
17 monetary beneficiary of the estate, is he?

18 A. As a trustee he is a beneficiary,
19 residuary beneficiary of the estate. And then he
20 would be a beneficiary as to tangible personal
21 property.

22 Q. So on one hand you say it's okay for
23 Mr. Bernstein to be suing the estate to keep the
24 estate from getting \$1.7 million dollars, and on
16:12:52 25 the other hand it's okay for him and his attorney

1 to defend the estate. So let me ask you this --

2 A. That's not what I am saying.

3 Q. Okay. Well, go back to Exhibit 8, if we
4 could.

16:13:07 5 A. Which one is Exhibit 8?

6 Q. That's the e-mail from Mr. Stamos that you
7 got last week asking about settlement.

8 A. The 31st?

9 Q. Right.

16:13:19 10 A. Well, actually the Stamos e-mail is
11 February 14th.

12 Q. Sorry, February 14th. And Mr. Rose right
13 now has entered an appearance on behalf of the
14 estate, correct?

16:13:37 15 A. You have to state what case.

16 Q. Down here in Florida.

17 A. Which case?

18 Q. The Stansbury action.

19 A. The civil action?

16:13:44 20 Q. Yes.

21 A. Yes. You need to be precise because
22 there's a number of actions and various
23 jurisdictions and various courts.

24 Q. And Mr. Rose's client in Chicago doesn't
16:13:56 25 want any money to go to the estate. So when you

1 are discussing settlement with Mr. Stamos, are you
2 going to talk to your other counsel, Mr. Rose,
3 about that settlement when he is representing a
4 client adverse to you?

16:14:16 5 A. No.

6 Q. How do we know that?

7 A. Because I don't do that and have not done
8 that.

9 Q. So you --

10 A. Again, can I finish, Your Honor?

11 THE COURT: Yes, please.

12 THE WITNESS: Thanks. Because there's a
13 differentiation you are not making between
14 these pieces of litigation. You have an
15 Illinois litigation pending in federal court
16 that has discrete issues as to who gets the
17 proceeds of a life insurance policy. Then you
18 have what you will call the Stansbury
19 litigation, you represent him, your civil
20 action, pending in circuit civil, your client
21 seeking to recover damages against the estate.

22 BY MR. FEAMAN:

23 Q. So Mr. Rose could advise you as to terms
24 of settlement, assuming he is allowed to be counsel
16:15:02 25 for the estate in the Stansbury action down here,

1 correct?

2 A. About the Stansbury action?

3 Q. Right, about how much we should settle
4 for, blah, blah, blah?

16:15:13 5 A. That's possible.

6 Q. Okay. And part of those settlement
7 discussions would have to entail how much money is
8 actually in the estate, correct?

9 A. Depends on what the facts and
10 circumstances are. Right now, as everyone knows I
11 think at this point, there isn't enough money to
12 settle, unless Mr. Stansbury would take less than
13 what is available. There have been attempts made
14 to settle at mediations and through communications
15 which haven't been successful. So certainly I am
16 not as personal representative able or going to
17 settle with someone in excess of what's available.

18 Q. Correct. But the outcome of the Chicago
19 litigation could make more money available for
20 settlement, correct?

21 A. It it's successful it could.

22 Q. Okay. May be a number that would be
23 acceptable to Mr. Stansbury, I don't know, that's
24 conjecture, right?

16:16:08 25 A. Total conjecture.

1 Q. Okay.

2 A. Unless we are going to get into what
3 settlement discussions have been.

4 Q. And at the same time Mr. Rose, who has
16:16:16 5 entered an appearance at that deposition for
6 Mr. Bernstein in the Chicago action, his client has
7 an interest there not to let that money come into
8 the estate, correct?

9 MR. ROSE: Objection again to the extent
16:16:29 10 it calls for a legal conclusion as to what I
11 did in Chicago. I mean, the records speak for
12 themselves.

13 THE COURT: Could you read back the
14 question for me?

15 (The following portion of the record was
16 read back.)

17 "Q. And at the same time Mr. Rose, who
18 has entered an appearance at that deposition
19 for Mr. Bernstein in the Chicago action, his
20 client has an interest there not to let that
21 money come into the estate, correct?"

22 THE COURT: I am going to allow it as the
23 personal representative his impressions of
24 what's going on, not as a legal conclusion
16:17:03 25 because he is also a lawyer.

1 THE WITNESS: My impression based on
2 stated positions is that Mr. Ted Bernstein does
3 not want the life insurance proceeds to come
4 into the probate estate of Simon Bernstein.

16:17:17 5 That's what he has pled.

6 BY MR. FEAMAN:

7 Q. Right. And you disagree with Mr. Ted
8 Bernstein on that, correct?

9 A. Yes.

16:17:24 10 MR. FEAMAN: Thank you.

11 CROSS (BRIAN O'CONNELL)

12 BY MR. ROSE:

13 Q. And notwithstanding that disagreement, you
14 still believe that --

16:17:29 15 MR. ROSE: I thought he was done, I am
16 sorry.

17 MR. ELIOT BERNSTEIN: Are you done, Peter?

18 MR. FEAMAN: No, I am not, Your Honor.

19 MR. ROSE: I am sorry, Your Honor.

16:17:36 20 THE COURT: That's okay. I didn't think
21 that you were trying to.

22 MR. FEAMAN: Okay. We'll rest.

23 THE COURT: All right.

24 MR. FEAMAN: Not rest. No more questions.

16:17:55 25 MR. ELIOT BERNSTEIN: Excuse me, Your

1 Honor.

2 BY MR. ROSE:

3 Q. And notwithstanding the fact that in
4 Illinois Ted as the trustee of this insurance trust
16:18:02 5 wants the money to go into this 1995 insurance

6 trust, right?

7 A. Right.

8 Q. And he has got an affidavit from Spallina
9 that says that's what Simon wanted, or he's got
16:18:14 10 some affidavit he filed, whatever it is? And you
11 have your own lawyer up there Stamos and Trucco,
12 right?

13 A. Correct.

14 Q. And notwithstanding that, you still
16:18:21 15 believe that it's in the best interests of the
16 estate as a whole to have Ted to be the
17 administrator ad litem and me to represent the
18 estate given our prior knowledge and involvement in
19 the case, right?

16:18:30 20 A. It's based on maybe three things. It's
21 the prior knowledge and involvement that you had,
22 the amount of money, limited amount of funds that
23 are available in the estate to defend the action,
24 and then a number of the beneficiaries, or call
16:18:48 25 them contingent beneficiaries because they are

1 trust beneficiaries, have requested that we consent
2 to what we have just outlined, ad litem and your
3 representation, those items.

4 Q. And clearly you are adverse to
16:19:03 5 Mr. Stansbury, right?

6 A. Yes.

7 Q. But in this settlement letter your lawyer
8 in Chicago is copying Mr. Stansbury and Mr. Feaman
9 about settlement position, right?

16:19:13 10 A. Correct.

11 Q. Because that's the deal we have,
12 Mr. Stansbury is funding litigation in Illinois and
13 he gets to sort of be involved in it and have a say
14 in it, how it turns out? Because he stands to
16:19:23 15 improve his chances of winning some money if the
16 Illinois case goes the way he wants, right?

17 A. Well, he is paying, he is financing it.

18 Q. So he hasn't paid in full, right? You
19 know he is \$40,000 in arrears with the lawyer?

16:19:33 20 A. Approximately, yes.

21 Q. And there's an order that's already in
22 evidence, and the judge can hear that later, but --
23 okay. So --

24 THE COURT: I don't have an order in
16:19:46 25 evidence.

1 MR. ROSE: You do. If you look at Exhibit
2 Number 2, page --

3 THE COURT: Oh, in the Illinois?

4 MR. ROSE: Yes, they filed it in Illinois.

16:19:55 5 THE COURT: Oh, in the Illinois.

6 MR. ROSE: But it's in evidence now, Your
7 Honor.

8 THE COURT: Yes, I am sorry, I didn't
9 realize it was in --

16:19:58 10 MR. ROSE: I am sorry.

11 THE COURT: No, no, that's okay.

12 MR. ROSE: I was going to save it for
13 closing.

14 THE COURT: In the Illinois is the Florida
15 order?

16 MR. ROSE: Yes.

17 THE COURT: Okay. That's the only thing I
18 missed.

19 MR. ROSE: Right.

16:20:08 20 BY MR. ROSE:

21 Q. The evidence it says for the reasons and
22 subject to the conditions stated on the record
23 during the hearing, all fees and costs incurred,
24 including for the curator in connection with his
16:20:16 25 work, and any counsel retained by the administrator

1 ad litem will initially be borne by William
2 Stansbury. You have seen that order before, right?

3 A. I have seen the order, yes.

4 Q. And the Court will consider a petition to
16:20:26 5 pay back Mr. Stansbury. If the estate wins in
6 Illinois, we certainly have to pay back
7 Mr. Stansbury first because he has fronted all the
8 costs, right?

9 A. Absolutely.

10 Q. Okay. So despite that order, you have
11 personal knowledge that he is \$40,000 in arrears
12 with the Chicago counsel?

13 A. I have knowledge from my counsel.

14 Q. Okay. That you shared with me, though?

15 A. Yes. It's information everyone has.

16 Q. Okay.

17 A. Should have.

18 Q. Would you agree with me that you have
19 spent almost no money defending the estate so far
16:21:03 20 in the Stansbury litigation?

21 A. Well, there's been some money spent. I
22 wouldn't say no money. I have to look at the
23 billings to tell you.

24 Q. Very minimal. Minimal?

16:21:15 25 A. Not a significant amount.

1 Q. Okay. Minimal in comparison to what it's
2 going to cost to try the case?

3 A. Yes.

4 Q. Have you had the time to study all the
16:21:26 5 documents, the depositions, the exhibits, the tax
6 returns, and all the stuff that is going to need to
7 be dealt with in this litigation?

8 A. I have reviewed some of them. I can't say
9 reviewed all of them because I would have to
16:21:36 10 obviously have the records here to give you a
11 correct answer on that.

12 Q. And you bill for your time when you do
13 that?

14 A. Sure.

16:21:41 15 Q. And if Ted is not the administrator ad
16 litem, you are going to have to spend money to sit
17 through a two-week trial maybe?

18 A. Yes.

19 Q. You are not willing to do that for free,
16:21:53 20 are you?

21 A. No.

22 Q. Okay. Would you agree with me that you
23 know nothing about the relationship, personal
24 knowledge, between Ted, Simon and Bill Stansbury,
16:22:05 25 personal knowledge? Were you in any of the

1 meetings between them?

2 A. No, not personal knowledge.

3 Q. Were you involved in the business?

4 A. No.

16:22:11 5 Q. Do you have any idea who the accountant --
6 well, you know who the accountant was because they
7 have a claim. Have you ever spoken to the
8 accountant about the lawsuit?

9 A. No.

16:22:17 10 Q. Have you ever interviewed any witnesses
11 about the lawsuit independent of maybe talking to
12 Mr. Stansbury and saying hello and saying hello to
13 Ted?

14 A. Or talking to different parties, different
16:22:29 15 family members.

16 Q. Now, did you sign a waiver, written waiver
17 form?

18 A. Yes.

19 Q. And did you read it before you signed it?

16:22:38 20 A. Yes.

21 Q. Did you edit it substantially and put it
22 in your own words?

23 A. Yes.

24 Q. Much different than the draft I prepared?

16:22:45 25 A. Seven pages shorter.

1 MR. ROSE: Okay. I move Exhibit 1 into
2 evidence. This is the three-page PR statement
3 of his position.

4 MR. FEAMAN: Objection, it's cumulative
16:22:54 5 and it's hearsay.

6 THE COURT: This is his affidavit, his
7 sworn consent?

8 MR. ROSE: Right. It's not cumulative.
9 It's the only evidence of written consent.

16:23:15 10 THE COURT: How is it cumulative? That's
11 what I was going to say.

12 MR. FEAMAN: He just testified as to why
13 he thinks there's no conflict.

14 THE COURT: But a written consent is
16:23:21 15 necessary under the rules, and that's been
16 raised as an issue.

17 MR. FEAMAN: The rule says that --

18 THE COURT: I mean, whether you can waive
19 is an issue, and I think that specifically
16:23:30 20 under four point -- I am going to allow it.
21 Overruled.

22 MR. ELIOT BERNSTEIN: Can I object?

23 THE COURT: Sure.

24 MR. ELIOT BERNSTEIN: That just came on
16:23:39 25 February 9th to me.

1 THE COURT: Okay.

2 MR. ELIOT BERNSTEIN: They didn't copy me
3 on this thing. I just saw it.

4 THE COURT: Okay.

16:23:43 5 MR. ELIOT BERNSTEIN: Which kind of
6 actually exposes a huge fraud going on here.
7 But I will get to that when I get a moment. It
8 shouldn't be in. I hardly had time to review
9 it. And I will explain some of that in a
16:23:54 10 moment, but.

11 THE COURT: I am overruling that
12 objection. All documents were supposed to be
13 provided by the Court pursuant to my order by
14 February 9th. This is a waiver of any
16:24:04 15 potential conflict that's three pages. And if
16 you got it February 9th you had sufficient
17 time. So overruled.

18 I am not sure what to call this,
19 petitioner's or respondent's, in this case. I
16:24:30 20 am going to mark these as respondent's.

21 MR. ROSE: You can call it Trustee's 1.

22 THE COURT: I could do that. Let me mark
23 it.

24 (Trustee's Exb. No. 1, Personal
16:24:39 25 Representative Position Statement.)

1 BY MR. ROSE:

2 Q. I think you alluded to it. But after the
3 mediation that was held in July, there were some
4 discussions with the beneficiaries, including Judge
16:24:49 5 Lewis who's a guardian ad litem for three of the
6 children, correct?

7 A. Yes.

8 Q. And you were asked if you would consent to
9 this procedure of having me come in as counsel
16:24:59 10 because --

11 THE COURT: I know you are going fast, but
12 you didn't pre-mark it, so you got to give me a
13 second to mark it.

14 MR. ROSE: Oh, I am sorry.

16:25:06 15 THE COURT: That's okay.

16 I have to add it to my exhibit list.

17 You may proceed, thank you.

18 BY MR. ROSE:

19 Q. You agreed to this procedure that I would
16:25:43 20 become counsel and Ted would become the
21 administrator ad litem because you thought it was
22 in the best interests of the estate as a whole,
23 right?

24 A. For the reasons stated previously, yes.

16:25:51 25 Q. And other than having to go through this

1 expensive procedure to not be disqualified, you
2 still agree that it's in the best interests of the
3 estate that our firm be counsel and that Ted
4 Bernstein be administrator ad litem?

16:26:02 5 A. For the defense of the Stansbury civil
6 action, yes.

7 Q. And that's the only thing we are asking to
8 get involved in, correct?

9 A. Correct.

16:26:10 10 Q. Now, you were asked if you had a fiduciary
11 duty to the interested persons including
12 Mr. Stansbury, right?

13 A. I was asked that, yes.

16:26:20 14 Q. So if you have a fiduciary duty to him,
15 why don't you just stipulate that he can have a two
16 and a half million dollar judgment and give all the
17 money in the estate to him? Because just because
18 you have a duty, you have multiple duties to a lot
19 of people, correct?

16:26:32 20 A. Correct.

21 Q. And you have to balance those duties and
22 do what you believe in your professional judgment
23 is in the best interests of the estate as a whole?

24 A. Correct.

16:26:39 25 Q. And you have been a lawyer for many years?

1 A. Yes.

2 Q. Correct? And you have served as trustee
3 as a fiduciary, serving as a fiduciary,
4 representing a fiduciary, opposing fiduciary,
16:26:51 5 that's been the bulk of your practice, correct?

6 A. Yes, yes and yes.

7 MR. ROSE: Nothing further.

8 THE COURT: Redirect?

9 MR. FEAMAN: Yes.

10 16:26:58 THE COURT: Wait a minute. Let me let
11 Mr. Eliot Bernstein ask any questions.

12 12 MR. ELIOT BERNSTEIN: Can I ask him
13 questions at one point?

14 THE COURT: You can.

15 16:27:10 MR. ELIOT BERNSTEIN: Your Honor, first, I
16 just wanted to give you this and apologize for
17 being late.

18 THE COURT: Don't worry about it. Okay.

19 16:27:20 MR. ELIOT BERNSTEIN: Well, no, it's
20 important so you understand some things.

21 I have got ten steel nails in my mouth so
22 I speak a little funny right now. It's been
23 for a few weeks. I wasn't prepared because I
24 am on a lot of medication, and that should
16:27:33 25 explain that. But I still got some questions

1 and I would like to have my....

2 MR. ROSE: I would just state for the
3 record that he has been determined to have no
4 standing in the estate proceeding as a
5 beneficiary.

6 THE COURT: I thought that was in the
7 Estate of Shirley Bernstein.

8 MR. ROSE: It's the same ruling --
9 (Overspeaking.)

10 THE COURT: Please, I will not entertain
11 more than one person.

12 MR. ROSE: By virtue of Judge Phillips'
13 final judgment upholding the documents, he is
14 not a beneficiary of the residuary estate. He
15 has a small interest as a one-fifth beneficiary
16 of tangible personal property, which is --

17 THE COURT: I understand.

18 MR. ROSE: Yes, he has a very limited
19 interest in this. And I don't know that he --

20 THE COURT: Wouldn't that give him
21 standing, though?

22 MR. ROSE: Well, I don't think for the
23 purposes of the disqualification by Mr. Feaman
24 it wouldn't.

25 THE COURT: Well, that would be your

1 argument, just like you are arguing that
2 Mr. Stansbury doesn't have standing to
3 disqualify you, correct?

4 MR. ROSE: Right.

16:28:26 5 THE COURT: So that's an argument you can
6 raise.

7 You may proceed.

8 CROSS (BRIAN O'CONNELL)

9 BY MR. ELIOT BERNSTEIN:

16:28:31 10 Q. Mr. O'Connell, am I a devisee of the will
11 of Simon?

12 MR. ROSE: Objection, outside the scope of
13 direct.

14 THE COURT: That is true. Sustained.

16:28:40 15 That was not discussed.

16 BY MR. ELIOT BERNSTEIN:

17 Q. Do I have standing in the Simon estate
18 case --

19 MR. ROSE: Objection, calls for a legal
16:28:46 20 conclusion.

21 BY MR. ELIOT BERNSTEIN:

22 Q. -- in your opinion?

23 MR. ELIOT BERNSTEIN: Well, he is a
24 fiduciary.

16:28:51 25 THE COURT: He was asked regarding his

1 thoughts regarding a claimant, so I will allow
2 it. Overruled.

3 THE WITNESS: You have standing in certain
4 actions by virtue of your being a beneficiary
16:29:01 5 of the tangible personal property.

6 BY MR. ELIOT BERNSTEIN:

7 Q. Okay, so beneficiary?

8 A. Right.

9 Q. Okay. Thank you. Which will go to the
16:29:09 10 bigger point of the fraud going on here, by the
11 way.

12 Are you aware that Ted Bernstein is a
13 defendant in the Stansbury action?

14 A. Which Stansbury action?

16:29:20 15 Q. The lawsuit that Mr. Rose wants Ted to
16 represent the estate in?

17 A. I'd have to see the action, see the
18 complaint.

19 Q. You have never seen the complaint?

20 A. I have seen the complaint, but I want to
21 make sure it's the same documents.

22 Q. So Ted --

23 THE COURT: You must allow him to answer
24 the questions.

16:29:37 25 MR. ELIOT BERNSTEIN: I am sorry, okay.

1 THE WITNESS: I would like to see if you
2 are referring to Ted Bernstein being a
3 defendant, if someone has a copy of it.

4 MR. ROSE: Well, I object. Mr. Feaman
16:29:45 5 knows that he has dismissed the claims against
6 all these people, and this is a complete waste.
7 We have a limited amount of time and these are
8 very important issues.

9 MR. ELIOT BERNSTEIN: Excuse me.

10 THE COURT: Wait.

11 MR. ROSE: These defendants they are
12 dismissed, they are settled. Mr. Feaman knows
13 because he filed the paper in this court.

14 THE COURT: Mr. Rose.

15 MR. ROSE: It's public record.

16 THE COURT: Mr. Rose, you are going to
17 have to let go of the -- it's going to finish
18 by 4:30.

19 MR. ROSE: Okay.

20 THE COURT: Because I know that's why you
21 are objecting, and you know I have to allow --

22 MR. ROSE: Okay.

23 THE COURT: All right? The legal
24 objection is noted. Mr. O'Connell can respond.
16:30:19 25 He asked to see a document.

1 BY MR. ELIOT BERNSTEIN:

2 Q. I would like to show you --

3 THE DEPUTY: Ask to approach, please.

4 MR. ELIOT BERNSTEIN: Oh, ask to.

16:30:28 5 BY MR. ELIOT BERNSTEIN:

6 Q. Can I approach you?

7 THE COURT: What do you want to approach
8 with?

9 MR. ELIOT BERNSTEIN: I just want to show
16:30:34 10 him the complaint.

11 THE COURT: Complaint? As long as you
12 show the other side what you are approaching
13 with.

14 MR. ELIOT BERNSTEIN: It's your second
16:30:40 15 amended complaint.

16 MR. ROSE: No objection.

17 BY MR. ELIOT BERNSTEIN:

18 Q. Is Ted Bernstein a defendant in that
19 action?

16:30:46 20 A. I believe he was a defendant, past tense.

21 Q. Okay. Let me ask you a question. Has the
22 estate that you are in charge of settled with Ted
23 Bernstein?

24 A. In connection with this action?

16:31:01 25 MR. ROSE: Objection, relevance.

1 BY MR. ELIOT BERNSTEIN:

2 Q. Yes, in connection with this action?

3 THE COURT: Which action?

4 MR. ELIOT BERNSTEIN: The Stansbury
16:31:07 5 lawsuit that Ted wants to represent.

6 THE COURT: If he can answer.

7 MR. ELIOT BERNSTEIN: This is the conflict
8 that's the elephant in the room.

9 THE COURT: No, no, no.

10 MR. ELIOT BERNSTEIN: Okay.

11 THE COURT: I didn't allow anyone else to
12 have any kind of narrative.

13 MR. ELIOT BERNSTEIN: Sorry.

14 THE COURT: Ask a question and move on.

15 MR. ELIOT BERNSTEIN: Got it.

16 THE COURT: Mr. O'Connell, if you can
17 answer the question, answer the question.

18 THE WITNESS: Sure. Thanks, Your Honor.

19 I am going to give a correct answer. We have
20 not had a settlement in connection with Ted
21 Bernstein in connection with what I will call
22 the Stansbury independent or civil action.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Okay. So that lawsuit --

16:31:37 25 A. The estate has not entered into such a

1 settlement.

2 Q. So Stansbury or Ted Bernstein is still a
3 defendant because he sued the estate and the estate
4 hasn't settled with him and let him out?

16:31:52 5 A. The estate prior to -- I thought you were
6 talking about me, my involvement. Prior to my
7 involvement there was a settlement.

8 Q. With Shirley's trust, correct?

9 A. No, I don't recall there being --

16:32:04 10 Q. Well, you just --

11 THE COURT: Wait. You have to let him
12 answer.

13 MR. ELIOT BERNSTEIN: Sorry, okay.

14 THE WITNESS: I recall there being a
15 settlement again prior to my involvement with
16 Mr. Stansbury and Ted Bernstein.

17 BY MR. ELIOT BERNSTEIN:

18 Q. But not the estate? The estate as of
19 today hasn't settled the case with Ted?

16:32:24 20 A. The estate, the estate, my estate, when I
21 have been personal representative, we are not in
22 litigation with Ted. We are in litigation with
23 Mr. Stansbury. That's where the disconnect is.

24 Q. In the litigation Ted is a defendant,
16:32:41 25 correct?

1 A. I have to look at the pleadings. But as I
2 recall the claims against Ted Bernstein were
3 settled, resolved.

4 Q. Only with Mr. Stansbury in the Shirley
16:32:55 5 trust and individually.

6 So let me ask you --

7 THE COURT: You can't testify.

8 MR. ELIOT BERNSTEIN: Okay.

9 BY MR. ELIOT BERNSTEIN:

10 Q. Ted Bernstein, if you are representing the
11 estate, there's a thing called shared liability,
12 meaning if Ted is a defendant in the Stansbury
13 action, which he is, and he hasn't been let out by
14 the estate, then Ted Bernstein coming into the
16:33:22 15 estate can settle his liability with the estate.

16 You following? He can settle his liability by
17 making a settlement that says Ted Bernstein is out
18 of the lawsuit, the estate is letting him out, we
19 are not going to sue him. Because the estate
16:33:40 20 should be saying that Ted Bernstein and Simon
21 Bernstein were sued.

22 THE COURT: I am sorry, Mr. Bernstein, I
23 am trying to give you all due respect.

24 MR. ELIOT BERNSTEIN: Okay.

16:33:47 25 THE COURT: But is that a question?

1 MR. ELIOT BERNSTEIN: Yeah, okay.

2 THE COURT: I can't --

3 MR. ELIOT BERNSTEIN: I will break it
4 down, because it is a little bit complex, and I
16:33:54 5 want to go step by step.

6 THE COURT: Thank you. And we will be
7 concluding in six minutes.

8 MR. ELIOT BERNSTEIN: Then I would ask for
9 a continuance.

10 THE COURT: We will be concluding in six
11 minutes.

12 MR. ELIOT BERNSTEIN: Okay.

13 THE COURT: Ask what you can.

14 MR. ELIOT BERNSTEIN: Okay.

16:34:08 15 BY MR. ELIOT BERNSTEIN:

16 Q. Ted Bernstein was sued by Mr. Stansbury
17 with Simon Bernstein; are you aware of that?

18 A. I am aware of the parties to the second
19 amended complaint that you have handed me.

16:34:23 20 Q. Okay.

21 A. At that point in time.

22 Q. So both those parties share liability if
23 Stansbury wins, correct?

24 MR. ROSE: Objection.

16:34:30 25 THE WITNESS: No.

1 THE COURT: Hold on.

2 MR. ROSE: Objection, calls for a legal
3 conclusion, misstates the law and the facts.

4 MR. ELIOT BERNSTEIN: Well, if
16:34:38 5 Mr. Stansbury won his suit and was suing Ted
6 Bernstein --

7 THE COURT: Hold on one second. Hold on,
8 please. You have got to let me rule. I don't
9 mean to raise my voice at all.

10 But his question in theory is appropriate.
11 He says they are both defendants, they share
12 liability. Mr. O'Connell can answer that. The
13 record speaks for itself.

14 THE WITNESS: And the problem, Your Honor,
16:34:57 15 would be this, and I will answer the question,
16 but I am answering it in the blind without all
17 the pleadings. Because as I -- I will give you
18 the best answer I can without looking at the
19 pleadings.

20 THE COURT: You can only answer how you
21 can.

22 THE WITNESS: As I recall the state of
23 this matter, sir, this is the independent
24 action, the Stansbury action, whatever you want
16:35:17 25 to call it, Ted Bernstein is no longer a

1 defendant due to a settlement.

2 BY MR. ELIOT BERNSTEIN:

3 Q. He only settled with Mr. Stansbury,
4 correct? The estate, as you said a moment ago, has
16:35:29 5 not settled with Ted Bernstein as a defendant. So
6 the estate could be --

7 THE COURT: Mr. Bernstein, Mr. Bernstein.

8 MR. ELIOT BERNSTEIN: Uh-huh.

9 THE COURT: From the pleadings the Court
10 understands there is not a claim from the
11 estate against Ted Bernstein in the Stansbury
12 litigation. Is the Court correct?

13 MR. ELIOT BERNSTEIN: The Court is
14 correct.

16:35:50 15 THE COURT: Okay.

16 MR. ELIOT BERNSTEIN: But the estate, if
17 Mr. O'Connell was representing the
18 beneficiaries properly, should be suing Ted
19 Bernstein because the complaint alleges that he
20 did most of the fraud against Mr. Stansbury,
21 and my dad was just a partner.

22 THE COURT: Okay. So that's your
23 argument, I understand.

24 MR. ELIOT BERNSTEIN: Okay.

16:36:07 25 THE COURT: But please ask the questions

1 pursuant to the pleadings as they stand.

2 MR. ELIOT BERNSTEIN: Okay.

3 BY MR. ELIOT BERNSTEIN:

4 Q. Could the estate sue Ted Bernstein since
16:36:15 5 he is a defendant in the action who has shared
6 liability with Simon Bernstein?

7 MR. ROSE: Objection, misstates -- there's
8 no such thing as shared liability.

9 THE COURT: He can answer the question if
16:36:24 10 he can.

11 MR. ROSE: Okay.

12 THE WITNESS: One of the disconnects here
13 is that he is not a current beneficiary in the
14 litigation as you just stated.

16:36:33 15 MR. ELIOT BERNSTEIN: There's no
16 beneficiary in that litigation.

17 THE COURT: Okay. You can't answer again.

18 MR. ELIOT BERNSTEIN: Oh.

19 THE COURT: Remember, you have got to ask
16:36:40 20 questions.

21 THE WITNESS: Defendant, Your Honor, wrong
22 term. He is not a named defendant at this
23 point due to a settlement.

24 BY MR. ELIOT BERNSTEIN:

16:36:48 25 Q. Could the estate sue back a

1 counter-complaint to Ted Bernstein individually who
2 is alleged to have committed most of the egregious
3 acts against Mr. Stansbury? He is a defendant in
4 the action. Nobody settled with him yet from the
16:37:05 5 estate. Could you sue him and say that half of the
6 liability, at least half, if not all, is on Ted
7 Bernstein?

8 A. Anyone, of course, theoretically could sue
9 anyone for anything. What that would involve would
16:37:19 10 be someone presenting in this case me the facts,
11 the circumstances, the evidence that would support
12 a claim by the estate against Ted Bernstein. That
13 I haven't seen or been told.

14 Q. Okay. Mr. Stansbury's complaint, you see
16:37:34 15 Ted and Simon Bernstein were sued. So the estate
16 could meet the argument, correct, that Ted
17 Bernstein is a hundred percent liable for the
18 damages to Mr. Stansbury, correct?

19 A. I can't say that without having all the
16:37:51 20 facts, figures, documents --

21 Q. You haven't read this case?

22 A. -- in front of me. Not on that level.
23 Not to the point that you are -- not to the point
24 that you are --

16:37:57 25 Q. Let me ask you a question.

1 A. -- trying to.

2 MR. ROSE: Your Honor?

3 BY MR. ELIOT BERNSTEIN:

4 Q. Let me ask you a question.

16:38:04 5 THE COURT: Hold on one second, sir.

6 MR. ROSE: He is not going to finish in
7 two minutes and there are other things we need
8 to address, if we have two minutes left. So
9 can he continue his cross-examination at the
16:38:12 10 continuance?

11 THE COURT: March we have another hearing.

12 MR. ELIOT BERNSTEIN: Can we continue this
13 hearing?

14 THE COURT: Yes. But I am going to give
16:38:15 15 you a limitation. You get as much time as
16 everybody else has.

17 MR. ELIOT BERNSTEIN: That's fine.

18 THE COURT: You have about ten more
19 minutes when we come back.

16:38:23 20 MR. ELIOT BERNSTEIN: Okay. Can I submit
21 to you the binder that I filed late?

22 THE COURT: Sure.

23 MR. ELIOT BERNSTEIN: (Overspeaking).

24 THE COURT: As long as it has been -- has
16:38:29 25 it been filed with the Court and has everybody

1 gotten a copy?

2 MR. ELIOT BERNSTEIN: I sent them copies
3 and I brought them copies today.

4 THE COURT: As long as everybody else gets
16:38:40 5 a copy --

6 MR. ELIOT BERNSTEIN: Okay.

7 THE COURT: -- you can submit the binder.
8 Just give it to my deputy.

9 MR. ROSE: Your Honor, we had a couple of
16:38:45 10 other -- I mean, he can continue it but we have
11 limited time. There is a summary judgment
12 hearing set for next week in this case. So
13 right now -- not this case, Your Honor, I mean
14 the Stansbury case.

16:38:56 15 THE COURT: Oh, you did see the look in my
16 face?

17 MR. ROSE: Right. No, I understand. So I
18 am right now traveling under a court order that
19 authorizes me to appear, but I would like to on
16:39:04 20 the record I am not going to -- I think we need
21 to cancel that hearing or advise Judge Marx,
22 because I don't feel comfortable going forward
23 in the light of this motion, no matter how
24 frivolous I think it is, pending. That's why I
16:39:16 25 would hope to get this concluded today.

1 THE COURT: I understand.

2 MR. ROSE: But it's not anyone's fault.
3 That's why I wanted to raise it in the minute
4 we have. So I think we should either continue
16:39:23 5 it or I would withdraw the motion without
6 prejudice, whatever I need to do with Judge
7 Marx. But I want Mr. Feaman's comment on the
8 record.

9 MR. FEAMAN: I think it should be
16:39:31 10 continued until there's a disposition of this.

11 MR. ELIOT BERNSTEIN: Yeah.

12 MR. ROSE: And then --

13 MR. FEAMAN: And in fact, that judge or
14 that division, sorry, I didn't mean to
16:39:41 15 interrupt, stayed all discovery in that case
16 until this motion was heard, so.

17 THE COURT: I am trying.

18 MR. ROSE: No, I understand.

19 MR. FEAMAN: No, we are not.

16:39:49 20 MR. ROSE: The other thing is Mr. Feaman
21 has represented this is the last witness. So I
22 would think we would finish this hearing in a
23 half an hour, and we have a couple hours set
24 aside. And you were going to just state what
16:40:00 25 other matters you were going to address.

1 The one thing I wanted -- we had sent you
2 in an order to -- at that same hearing if
3 there's time to handle some just very mop-up
4 motions in the Shirley Bernstein estate.

16:40:11 5 THE COURT: Let me see how long we have
6 set for next time.

7 MR. ROSE: We have two hours on the 2nd.

8 THE COURT: All right. Here's what I want
9 done. Within the first hour we are going to
10 finish this motion. With all due respect, now
11 I will have some time to review some of what
12 you have given me, but I don't know if I will
13 rule from the bench, so you are also going to
14 have to give me time.

16:40:31 15 MR. ROSE: That's fine.

16 THE COURT: Thanks. I appreciate that.

17 MR. ROSE: I will tell Judge Marx that we
18 need a continuance for let's say 45 days or
19 something.

16:40:38 20 THE COURT: I need time to rule on that
21 motion once I have everything. And we are just
22 going to have to take things as they come. I
23 mean, that's just how we'll have to do it. We
24 have a lot of -- how can I put this --
16:41:00 25 positions being presented. And so, like I

1 said, so, Mr. Eliot -- and I am only calling
2 you that because there's a lot of Bernsteins in
3 the room.

4 MR. ELIOT BERNSTEIN: That's okay.

16:41:08 5 THE COURT: It's not disrespectful, I am
6 not trying to be, because I have two
7 Bernsteins.

8 Mr. Eliot Bernstein.

9 MR. ELIOT BERNSTEIN: Yes.

16:41:14 10 THE COURT: So you will get ten more
11 minutes.

12 MR. ELIOT BERNSTEIN: Okay.

13 THE COURT: Then Mr. Feaman will have his
14 final say because it was his witness, on that
16:41:22 15 witness.

16 MR. ELIOT BERNSTEIN: And then do I get to
17 say something at some point?

18 THE COURT: You will get to say something
19 at some point, yes.

16:41:30 20 MR. ELIOT BERNSTEIN: Thank you.

21 THE COURT: Okay. But we are going to
22 wrap it all up within an hour.

23 MR. ELIOT BERNSTEIN: That one hearing?

24 THE COURT: Yes, the motion to disqualify
16:41:36 25 and the motion to vacate.

1 MR. ELIOT BERNSTEIN: Okay.

2 THE COURT: So the first hour -- and you
3 can see I am pretty militant, because if not we
4 are not going to get anything done here. So we
16:41:45 5 are -- no, not yet. Then we are going to move
6 on to the administrator ad litem motion which
7 would be the next consecutive motion.

8 Yes?

9 MR. ELIOT BERNSTEIN: What day is that on?
16:41:57 10 THE COURT: March 2nd. I can give you an
11 extra copy of the scheduling order if you would
12 like.

13 MR. ELIOT BERNSTEIN: Okay. All I want to
14 make the Court aware of here is I am dealing
16:42:06 15 with a serious medical issue that I am telling
16 you I am bleeding talking to you. It's very
17 serious, and it has been for three weeks. And
18 I just want to say I will let you know if I --
19 as soon as I can how long it's going to take.
16:42:21 20 He has got to put in full. It's complicated.
21 But I have had facial reconstruction and it
22 takes time for the teeth to adjust once he
23 puts. And I do not have teeth for three weeks,
24 and these spikes are like nails in your mouth.
16:42:37 25 So every talk tongue bite will hurt.

1 THE COURT: You can --

2 MR. ELIOT BERNSTEIN: I will let you know
3 if it's going to take any longer than that by
4 say a week before that hearing, okay? And I
16:42:46 5 will give you a doctor's note that it's still
6 ongoing, et cetera. Because I can't -- I mean,
7 the last three weeks they've bombarded me with
8 all this stuff, not saying I wasn't prepared
9 for it. But I have been severely stressed, as
16:42:59 10 the letter indicates. I am on severe
11 narcotics, heavy muscle relaxers that would
12 make you a jellyfish. So just appreciate that.

13 THE COURT: I do.

14 MR. ELIOT BERNSTEIN: Okay. I appreciate
16:43:10 15 that.

16 THE COURT: The Court appreciates what you
17 have represented. We'll deal with it. Do you
18 need an extra copy of the scheduling order?

19 MR. ELIOT BERNSTEIN: Me?

16:43:19 20 THE COURT: You.

21 MR. ELIOT BERNSTEIN: Oh, for March 2nd?

22 THE COURT: Yes.

23 MR. ELIOT BERNSTEIN: Can I get one,
24 please?

16:43:25 25 THE COURT: I am trying to find it. I

1 have so many papers.

2 MR. ELIOT BERNSTEIN: Did you serve it to
3 me?

4 THE COURT: Me personally?

16:43:32 5 MR. ELIOT BERNSTEIN: Did somebody?

6 THE COURT: I have no idea. You should,
7 actually yes.

8 MR. ELIOT BERNSTEIN: Is it today's order?

9 MR. FEAMAN: Yes, he is on the list.

10 THE COURT: He is on the service list. I
11 double checked when you were late.

12 MR. ELIOT BERNSTEIN: I got it.

13 THE COURT: You did get it, okay. So you
14 do have it. All right. Excellent.

15 MR. ROSE: Thank you everyone. I am taking -- you
16 know what, Court's in recess. He has some of
17 the exhibits in evidence. But I think he took
18 Mr. Feaman's original e-mail.

19 MR. ROSE: We'll straighten it out, Your
20 Honor.

21 THE COURT: Thank you. Court's in recess.

22 (Judge Scher exited the courtroom.)

23 MR. FEAMAN: Don't go off the record.
24 Stay on the record. We have got to have
16:44:11 25 custody of these original exhibits. We've got

1 to know who's going to get them and all that.

2 MR. ROSE: Mr. Feaman, would you please
3 check these and determine if they are your
4 copies or the Court's copies? Thank you, sir.

16:44:22 5 MR. FEAMAN: This looks like a copy, copy,
6 copy, original.

7 THE DEPUTY: This is for the Court.

8 MR. FEAMAN: I just want to go through it
9 and make sure the Court has all the originals.

16:45:25 10 MR. ROSE: Those are the eight -- I handed
11 Mr. Feaman the eight exhibits that he put in
12 and the one exhibit that was trustee's exhibit.

13 MR. FEAMAN: The Court has all the
14 exhibits.

16:46:03 15
16 (The proceedings adjourned at 4:46 p.m.)

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25

1 C E R T I F I C A T E
2 - - -
34 The State of Florida
5 County of Palm Beach
67 I, Lisa Mudrick, RPR, FPR, certify that I
8 was authorized to and did stenographically report
9 the foregoing proceedings, pages 1 through 117, and
10 that the transcript is a true record.11
12 Dated February 21, 2017.
13
14
15
16
1718 
1920 LISA MUDRICK, RPR, FPR
21 Mudrick Court Reporting, Inc.
22 1615 Forum Place, Suite 500
23 West Palm Beach, Florida 33401
24 561-615-8181
25

EXHIBIT 3

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

IN RE: Case No. 502012CP004391XXXXNBIH

ESTATE OF SIMON L. BERNSTEIN,
Deceased.

/

**ELIOT I. BERNSTEIN, AS A BENEFICIARY OF THE ESTATE OF SIMON L.
BERNSTEIN WITH STANDING AND AN INTERESTED PERSON UNDER LAW,
MAKES THIS MOTION TO;**

**A. Motion under Florida Rules of Civil Procedure 1.540(b)(3) and 1.540(b)(4) to
Vacate-Amend-Modify in part the Case Management Conference Order of Dec. 13,
2016 based upon Newly Discovered Evidence, Discovered on Feb. 9th 2017
involving Admissions-Statement of PR Fiduciary Brian O'Connell, also an Officer
of the Court, proving ongoing Fraud Upon the Court in general and upon this very
Court of Judge Scher of the Northern Branch of Palm Beach County by Attorney
Alan Rose and with such Case Management Order issued upon Fraud upon the
Court without consideration of the Schedule and Motions submitted by Estate
Beneficiary Eliot I. Bernstein;**

**B. Establish the Orderly Structure for Evidentiary Hearings including Discovery and
Depositions, Witness Lists, Exhibits and proper time allotted for the Evidentiary
Hearings;**

C. In Opposition to the Motions by Trustee Ted Bernstein, Attorney Alan Rose and PR O'Connell to Retain Alan Rose and the "Rose law firm" to Represent the Estate in any capacity and in opposition to Appointment of Ted Bernstein as Administrator Ad litem for the Estate in any capacity and in opposition to all relief sought by Trustee Ted Bernstein, Alan Rose, the Rose law firm and PR O'Connell on behalf of the Estate of Simon Bernstein;

D. Motion for Continuance under Florida Rules of Civil Procedure _____ to permit Discovery and Depositions in advance of the Hearings and based upon ongoing severe Medical-Dental issues of Eliot I. Bernstein.

E. Motion to Stay and Freeze all Assets and Discovery;

F. Granting leave to permit Eliot I. Bernstein sufficient time to file comprehensive Motions to Vacate prior Orders and Judgments of Judge Phillips and-or Judge Colin including the Removal of Ted Bernstein in any Fiduciary capacity and removal of PR Brian O'Connell in any fiduciary capacity;

G. And for such other relief as law and justice requires.

COMES NOW Eliot I. Bernstein, a Beneficiary of the Estate of Simon Bernstein according to the terms of the purported 2012 Will of Simon Bernstein and upon the Newly Discovered Admissions of PR Brian O'Connell discovered on Feb. 9, 2017 but WITHHELD from Judge Scher and this Court and Eliot Bernstein for at least 49 Days and also as an interested person and beneficiary with standing pro se who respectfully pleads and shows this court as follows:

I am Eliot Ivan Bernstein ("Eliot") acting pro se.

1. I am a natural born child to Shirley and Simon Bernstein, now deceased and a beneficiary of the Estate of Simon Bernstein upon the express terms of a purported 2012 Will of Simon Bernstein

purported to be “valid” at a Dec. 15, 2015 “Validity” Trial held by Northern Branch Judge John Phillips.

2. It is noted for this Court that no reference to the purported 2012 Will of Simon Bernstein allegedly “validated” at a “Validity Trial” of Dec. 15, 2015 shall be deemed or construed as an admission by Eliot Bernstein that proper Testamentary documents and Trusts have been provided to this Court and Eliot I. Bernstein reserves any and all rights to file further motions herein challenging such “Testamentary” documents and moving to Vacate other Judgments and Orders herein based upon fraud upon the Court and that such Orders and Judgments are void under law.
3. Thus, all references to any estate and trust documents that were produced or referenced herein by former Fiduciaries and counsel Tescher and Spallina are not deemed validated and confirmation of such documents is not admitted to by Eliot I. Bernstein of the authenticity of said documents or the force and effect of such documents as there are No “Original” documents at this time to validate them against despite a Court Order of Feb. 18, 2014 by former Judge Martin Colin for the prior co-Personal Representatives and Counsel-Attorneys at law Robert Spallina and Donald Tescher of the Tescher & Spallina law firm and CO-TRUSTEES and Fiduciaries of the Trusts to turn over all records upon their resignation which was steeped in admissions of Fraud Upon the Court and Fraud upon the Beneficiaries and where fraudulent documents have already been proven to be used in these proceedings by Court appointed Fiduciaries and counsel,

4. I first respectfully remind this Court of its duties and obligations under the Canons of Judicial Conduct and under the Statewide Court Fraud Policy¹ and as shown herein by clear and convincing evidence as this Case Management Order itself of Dec. 13, 2016 was issued upon Fraud upon the Court by attorney Alan Rose, Fiduciary Trustee Ted Bernstein, and PR Fiduciary Brian O'Connell, this Court must now Vacate in substantial part the Case Management Conference Order and grant Discovery to Eliot I. Bernstein and Hearings based upon the fraud prior to any further action according to the existing Case Management Order.
5. "This court and others have held that if a party files a motion pursuant to rule 1.540(b)(3), pleads fraud or misrepresentation with particularity, and shows how that fraud or misrepresentation affected the judgment, the trial court is required to conduct an evidentiary hearing to determine whether the motion should be granted.[7]See Seal v. Brown, 801 So. 2d 993, 994-95 (Fla. 1st DCA 2001); St. Surin v. St. Surin, 684 So. 2d 243, 244 (Fla. 2d DCA *782 1996); Estate of Willis v. Gaffney, 677 So. 2d 949 (Fla. 2d DCA 1996); Dynasty Exp. Corp. v. Weiss, 675 So. 2d 235, 239 (Fla. 4th DCA 1996); Townsend v. Lane, 659 So. 2d 720 (Fla. 5th DCA 1995); S. Bell Tel. & Tel. Co. v. Welden, 483 So. 2d 487, 489 (Fla. 1st DCA 1986)".
6. ("[W]here the moving party's allegations raise a colorable entitlement to rule 1.540(b)(3) relief, a formal evidentiary hearing on the motion, as well as permissible discovery prior to the hearing, is required."); Kidder v. Hess, 481 So. 2d 984, 986 (Fla. 5th DCA 1986); Stella v. Stella, 418 So. 2d 1029 (Fla. 4th DCA 1982); see also Robinson. Moreover, the courts have held that the hearing requirement applies when fraud is asserted as a grounds for relief under either rule 1.530 or 1.540, Florida Rules of Civil Procedure. See Stella. The motion filed by

¹ Florida Court Statewide Fraud Policy
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120927%20Florida%20State%20Courts%20System%20Fraud%20on%20the%20Court%20Policy%20Procedure.pdf>

Robinson sufficiently alleges fraud and demonstrates how it affected the judgment, thereby satisfying the requirement for an evidentiary hearing under either rule 1.530 or 1.540.”

7. The requisite fraud on the court occurs where “it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system’s ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party’s claim or defense.” *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989) .
8. The trial court has the inherent authority, within the exercise of sound judicial discretion, to dismiss an action when a plaintiff has perpetrated a fraud on the court, or where a party refuses to comply with court orders. See, *Kornblum v. Schneider*, 609 So. 2d 138, 139 (Fla. 4th DCA 1992).
9. The plaintiff’s false or misleading statement given under oath concerning issues central to her case amounted to fraud. See *Cox v. Burke*, 706 So. 2d 43, 47 (Fla. 5th DCA 1998).
10. Courts throughout this state have repeatedly held “that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends.” *Metropolitan Dade County v. Martinsen*, 736 So. 2d 794, 795 (Fla. 3d DCA 1999) (quoting *Hanono v. Murphy*, 723 So. 2d 892, 895 (Fla. 3d DCA 1998)); see also *Cox v. Burke*, 706 So. 2d 43, 47 (Fla. 5th DCA 1998); *O’Vahey v. Miller*, 644 So. 2d 550, 551 (Fla. 3d DCA 1994); *Kornblum v. Schneider*, 609 So. 2d 138, 139 (Fla. 4th DCA 1992).
11. Respectfully, this Court is shown herein by **clear and convincing evidence** that Fiduciaries and Officers of the Court Attorney Alan M. Rose and PR Fiduciary Attorney Brian M. O’Connell and alleged Fiduciary Ted Bernstein have “sentiently set in motion some unconscionable

scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." See, *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989).

12. This Court must now perform its Mandatory Duties and obligations to address and correct such Frauds and Vacate in substantial part the Case Management Order of Dec. 13, 2016 and should in fact DISMISS the Motions Filed by Ted Bernstein, Alan Rose and Brian O'Connell in their entirety, issue a Stay and Continuance in the case and a Stay and Injunction over all Assets and Discovery and remove such Fiduciaries from the Cases and Report the Attorneys-Officers of the Court to proper authorities according to law and grant such other relief as is just and proper.

Newly Discovered Evidence Submitted "Last Minute" by Attorney Officer of the Court Alan Rose on Feb. 9, 2017- PR O'Connell's "Undated" Statement-Waiver First Discovered by Eliot I. Bernstein on the Afternoon of Thursday, Feb. 9, 2017 Contains Admission Against Interest showing Fraud by Alan Rose-Ted Bernstein against Eliot Bernstein as Beneficiary for Over One Year - Other Parts of PR O'Connell's Statement make O'Connell Material and Necessary Fact Witness if Alan Rose is Not Disqualified as a Matter of Law prior to Any Hearing

13. As this Court is and should be actually aware, Attorney and Officer of the Court Alan Rose who is now seeking to come in and represent the Estate of Simon Bernstein in an action against alleged Creditor William Stansbury has repeatedly made False Statements and committed Fraud

upon this Court by falsely claiming Eliot Bernstein is not a Beneficiary of the Estate of Simon Bernstein and lacks standing and is not a beneficiary anywhere.

14. In fact, **as clear and convincing proof that this scheme to defraud set in motion before this Court is Central to the proceedings and thus Fraud on the Court standards met now triggering this Court's duty to act, this Court of Judge Scher's own Case Management Order of Dec. 13, 2016 which set the schedule for why we are all present in Court today on Feb. 16, 2017 in fact recites and relied upon the Fraud and False statements of Alan Rose attorney in the Case Management Order itself Paragraph 4 showing-claiming "Ted S. Bernstein as Successor Trustee of Trust which is Sole Beneficiary of the Estate { DE 473 }.**

15. Upon information and belief, Alan Rose is an attorney licensed to practice in the State of Florida under Florida Bar No. 961825.

16. Alan Rose as an Attorney and Officer of the Court has actual knowledge that this is not true and is False before this Court and in fact his own Submission before this Court at the "last minute" of Feb. 9, 2017 in the afternoon on the last day of submissions finally discloses a Statement and Waiver of PR O'Connell, another fiduciary and Officer of the Court which proves Alan Rose's repeated actions as false, fraudulent and a Fraud upon the Court for which this Court must now act.

17. Ashley Bourget of the Rose Law Firm sent this Email at Thursday, February 9, 2017 1:32 PM containing a Spiral Notebook to Judge Scher on 2-9-17 and according the Chart in this Spiral Notebook Attorney Alan Rose sent an email to Attorney and Officer of the Court Peter Feaman enclosing the PR O'Connell Statement on Dec. 22, 2016 *which goes Contrary to the positions of Alan Rose and Ted Bernstein before both Judge Scher and contrary to the fraud by Alan Rose and Ted Bernstein for over a year with Judge Phillips as the O'Connell Statement*

shows that the Will of Simon Bernstein of 2012 makes the Children of Simon Bernstein “devisees” and I am one of those children and a Devisee and thus a Beneficiary with Standing which Alan Rose and Ted Bernstein have falsely denied before this Court through Fraud upon the Court which has been aided and abetted and gone along uncorrected for a year by PR O’Connell and not acted upon by Attorney Peter Feaman amounting to 49 Days of withholding the proof of this fraud from this Court and myself justifying my Motions herein as timely. See Spiral Notebook and PR O’Connell Statement.

18. Attorney Alan Rose continued his prior fraud upon the Court before Judge Phillips again falsely claiming in a Footnote 1 to this Court in his Nov. 28, 2016 filing which incorporates his Sept., 14, 2016 Omnibus report before Judge Phillips falsely and fraudulently claiming “Introduction The overarching issue in these cases is Eliot Bernstein. He is not named as a beneficiary of anything; yet he alone has derailed these proceedings for more than two years and has harassed and attacked the prior judges, fiduciaries and their counsel.” See, Nov. 28m 2016 Omnibus Report to Judge Scher and Sept. 14, 2015 Omnibus Report to Judge Phillips.
19. A simple plain reading of the Will of Simon Bernstein clearly shows that the Children of Simon Bernstein are “Devisees” and thus Beneficiaries with Standing and yet Alan Rose and Ted Bernstein have continued a fraud before the Court illegally denying my Standing which the PR O’Connell has gone along with amounting to sufficient grounds to Strike ALL of their Motions, Vacate the current Case Management Order and remove all of these fiduciaries or grant leave to file detailed motions for their removal.
20. My standing as a Beneficiary under the Estate of Simon Bernstein was already acknowledged and admitted by Attorney Mark Manceri who is Added to the Witness list who admitted before Judge Colin on Sept., 13, 2013, **September 13, 2013 Hearing Transcript**

Page 23

16 MR. MANCERI: The ten grandchildren shares
17 -- and I want to be clear on this, this
18 gentleman is only a tangible personal property
19 beneficiary. He and his own proper person.
20 And the mother. That's all he's entitled to.

Page 30

8 THE COURT: Well, I don't know what
9 documents --
10 MR. ELIOT BERNSTEIN: I was a beneficiary,
11 unlike they said, me, my brother was cut out of
12 my mother's estate and my older sister.
13 THE COURT: They said you were a
14 beneficiary of personal property.
15 MR. ELIOT BERNSTEIN: No, I was the third
16 beneficiary to the entire estate.
17 THE COURT: All right, I don't know.
18 MR. SPALLINA: At one point he was.

21. Thus now in addition to the Will itself and the admission by PR O'Connell there is also the
Notice of Administration document filed by prior Fiduciaries Tescher and Spallina who must

now be witnesses who listed me as a Beneficiary in the Estate of Simon:

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF

PROBATE DIVISION 12

SIMON L. BERNSTEIN, File No. _____

Deceased.

502012 CPOO 4391 XXXX SR

2012 OCT -2 AM 8:58
JEREMY R. BOEK CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BRANCH-FILED

PETITION FOR ADMINISTRATION

(testate Florida resident)

Petitioners, ROBERT L. SPALLINA and DONALD R. TESCHER, allege:

1. Petitioners have an interest in the above estate as the named co-personal representatives under the decedent's Will. The Petitioner's addresses are 7387 Wisteria Avenue, Parkland, FL 33076 and 2600 Whispering Oaks Lane, Delray Beach, FL 33445, respectively, and the name and office address of petitioners' attorney is set forth at the end of this Petition.

2. Decedent, SIMON L. BERNSTEIN, whose last known address was 7020 Lions Head Lane, Boca Raton, Florida 33496, whose age was 76, and whose social security number is [REDACTED], died on September 13, 2012, at his home at 7020 Lions Head Lane, Boca Raton, Florida 33496, and on the date of death decedent was domiciled in Palm Beach County, Florida.

3. So far as is known, the names of the beneficiaries of this estate and of decedent's surviving spouse, if any, their addresses and relationship to decedent, and the dates of birth of any who are minors, are:

NAME	ADDRESS	RELATIONSHIP	BIRTH DATE (if Minor)
Ted S. Bernstein	880 Berkeley Street Boca Raton, FL 33487	son	adult
Pamela B. Simon	950 North Michigan Ave. Suite 2603 Chicago, IL 60606	daughter	adult
Eliot Bernstein	2753 NW 34 th St. Boca Raton, FL 33434	son	adult
Jill Iantoni	2101 Magnolia Lane Highland Park, IL 60035	daughter	adult

Bar Form No. P-3-0100
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Reviewed October 1, 1998

- 1 -



Lisa S. Friedstein

2142 Churchill Lane
Highland Park, IL 60035

daughter

adult

Robert L. Spallina and Donald R. Tescher,
co-Trustees of the Simon L. Eernstein
Amended and Restated Trust Agreement
dated July 25, 2012

4855 Technology Way,
Suite 720
Boca Raton, FL 33431

Trust

4. Venue of this proceeding is in this county because decedent was a resident of Palm Beach County at the time of his death.

5. Robert L. Spallina and Donald R. Tescher, whose addresses are listed above, and who are qualified under the laws of the State of Florida to serve as co-personal representatives of the decedent's estate are entitled to preference in appointment as co-personal representatives because they are the persons designated to serve as co-personal representatives under the decedent's Will.

6. The nature and approximate value of the assets in this estate are: tangible and intangible assets with an approximate value of less than \$ Unknown.

7. This estate will not be required to file a federal estate tax return.

8. The original of the decedent's last will, dated July 25, 2012, is being filed simultaneously with this Petition with the Clerk of the Court for Palm Beach County, Florida.

9. Petitioner is unaware of any unrevoked will or codicil of decedent other than as set forth in paragraph 8.

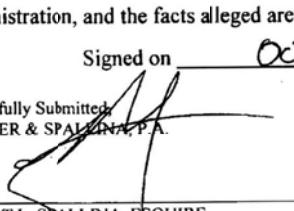
Petitioner requests that the decedent's Will be admitted to probate and that Robert L. Spallina and Donald R. Tescher be appointed as co-personal representatives of the estate of the decedent.

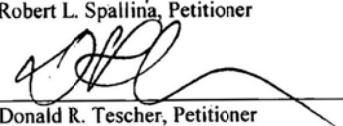
Under penalties of perjury, we declare that we have read the foregoing Petition for Administration, and the facts alleged are true, to the best of our knowledge and belief.

Signed on Oct. 1, 2012.

Respectfully Submitted,
TESCHER & SPALLINA, P.A.

By:
ROBERT L. SPALLINA, ESQUIRE
Attorney for Petitioner
Florida Bar No. 0497381
4855 Technology Way, Ste. 720
Boca Raton, FL 33431
561-997-7008
Email: rspallina@tescherspallina.com


Robert L. Spallina, Petitioner


Donald R. Tescher, Petitioner

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Reviewed October 1, 1998



I hereby incorporate by reference the arguments, statements, memorandums and documents filed by Creditor William Stansbury through counsel Peter Feaman seeking to Disqualify Alan Rose and the law firm of Page, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A, hereinafter the “Rose law firm” as if specifically attached and re-stated herein.

22. I respectfully submit to this Court that not only must the Court disqualify Alan Rose and the Rose law firm from representing the Estate, but further that Alan Rose is a “material fact witness” to many of the prior frauds upon this Court and the proper beneficiaries and that Alan Rose has further committed fraud upon this Court in the very filings which bring these matters to the Specially Set Hearing referenced by this Court’s Case-Management Order dated Dec. 13, 2016 and the very acts of these “further frauds upon the court” are such that Alan Rose and the Rose law firm must be permanently enjoined from representing the Estate of Simon L. Bernstein.

**ALAN ROSE AS ATTORNEY FOR TED BERNSTEIN AS “TRUSTEE” FRAUDULENT
FILING TO DENY AND UNLAWFULLY REMOVE ELIOT BERNSTEIN’S
“STANDING” AND REMOVE ELIOT BERNSTEIN AS A BENEFICIARY OF THE
SIMON L. BERNSTEIN ESTATE**

23. Upon information and belief, Alan Rose is an attorney licensed to practice in the State of Florida under Florida Bar No. 961825.

24. Just one part of the “frauds’ Alan Rose has perpetrated in these proceedings is a filing before prior Judge Phillips falsely denying my Standing dated Jan. 04, 2016, Filing # 36122958 E- Filed 01/04/2016 04:32:05 PM. See Exhibit 5 of EXHIBIT LIST - Trustee Filing Jan 04, 2016.

25. This filing occurred just 2 weeks after a “Validity Trial” that is on Appeal and contested by Eliot Bernstein and which purports to determine the “validity” of various Wills and Trusts of

Shirley Bernstein and Simon Bernstein and was filed by Alan Rose as an attorney under Bar No. 961825.

26. Paragraph 1 of this filing states in part as follows, “By its ruling at the trial held on December 15th, the Court upheld the 2012 Will and Trust of Simon L. Bernstein and the 2008 Will and Trust of Shirley Bernstein. As a result of upholding these documents, the Court has determined that Eliot Bernstein, individually, is not a beneficiary of either Simon's or Shirley's Trusts or Estates. Instead, his three sons are among the beneficiaries of both Simon's and Shirley's Trusts, in amounts to be determined by further proceedings. Eliot lacks standing to continue his individual involvement in this case.” (emphasis added).

27. This statement was a **knowingly false and fraudulent statement as an Officer of the Court by Alan Rose before the Court as Judge Phillips had not made any such Ruling or Determination as of January 4, 2016, no such Ruling or Determination was contained in the Final Judgement** of the Validity Trial on Appeal, **nor was any such Ruling or determination made upon the Record of Proceedings** at the Validity Trial on Dec. 15, 2015. See, Final Judgement Dec. 15, 2015 - EXHIBIT 4 of EXHIBIT LIST; See Exhibit C Transcript of Validity Trial - Filing # 52565600 E-Filed 02/16/2017 06:58:04 AM EXHIBIT 25 of EXHIBIT LIST.

28. Attorney Alan Rose, as an Officer of the Court had actual knowledge that Judge Phillips had never held a “Construction” hearing as of this date to determine the construction of any of the documents, and further had actual knowledge as an Officer of the Court that Judge Phillips Order setting a Trial of Sept. 24, 2015 only set for Trial the Amended Count II Validity and otherwise had stayed hearing on Count I for Construction or anything else that day consistent with prior Judge Colin’s Order reference by Judge Phillips and dated Oct. 6, 2014. See Exhibit 3 of EXHIBIT LIST - Sept. 24, 2015 Phillips Order setting Trial.

29. Attorney Alan Rose and Ted Bernstein knew the improperly scheduled “Validity Trial” itself was not about “Construction” even before the Trial was held and again confirmed at the Trial and thus there has been No hearing on the Meaning of the Testamentary documents, something known to Rose, Ted, O’Connell and Feaman and thus grounds to Vacate the current Management Order and remove the Fiduciaries.

September 15, 2015 Case Management Transcript Excerpts

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20 And then there's -- I think the main thing
21 we need to discuss is what order we're going to
22 do the hearings in because along with the
23 guardian ad litem it's our position the first
24 thing we should decide, since almost every
25 motion you're going to hear on Mr. O'Connell's

7

1 list is filed by Eliot Bernstein, is he's not a
2 beneficiary. We have a one-count complaint to
3 determine the validity of the documents. And
4 under the documents, as drafted, he's
5 disinherited. He's not a beneficiary under any
6 way and if you remove his standing then I
7 believe we can go to mediation and resolve
8 almost all of these motions without taking up,
9 probably, two or three weeks of the Court's
10 time

8

1 So what we filed was a one-count complaint to
2 determine those documents. We actually filed a
3 trust construction action. Judge Colin advised
4 us to file -- to add a count. We added one
5 count to determine the validity of those
6 documents. It's been answered by everybody,
7 and what Judge Colin did was he severed that
8 one count from everything else and he stayed
9 everything else until we resolved that one
10 count. That's the issue that we believe, if

9

25 THE COURT: What is the name or where is

10
1 the document to be found that has this single
2 count for determination of validity of estate
3 documents or trust documents that was severed
4 out by Judge Colin?
5 MR. ROSE: It's in case 5020143698

12
5 THE COURT: All right. And then at some
6 point in time you say Judge Colin severed out
7 this count and said it should be heard
8 separately. Is that --

9 MR. ROSE: He severed it and stayed --
10 THE COURT: Do you know when the order was
11 entered on that?

12 MR. ROSE: 10-6 according to the chart
13 from --

14 THE COURT: 10-6-14?
15 MR. ROSE: Yes. It says order on
16 amendments to pleadings. There might be an
17 order that predates that

15
13 THE COURT: -- the trustees believe the
14 first thing that needs to be done is the
15 resolution of this order that was entered by
16 Judge Colin severing out the count and the
17 amended complaint that deals with the validity
18 of the testamentary documents, correct?

19 MR. ROSE: Yes, sir.

18
9 THE COURT: Let me ask this: How is it
10 that there is an order by Judge Colin severing
11 out this count about the validity of some
12 estate documents in the Simon Bernstein case if
13 the documents in question were filed in a
14 different estate? Maybe the trustee can
15 address that.

16 MR. ROSE: Sure.

17 THE COURT: What's up with that?

18 MR. ROSE: We have a trust construction
19 count that was to determine the validity and
20 then the construction of the Shirley Bernstein
21 trust. Within that claim, because there's an
22 overlap of issues there, the standing issue is

23 the same in both. What Judge Colin ordered me
24 to do was to file an additional count into that
25 complaint. Everyone was properly noticed. We

19
1 already had the jurisdiction over all the
2 beneficiaries, those that answered, those that
3 did not. Nobody moved to dismiss upon the
4 ground that it's not properly in one case, and
5 so because there's a direct overlap between
6 documents that were executed and the validity
7 of those documents, and the validity of the
8 will of Simon directly relates to the validity
9 of the exercise of power of appointment because
10 he exercised his power through his will. So
11 what Judge Colin did was he ordered me to file
12 a simple one-count complaint, as simple as it
13 could be, list the four documents and allege
14 that they're all valid and enforceable. In the
15 context of trying that issue you will decide
16 whether, for example, Simon Bernstein was
17 unduly influenced, if that's an allegation, to
18 execute the power of appointment. The power of
19 appointment is what deprives Mr. Eliot
20 Bernstein of standing. Judge Colin ordered us
21 all put it all in this count. He then stayed
22 everything else and severed that and we're
23 supposed to try that and we get bogged down
24 constantly in - -

22
5 Is it true that Judge Colin issued a stay
6 order on the other parts of the litigation and
7 it intended -- somehow he manifested an
8 intention to resolve the validity of the estate
9 documents? Is there an order that says that
10 somewhere?

11 MR. ROSE: I think that goes too far.
12 There are multiple proceedings. He severed
13 this count --

14 THE COURT: I got that.

15 MR. ROSE: It's our view that that should
16 be what is decided --

17 THE COURT: I know. But you said a minute
18 ago that he stayed other proceedings. Is there
19 an order that says that? Where do I find that

20 order?

21 MR. ROSE: It's the one that you looked
22 at, October 6th. It stays the rest of the
23 proceedings inside the Shirley Bernstein trust
24 construction case. It doesn't stay everything
25 in the Simon Bernstein side.

23

11 Well, then there's no reason for me not to
12 set a trial on that Count II of the amended
13 complaint, right? I'll do that whether
14 everybody wants me to do or not that way I'll
15 get something done and that way we'll move down
16 the road. That will be done. Court to order
17 set. How much time you think we need to try
18 that?

19 MR. ROSE: Normally I would think we can
20 try the case within a day.

21 THE COURT: Okay. Anybody think we need a
22 different amount of time?

23 MR. ELIOT BERNSTEIN: Yeah. I think it
24 will take several days.

25 THE COURT: Why?

24

1 MR. ELIOT BERNSTEIN: Well, you're going
2 to have to first start with is Ted Bernstein a
3 valid trustee to argue the case. So that's --

4 THE COURT: No, I won't have to decide
5 that.

6 MR. ELIOT BERNSTEIN: You want somebody to
7 argue who's not valid --

8 THE COURT: What else? Any other issue?

9 Is there any other issue that's going to take
10 more than a day?

11 MR. ELIOT BERNSTEIN: Well, it's very
12 complicated.

13 THE COURT: No, this isn't going to be
14 complicated.

15 MR. ELIOT BERNSTEIN: Okay.

16 THE COURT: It's not. There's documents,
17 pieces of paper that somebody claims were
18 executed or not executed.

19 MR. ELIOT BERNSTEIN: There's been fraud
20 in the document.

21 THE COURT: I was explaining to you

22 something. If you interrupt me you can be held
23 in contempt. If I interrupt you I'm keeping
24 order in my courtroom. You see the difference
25 there? This is not a conversation. Okay. No

25
1 need for me to explain anything further. I
2 intend to set this for trial. I intend to set
3 it for a day. I intend that issue of the
4 validity of the estate documents will be
5 resolved in that trial. Is there any reason to
6 not think I can do that in a day other than
7 what Mr. Eliot Bernstein has mentioned?

35
21 THE COURT: I'm confused too. Welcome to
22 my world.
23 MR. ELIOT BERNSTEIN: Welcome to mine.
24 THE COURT: We're going to eliminate some
25 of the confusion by trying some of these things

36
1 pled in this case and one of them that's been
2 pled is Count II of the amended petition of
3 Docket Entry 26 that Judge Colin severed out
4 and said is going to be tried separately.

December 15, 2015 Validity Hearing Transcript Excerpts on limiting hearing

Page 8

21 · · · MR. ROSE: · We are asking you to decide whether
22 · five testamentary documents are valid, authentic
23 · and enforceable. · And that is set forth in count
24 · two of the amended complaint in this action. · The
25 · five documents are a 2008 will of Shirley

9
· 1 · Bernstein, a 2008 trust of Shirley Bernstein, and
· 2 · an amendment by Shirley Bernstein to her 2008
· 3 · trust.

9
14 · · · So for Shirley, there are three documents that
15 · count two seeks you to determine are valid,
16 · authentic and enforceable according to their terms.
17 · · · And for Simon Bernstein, he has a 2012 will,

18· ·and a 2012 amended and restated trust agreement.
19· ·And we're asking that these five documents be
20· ·validated today.

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15· · · · ·THE COURT:· Sustained.

16· · · · ·Here's what I'm going to decide at the end of
17· · · · the day; I'm going to decide whether Shirley's 2008
18· · · will and trust and 2008 amendment are valid and
19· · · enforceable.· I'm going to decide whether Simon's
20· · · 2012 will and 2012 trust documents are valid and
21· · · enforceable.· You have a lot more on your mind than
22· · · I have on mine.· You do.· Right?· But those are the
23· · · things that I'm working on.· So I'm focused like a
24· · · laser and you're focused more like a shotgun.· I'm...

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25· · · · ·MR. ROSE:· Your Honor, can I just -- I don't

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1· ·want to go out of order, but this is only relevant
·2· ·if the documents are valid.· And if he's -- the
·3· ·whole point is the documents are valid.· And he
·4· ·wants to argue the second part, of what they mean,
·5· ·then we should not have wasted a whole day arguing
·6· ·over the validity of these five documents.

·7· · · ·THE COURT:· Well, waste of time is what I do
·8· ·for a living sometimes.· Saying we shouldn't be
·9· ·here doesn't help me decide anything.

10· · · · I thought I was supposed to decide the
11· ·validity of the five documents that have been
12· ·pointed out; some of them might be valid and some
13· ·of them might be invalid.· And I'm struggling to
14· ·decide what's relevant or not relevant based upon
15· ·the possibility that one of them might be invalid
16· ·or one of them might not.· And so I'm letting in a
17· ·little bit more stuff than I normally think I
18· ·would.

19· · · · MR. ROSE:· I'm concerned we're arguing the
20· ·second -- the second part of this trial is going to
21· ·be to determine what the documents mean and what
22· ·Simon's power of attorney could or couldn't do.
23· ·And this document goes to trial two and not trial
24· ·one, although I didn't object to its admissibility.

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·3· · · · ·THE COURT:· I'll sustain the objection.

·4· · · · · I'm not called to rule upon that stuff.· I'm
·5· · · · · called to rule upon the validity of these five
·6· · · · paper documents.· That's what I'm going to figure
·7· · · · out at the end of the day.

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9· · · · · MR. ROSE:· Okay.· Thank you.· May it please
10· · the Court.

11· · · · · We're here on a very narrow issue.· And
12· · we -- you know, I apologize to the extent I put on
13· · a little bit of background.· We've had an extensive
14· · litigation before Judge Colin.· This is our first
15· · time here.· And if any of my background bored you,
16· · I apologize.

17· · · · · There are five documents that are at issue,
18· · which we talked about before we started; the 2008
19· · will and trust of Shirley Bernstein, as well as the
20· · amendment that she signed, and then the 2012 will
21· · and trust of Simon Bernstein.

233

[Rose]

11· · · · · But what we're here to decide is, are these
12· · documents valid and enforceable?· And there are
13· · self-proving affidavits attached to the documents.
14· · And by themselves, if you find the self-proving
15· · affidavits to be valid, then the wills themselves
16· · are valid and enforceable.

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[Rose]

17· · · · · And we would ask that you uphold the five
18· · documents and determine, as we have pled, that the
19· · five testamentary documents that are in evidence, I
20· · believe, as 1, 2, 3, 4, and 5 be upheld and
21· · determined to be the valid and final testamentary
22· · documents of Simon and Shirley Bernstein.· To the
23· · extent there's any question the document that has
24· · been admitted to be not genuine be determined to be
25· · an inoperative and ungenuine document, we would ask

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·1· · that you enter judgment for us on Count II and
·2· · reserve jurisdiction to deal with the rest of the
·3· · issues as swiftly as we can.
·4· · · · · THE COURT:· All right.· Thank you.

Thus, attorneys and fiduciaries Rose, Ted, O'Connell and Feaman all know NO Construction hearing occurred, all know I am a Child of Simon Bernstein and was named in the Notice of Admin Document filed and in the Will itself and yet all have gone along with the Fraud upon the Court denying my Standing in the Estate for nearly a year.

Even if I am allegedly only a "TPP" Beneficiary, because the Estate has allegedly been so poorly managed and has minimal funds due to misconduct, if Stansbury were to get a \$2.6 Million judgement then it is possible the Court and proper Fiduciaries will have to look to the TPP to satisfy the Creditor and thus I should have full standing for all of Simon's Estate and these hearings including Removing the current Fiduciaries and PR and denying Alan Rose from Representing the Estate or trusts due to the frauds upon the Court.

30. This Court had ample information from my Nov. 21, 2016 filing in Opposition to the current actions of Rose, Ted and PR O'Connell to Order different hearings and yet none of my claims have been heard by this Court nor any of my submitted Schedule of issues for these hearings considered which must now be changed.

31. This filing included the Federal all Writs act which shows specific areas of Monies unaccounted for by Ted, Rose and O'Connell and Stansbury and Counsel have also been aware of this and have yet to go after these funds or accountings either and the misconduct should be sufficient to permanently disqualify Ted, Rose and O'Connell from further action in these cases as fiduciaries.

32. From Par. 6 of All Writs Act Injunction filed in Federal District Court of the Northern District of Illinois on Feb. 24, 2016 and submitted to THIS Court as an Exhibit in support of the Nov. 21, 2016 Motion in Opposition, see Exhibit 11 of EXHIBIT LIST - Exhibit #5 of Filing, to the latest fraud by Ted Bernstein and his Counsel Alan Rose,

“Just one “piece-meal” disclosed item of documentary evidence shown later herein documents approximately \$2.8 Million in just one of Simon Bernstein’s accounts at the time of his passing which to this day has never been accounted for which also does not include millions from other accounts and the millions of worth of Shirley Bernstein where in 5 years there has never been an accounting yet the core parties who brought this original action to your Court try to portray my parents as virtual paupers where all their records and financials and critical documents are “lost” which is a fraud itself.”

33. This refers to funds held in a Wilmington Trust Account, see Exhibit 8 of EXHIBIT LIST, at the time of Simon Bernstein’s passing which have never been accounted for to this very day years later and never addressed by PR O’Connell despite being served a copy of the All Writs Act motion in Feb. of 2016.

34. Not only has PR O’Connell never once addressed this or sought to determine the whereabouts and accounting of these funds, but PR O’Connell has taken no action to obtain such information from Trustee Ted Bernstein or his Counsel Alan Rose.

35. Likewise, “Creditor” William Stansbury and his Counsel Peter Feaman have known about the existence of these funds for well over a year and done nothing to pursue these funds whatsoever.

36. “Creditor” Counsel Feaman was made aware of these specific funds by the All Writs Act filing by being provided a copy and “Creditor” William Stansbury has had discussions about these funds since on or about the summer of 2015 even before the “Validity Trial” of Dec. 2015 as it was William Stansbury who had pointed out that the \$2.8 Million ONLY referred to Simon Bernstein’s half of the BFR investments and that Shirley Bernstein’s half of BFR would also likely represent another \$2.8 Million and likewise there has never been Any Accounting of

these funds in the Shirley Bernstein case either and again “Creditor” William Stansbury has taken no action to pursue these matters.

37. Par. 7 of the All Writs, see Exhibit 11 of EXHIBIT LIST - Exhibit #5 of Filing, showed which this Court received as part of the Nov. 21, 2016 filings in Opposition to the actions of Ted Bernstein and Alan Rose and yet this Court with Judge Scher presently has taken No Action on even in the Scheduling of Hearings, “As shown throughout this complaint, the Discovery Abuses in the parallel State proceedings which justify exercise of this Court’s injunctive powers at this time are such that there has never been any coherent, complete disclosure of “Original” Trusts, Wills and related instruments nor any coherent presentation of the Estates and how these were managed despite sophisticated lawyers working in these cases Billing hundreds of thousands of dollars a clip.”

O’Connell is a Material and Necessary Fact Witness if Alan Rose is Not Disqualified as a Matter of Law prior to Any Hearing and PR O’Connell is Unqualified to give any Waiver or act for the Estate

- A. O’Connell and Rose’s Office are already Material Fact Witnesses on Missing TPP and from Rose’s last Minute “Discovery” of “Duplicate Originals” in May of 2015. See, Phillips Trial Motion and New Trial motion; All Writs Fed Court; Nov. 21, 2016 Filing with this Court.
- B. O’Connell claims in his UNDATED Statement first disclosed Feb., 9, 2017, see Exhibit 10 of EXHIBIT LIST, that he was “Advised” by the Rose law firm that there are no Conflicts. This is an inconclusive improper Statement that does Not show that PR O’Connell actually knows there is No Conflict based upon due diligence professional review on behalf of the Estate

C. Under (iii) O'Connell says "I have no personal knowledge or involvement in the matter" referring to the Stansbury case as an alleged basis to Agree to Appoint Ted. Yet, if PR O'Connell has NO Personal Knowledge or involvement in the matter, then PR O'Connell has no basis to make a waiver on behalf of the Estate and the Beneficiaries.

D. PR O'Connell has failed to obtain the LIC Holdings and Arbitrage International Statements. The LIC Holding Tax Returns - Last years Provided by T&S, see Exhibit 7 of EXHIBIT LIST - 2007-2008 Tax Returns²) 2007 Alleged- \$38.4 Million with \$2.7 Million to Ted and \$2.38 Million to Stansbury yet Only \$400K to Simon - 2008 - \$39.4 Million with \$5.2 Million to Ted and \$3.7 Million to Simon and \$420K to Stansbury. Yet PR O'Connell has None of the Statements since and thus No proper knowledge of what was going on with LIC to make a Waiver.

E. Further, See Sept. 19th 2014 Email from Ben Brown, see Exhibit 30 from EXHIBIT LIST - Ben Brown confirms there are NO Statements for Shirley or EITHER TRUSTS - Still Waiting on IRS Tax Returns. Yet, PR O'Connell never Follows up, never gets any LIC info; never gets Tax Returns.

F. IF PR O'Connell never gets any of that info, how can he determine what is Best Interests of the Estate? IF he hAS that INFO and DISCOVERY then there are Discovery Violations as he never turned Over these items to myself and turned over 3 Partially Filled Boxes in August of 2015 supposed to be representing Simon's Business Etc for someone in Business for 50 years,

G. O'Connell as PR for the Estate of Simon has conflicting interest with Ted Bernstein as a Defendant in the Stansbury lawsuit, as Ted is a defendant in the lawsuit who has only

² 2007-2008 LIC Tax Returns UNSIGNED
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/tax%20returns%202007%202008%20LIC.pdf>

been let out of the lawsuit by Stansbury, not the Estate, not BFR and Ted is alleged to have committed most of the egregious acts alleged by Stansbury, including fraud. The Estate should be claiming that Ted was responsible for virtually all of the claims Stansbury alleges and therefore should be held personally liable for ALL OF THE DAMAGES and not shift burden of liabilities from Ted to the Estate beneficiaries only.

H. If Ted's counsel Rose were to defend the Estate would he be capable of alleging his client Ted is responsible for the fraud or aid and abet Ted in shifting the liabilities and allowing Ted out of the damages? Especially due to Rose's previous involvement in a conflicted and fraudulent settlement with Stansbury that was done with Ted having conflicts of interest, adverse interests and conflicting financial interests to the parties he was representing as a fiduciary and Rose knowing these conflicts and adversity settled the matter to allow his client Ted individually out of the lawsuit and thereby shifted the entire burden of liabilities to the Simon Estate and Simon Trust where his client Ted has no financial interest. This previous settlement constructed with such a diabolical conflict shows this Court that Ted again has ignored his fiduciary responsibilities to the parties he represents and put himself before them at their expense. Beneficiaries and this Court were never given information relating to the settlement that allowed Ted Bernstein out of the Stansbury lawsuit.

I. Brian O'Connell has been repeatedly informed of this conflict of interest and adverse interest of Ted Bernstein but yet somehow now is allowing the breaches to continue without even informing this Court of the fraud that is occurring and in fact, further enabling the fraud by allowing Ted's counsel to replace him in the litigation without raising adequate defenses to quash this fraud from continuing..

Current Case Management Order has No Orderly Structure for Hearings; Witness Lists;

Exhibits etc - Insufficient Time scheduled for Proper Hearings

The current case management Order had no Orderly structure for the hearings, Witness lists or Exhibit lists and has insufficient time and must be Vacated in substantial part, amended and modified.

Ted's Inherent Conflicts as Responsible Party in Stansbury Litigation Shifting Burden of Liability to the Estate for Acts he May be Responsible For; Attorney Alan Rose "integral" part of this Inherent Conflict

- A. Terms of Settlement with Ted Bernstein Unknown in general and are "Hidden" from this Court and All of the Beneficiaries of the Estate. This Court should make No determinations on Rose or Ted without full disclosure of the Terms of the Settlement with Ted on the Record and to All Beneficiaries of the Estate including Eliot Bernstein.
- B. PR O'Connell as PR could not make Proper waiver or determination in absence of determination of Ted's Responsibility and Liability.
- C. The Court should note that attorney Feaman and the Creditor Stansbury started off their attempts to collect the \$2.6 million by Certified Letter to Ted Bernstein, NOT Simon Bernstein and the Complaints and Amended Complaints filed by Stansbury focused conduct on Ted Bernstein who had inherent conflicts in Settling as Fiduciary shifting liabilities to the Estate Beneficiaries and must now be denied all motions, strike all motions and removed as fiduciary or leave for full motions on removal to be filed.
- D.

OTHER FRAUD UPON THE COURT BY ATTORNEY ALAN ROSE, FIDUCIARY TED BERNSTEIN THAT FIDUCIARY PR BRIAN O'CONNELL HAS GONE ALONG WITH AND ATTORNEY OFFICER OF THE COURT PETER FEAMAN HAS REFUSED TO ADDRESS; THUS THE COURT SHOULD GRANT LEAVE FOR A FULL MOTION TO VACATE THE “FINAL JUDGMENT” OF VALIDITY TRIAL HEREIN IF IT DOES NOT DO SO ON THE CURRENT PAPERS.

Florida Rules of Civil Procedure 1.200 provides in part that, “PRETRIAL PROCEDURE (a) Case Management Conference. At any time after responsive pleadings or motions are due, the court may order, or a party, by serving a notice, may convene, a case management conference. The matter to be considered shall be specified in the order or notice setting the conference.” (emphasis added). Procedural due process is a constitutional guarantee. See, e.g., Vollmer v. Key Dev. Props., 966 So.2d 1022 (Fla. 2 nd DCA 2007).

Starting in the same pattern as now shown before this Court, Attorney Alan Rose actually knew on Sept. 15, 2015 that a Case Management Conference was only called in the Simon Bernstein Estate case as filed by PR O’Connell’s office but instead “moved” the Court of Judge Phillips to set a Trial in the Shirley Bernstein case after submitting a “last minute” Omnibus Report “after business hours” the day before which clearly showed he was aware that No Case Management Conference had been issued in the Shirley Trust or cases other than Simon’s Estate and in fact had requested a last minute additional hour for Case Management on those cases but no such hour was granted and no Notice of Case Management in the other cases occurred.

Fiduciary and Officer of the Court Attorney Brian O’Connell continued with this fraud and went along not moving to correct and neither did Attorney Officer of the Court Peter Feaman.

Attorney and Officer of the Court Peter Feaman even admitted in a phone conference shortly before the improperly scheduled “Validity” Trial of Dec. 15, 2015 that UNIFORM Pre-Trial Procedures exist in the 15th Judicial but these had not been Ordered by Judge Phillips and yet has taken no action to correct ever since or come forward with an Affidavit in this matter. Peter Feaman must be added to the Witness List for Hearings in this case under a new Case management Order.

The right to be heard is so instrumental that error need not be preserved. “[T]he denial of a party's right to be heard — even if unpreserved — constitutes per se reversible error and, therefore, can be raised at any time.” K.G. v. Fla. Dep’t of Children & Families, 66 So. 3d 366 (Fla. 1st DCA 2011), citing Vollmer v. Key Dev. Props., Inc., 966 So. 2d 1022, 1027 (Fla. 2d DCA 2007).

“The constitutional guarantee of due process requires that each litigant be given a full and fair opportunity to be heard... The violation of a litigant’s due process right to be heard requires reversal.” Vollmer v. Key Dev. Props., 966 So.2d 1022, 1027 (Fla. 2nd DCA 2007). See also, Minakan v. Husted, 27 So. 3d 695 (Fla. 4th DCA 2010)”.

“The goals of these procedural rules are “to eliminate surprise, to encourage settlement, and to assist in arriving at the truth.” Spencer v. Beverly, 307 So.2d 461, 462 (Fla. 4th DCA 1975) (Downey, J., concurring), cert. denied, 314 So.2d 590 (Fla. 1975). We recently reiterated those goals. “A search for truth and justice can be accomplished only when all relevant facts are before the judicial tribunal. Those relevant facts should be the determining factor rather than gamesmanship, surprise, or superior trial tactics. Dodson v. Persell, 390 So.2d 704, 707 (Fla. 1980).

”,

According to *Hendrix v. Department Stores National Bank*, 4D14-1612 (Fla. App. 4 Dist. 9- 30-2015) citing *Infante v. Vantage Plus Corp.*, 27 So.3d 678, 680 (Fla. 3d DCA 2009), "A judgment is void if, in proceedings leading up to the judgment, there is [a] violation of the due process guarantee of notice and an opportunity to be heard." See, *Hendrix v. Department Stores National Bank*, 4D14-1612 (Fla. App. 4 Dist. 9- 30-2015) citing *Infante v. Vantage Plus Corp.*, 27 So.3d 678, 680 (Fla. 3d DCA 2009)

"A judgment is void if, in the proceedings leading up to the judgment, there is [a] violation of the due process guarantee of notice and an opportunity to be heard." *Tannenbaum v. Shea*, 133 So.3d 1056, 1061 (Fla. 4th DCA 2014) (internal quotations and citations omitted); see also *Viets v. Am. Recruiters Enterprises, Inc.*, 922 So.2d 1090, 1096 (Fla. 4th DCA 2006) (a denial of due process "voids the default, and derivatively the default judgment."). See, *Tannenbaum v. Shea*, 133 So.3d 1056, 1061 (Fla. 4th DCA 2014) (internal quotations and citations omitted); see also *Viets v. Am. Recruiters Enterprises, Inc.*, 922 So.2d 1090, 1096 (Fla. 4th DCA 2006)

As the 4th DCA said in *JOELLE SAWAYA, Appellant, v. MORRIS KENT THOMPSON, Appellee*. No. 4D15-841 [November 30, 2016], "By failing to hold an evidentiary hearing on the petition and motions, the trial court violated Appellant's due process rights. There was a denial of procedural due process in the instant case because the trial court summarily denied Appellant's petition without holding an evidentiary hearing.¹ Such a summary denial violates a petitioner's right to be heard. *Murphy v. Ridgard*, 757 So. 2d 607, 608 (Fla. 5th DCA 2000)." Further, " As this Court explained in *Sperdute v. Household Realty Corp.*, 585 So. 2d 1168 (Fla. 4th DCA 1991), "the purpose of an evidentiary hearing is to allow a party to 'have a fair opportunity to contest' the factual issues [I]t is reversible error for a trial court to deny a party an evidentiary hearing to which he is entitled." Id. at 1169 (quoting *Malzahn v. Malzahn*,

541 So. 2d 1359, 1360 (Fla. 4th DCA 1989)). See, Sperduto v. Household Realty Corp., 585 So. 2d 1168 (Fla. 4th DCA 1991)

Eliot I. Bernstein was Summarily denied any Evidentiary hearing on the motions to oppose the lack of standing, wholly denied any Evidentiary Hearing for proper “Construction” of the allegedly “valid” “Testamentary” documents, denied a proper due process evidentiary hearing on Guardianship and summarily denied an evidentiary hearing on counterclaims herein and throughout these proceedings.

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Thus, not only should this Court grant Leave to file a comprehensive Motion to Vacate the “Final Judgment” on Validity, but should also Order Standard, Uniform Pre Trial Order for the new Hearings and grant further leave to file comprehensive motions to Vacate all of the Orders and or Judgements of of Judge Phillips and Orders of Judge Colin and other relief as law and justice requires.

This Court Must Now Restructure the Case Management Order and Order Producton of Discovery and Depositions before Hearings to Address the pervasive Fraud upon the Court

by Alan Rose, Ted Bernstein and “gone along with” by PR Brian O’Connell

38. Pre-trial depositions in Trust and Will construction and validity cases are proper and the lower tribunal abused its discretion by denying these pre-trial Discovery procedures. Although in the following case there existed the additional factor of witnesses in jeopardy of passing away before trial to also support the pre-trial deposition request, the Court noted, “The depositions were plainly within the general scope of discovery relating to the allegations in the second amended

complaint. Fla. R. Civ. P. 1.280(b).". See, *Toomey v. the Northern Trust Co., Etc.*, 15-2813 (Fla. Dist. Ct. App. 2016).

39. This Court is respectfully Petitioned to Amend and Modify the Case Management Order to permit Discovery and Depositions of the parties listed in the submitted Witness List already on file with this Court on this day of Feb, 16, 2017 and restructure the Order of the Hearings so All Fraud upon the Court is addressed and removed first.

A Continuance of the Hearings Should Further be Granted Considering the serious Medical-Dental issues of Eliot Bernstein while repeatedly faced with Fraud Upon the Court

by Fiduciaries and Attorneys

40. "Factors to be considered in determining whether the trial court abused its discretion in denying the motion for continuance include whether the denial of the continuance creates an injustice for the movant; whether the cause of the request for continuance was unforeseeable by the movant and not the result of dilatory practices; and whether the opposing party would suffer any prejudice or inconvenience as a result of a continuance." *Fleming v. Fleming*, 710 So.2d 601 (Fla. 4th DCA 1998)

41. In determining whether the trial court has abused this broad discretion, the appellate courts consider the following three factors stated previously: "1) whether the movant suffers injustice from the denial of the motion; 2) whether the underlying cause for the motion was unforeseen by the movant and whether the motion is based on dilatory tactics; and 3) whether prejudice and injustice will befall the opposing party if the motion is granted. *Baron v. Baron*, 941 So.2d 1233,

1235-36 (Fla. 2d DCA 2006) (quoting *Myers v. Seigel*, 920 So.2d 1241, 1242 (Fla. 5 th DCA 2006))."

42. In this case, it was Unforeseen that PR O'Connell would finally come out with an Admission against the Interests of Ted Bernstein and Alan Rose now proving the FRAUD Upon the Court that these parties have perpetrated for over a year.
43. It was these "Fiduciaries" and "Attorneys" who WITHHELD this Information from the Court and Judge Scher and myself until the "last minute" filing of Feb. 9th, 2017.
44. These parties can not claim Prejudice as a result of their own Fraud Upon the Court.
45. For these reasons and the attached Doctor's statement showing serious Medical-Dental issues of Eliot I. Bernstein, a Continuance of at least 3 weeks should be granted but any such Order should also consider the time needed to obtain necessary Discovery and Depositions of these parties and those on the attached Witness list.

**O'Connell Material and Necessary Fact Witness if Alan Rose is Not Disqualified as a
Matter of Law prior to Any Hearing**

- J. O'Connell and Rose's Office already Material Fact Witnesses on Missing TPP; last Minute "Discovery" of "Duplicate Originals" etc - Phillips Trial Motion; All Writs Fed Court; Nov. 21, 2016 Filing with this Court etc
- K. O'Connell claims in an UNDATED Statement, see Exhibit 10 of EXHIBIT LIST, he was "Advised" by the Rose law firm that there are no Conflicts - Inconclusive Improper Statement that does Not show the PR O'Connell actually knows there is No Conflict Based upon Due Diligence Professional Review on Behalf of the Estate
- L. Under (iii) O'Connell says "I have no personal knowledge or involvement in the matter" as a basis to Agree to Appoint Ted - YET, IF he has NO Personal Knowledge or

Involvement in the Matter then PR O'Connell has No Basis to Make a Waiver on behalf of the Estate and the Beneficiaries.

M. *** LIC Holding Tax Returns - Last years Provided by T&S, see Exhibit 7 of EXHIBIT LIST - 2007-2008 Tax Returns³) 2007 Alleged- \$38.4 Million with \$2.7 Million to Ted and \$2.38 Million to Stansbury yet Only \$400K to Simon - 2008 - \$39.4 Million with \$5.2 Million to Ted and \$3.7 Million to Simon and \$420K to Stansbury - See Sept. 19th 2014 Email from Ben Brown, see Exhibit 30 from EXHIBIT LIST - NO Statements for Mother or EITHER TRUSTS - Still Waiting on IRS Tax Returns - O'Connell Never Follows up - NEVER Gets Any LIC info - Never Gets Tax Returns - IF Never Gets ANY of that Info, HOW Can he Determine what is Best Interests of the Estate - IF he HAS that INFO, DISCOVERY Violations as Never Turned Over to Eliot - Turned over 3 Partially Filled Boxes in August of 2015 Supposed to Be Representing Simon's Business Etc for Someone in Business for 50 years -

N. O'Connell as PR for the Estate of Simon has conflicting interest with Ted Bernstein as a Defendant in the Stansbury lawsuit, as Ted is a defendant in the lawsuit who has only been let out of the lawsuit by Stansbury, not the Estate, not BFR and is alleged to have committed most of the egregious acts alleged by Stansbury, including fraud. The Estate should be claiming that Ted was responsible for virtually all of the claims Stansbury alleges and therefore should be held personally liable for ALL OF THE DAMAGES and not shift burden of liabilities from Ted to the Estate beneficiaries only.

O. If Ted's counsel Rose where to defend the Estate would he be capable of alleging his client Ted is responsible for the fraud or aid and abet Ted in shifting the liabilities and

³ 2007-2008 LIC Tax Returns UNSIGNED
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/tax%20returns%202007%202008%20LIC.pdf>

allowing Ted out of the damages? Especially due to Rose's previous involvement in a conflicted and fraudulent settlement with Stansbury that was done with Ted having conflicts of interest, adverse interests and conflicting financial interests to the parties he was representing as a fiduciary and Rose knowing these conflicts and adversity settled the matter to allow his client Ted individually out of the lawsuit and thereby shifted the entire burden of liabilities to the Simon Estate and Simon Trust where his client Ted has no financial interest. This previous settlement constructed with such a diabolical conflict shows this Court that Ted again has ignored his fiduciary responsibilities to the parties he represents and put himself before them at their expense. Beneficiaries and this Court were never given information relating to the settlement that allowed Ted Bernstein out of the Stansbury lawsuit.

P. Brian O'Connell has been repeatedly informed of this conflict of interest and adverse interest of Ted Bernstein but yet somehow now is allowing the breaches to continue without even informing this Court of the fraud that is occurring and in fact, further enabling the fraud by allowing Ted's counsel to replace him in the litigation without raising adequate defenses to quash this fraud from continuing..

WHEREFORE, it is respectfully prayed for an Order Vacating in substantial part the Case Management Order and amending and modifying same, Disqualifying Rose, Ted and O'Connell from all fiduciary capacities or granting leave for formal motions to remove all fiduciaries, granting Discovery and Depositions and Orderly trial procedures and a continuance and other relief as requested herein.

Dated: February 16, 2017

By: /S/ Eliot Ivan Bernstein

Eliot Ivan Bernstein, Pro Se
2753 NW 34th Street
Boca Raton, FL 33434
561.245.8588
iviewit@iviewit.tv

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to counsel of record and the proper parties on the attached Service List via the Court's e-portal system or Email Service on this 16th day of February, 2017.

By: /S/ Eliot Ivan Bernstein

Eliot Ivan Bernstein, Pro Se
2753 NW 34th Street
Boca Raton, FL 33434
561.245.8588
iviewit@iviewit.tv

SERVICE LIST

Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com	Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 arose@pm-law.com and arose@mrachek-law.com mchandler@mrachek-law.com	John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 courtfilings@pankauskilawfirm.com john@pankauskilawfirm.com
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Robert L. Spallina, Esq., Teschers & Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 rspallina@tescherspallina.com kmoran@tescherspallina.com ddustin@tescherspallina.com	Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com lisa.friedstein@gmail.com lisa@friedsteins.com	Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway Suite 200 Boca Raton, Florida 33432 ijb@ijblegal.com martin@kolawyers.com
Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net mrmlaw1@gmail.com	Donald Tescher, Esq., Tescher & Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 dtescher@tescherspallina.com dtescher@tescherspallina.com ddustin@tescherspallina.com kmoran@tescherspallina.com	Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com
Peter Feaman, Esquire Peter M. Feaman, P.A. 3615 Boynton Beach Blvd. Boynton Beach, FL 33436 pfeaman@feamanlaw.com service@feamanlaw.com mkoskey@feamanlaw.com	Kimberly Moran kmoran@tescherspallina.com	Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians 210 I Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com
Carley & Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 Lisa@friedsteins.com lisa.friedstein@gmail.com	Lindsay Baxley aka Lindsay Giles lindsay@lifeinsuranceconcepts.com	Brian M. O'Connell, Esq. Joielle A. Foglietta, Esq. Ciklin Lubitz Martens & O'Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900-Telephone 561-833-4209 - Facsimile Email: boconnell@ciklinlubitz.com; ifoglietta@ciklinlubitz.com; service@ciklinlubitz.com; slobdell@ciklinlubitz.com

SERVICE LIST

John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401	Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 lisa@friedsteins.com
--	--

<p>(561) 833-0766-Telephone (561) 833-0867 -Facsimile Email: John P. Morrissey (john@jrnoiTisseylaw.com)</p>	
<p>Peter M. Feaman, Esq. Peter M. Feaman, P.A. 3695 West Boynton Beach Blvd., Suite 9 Boynton Beach, FL 33436 (561) 734-5552 -Telephone (561) 734-5554 -Facsimile Email: service@feamanlaw.com: mcoskey@feamanlaw.com</p>	<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>
<p>Gary R. Shendell, Esq. Kenneth S. Pollock, Esq. Shendell & Pollock, P.L. 2700 N. Military Trail, Suite 150 Boca Raton, FL 33431 (561)241-2323 - Telephone (561)241-2330-Facsimile Email: gary@shendellpollock.com ken@shendellpollock.com estella@shendellpollock.com britt@shendellpollock.com grs@shendellpollock.com</p>	<p>Counter Defendant Robert Spallina, Esq. Donald Tescher, Esq. Tescher & Spallina 925 South Federal Hwy., Suite 500 Boca Raton, Florida 33432</p>
<p>Brian M. O'Connell, Esq. Joieille A. Foglietta, Esq. Ciklin Lubitz Martens & O'Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900-Telephone 561-833-4209 - Facsimile Email: boconnell@ciklinlubitz.com; ifoglietta@ciklinlubitz.com; service@ciklinlubitz.com; slobdell@ciklinlubitz.com</p>	<p>Counter Defendant John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 courtfilings@pankauskilawfirm.com john@pankauskilawfirm.com</p>
<p>Counter Defendant Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net</p>	<p>Counter Defendant Donald Tescher, Esq., Tescher & Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com</p>

Theodore Stuart Bernstein 880 Berkeley Boca Raton, FL 33487 tberNSTein@lifeinsuranceconcepts.com	Counter Defendant TESCHER & SPALLINA, P.A.. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com
Theodore Stuart Bernstein Life Insurance Concepts, Inc. 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 tberNSTein@lifeinsuranceconcepts.com	Counter Defendant Alan B. Rose, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 561-355-6991 arose@pm-law.com arose@mrachek-law.com
Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com	Counter Defendant L. Louis Mrachek, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 561-355-6991 lmrachek@mrachek-law.com
Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com	Counter Defendant Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401
Lisa Sue Friedstein 2142 Churchill Lane Highland Park, IL 60035 lisa.friedstein@gmail.com lisa@friedsteins.com	Dennis McNamara Executive Vice President and General Counsel Oppenheimer & Co. Inc. Corporate Headquarters 125 Broad Street New York, NY 10004 800-221-5588 Dennis.mcnamara@opco.com info@opco.com
Dennis G. Bedley Chairman of the Board, Director and Chief Executive Officer Legacy Bank of Florida Glades Twin Plaza	Hunt Worth, Esq. President Oppenheimer Trust Company of Delaware 405 Silverside Road Wilmington, DE 19809

<p>2300 Glades Road Suite 120 West – Executive Office Boca Raton, FL 33431 info@legacybankfl.com DBedley@LegacyBankFL.com</p>	<p>302-792-3500 hunt.worth@opco.com</p>
<p>James Dimon Chairman of the Board and Chief Executive Officer JP Morgan Chase & CO. 270 Park Ave. New York, NY 10017-2070 Jamie.dimon@jpmchase.com</p>	<p>Neil Wolfson President & Chief Executive Officer Wilmington Trust Company 1100 North Market Street Wilmington, DE 19890-0001 nwolfson@wilmingtontrust.com</p>
<p>William McCabe Oppenheimer & Co., Inc. 85 Broad St Fl 25 New York, NY 10004 William.McCabe@opco.com</p>	<p>STP Enterprises, Inc. 303 East Wacker Drive Suite 210 Chicago IL 60601-5210 psimon@stpcorp.com</p>
<p>Charles D. Rubin Managing Partner Gutter Chaves Josepher Rubin Forman Fleisher Miller PA Boca Corporate Center 2101 NW Corporate Blvd., Suite 107 Boca Raton, FL 33431-7343 crubin@floridatax.com</p>	<p>Ralph S. Janvey Krage & Janvey, L.L.P. Federal Court Appointed Receiver Stanford Financial Group 2100 Ross Ave, Dallas, TX 75201 rjanvey@kjllp.com</p>
<p>Kimberly Moran Teschner & Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 kmoran@tescherspallina.com</p>	<p>Lindsay Baxley aka Lindsay Giles Life Insurance Concepts 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 lindsay@lifeinsuranceconcepts.com</p>
<p>Gerald R. Lewin CBIZ MHM, LLC 1675 N Military Trail Fifth Floor Boca Raton, FL 33486</p>	<p>CBIZ MHM, LLC General Counsel 6480 Rockside Woods Blvd. South Suite 330 Cleveland, OH 44131 ATTN: General Counsel generalcounsel@cbiz.com (216)447-9000</p>
<p>Albert Gortz, Esq. Proskauer Rose LLP One Boca Place 2255 Glades Road Suite 421 Atrium</p>	<p>Heritage Union Life Insurance Company A member of WiltonRe Group of Companies 187 Danbury Road Wilton, CT 06897 cstrroup@wiltonre.com</p>

Boca Raton, FL 33431-7360 agortz@proskauer.com	
Estate of Simon Bernstein Brian M O'Connell Pa 515 N Flagler Drive West Palm Beach, FL 33401 boconnell@ciklinlubitz.com	Counter Defendant Steven Lessne, Esq. Gray Robinson, PA 225 NE Mizner Blvd #500 Boca Raton, FL 33432 steven.lessne@gray-robinson.com
Byrd F. "Biff" Marshall, Jr. President & Managing Director Gray Robinson, PA 225 NE Mizner Blvd #500 Boca Raton, FL 33432 biff_marshall@gray-robinson.com	Steven A. Lessne, Esq. Gunster, Yoakley & Stewart, P.A. 777 South Flagler Drive, Suite 500 East West Palm Beach, FL 33401 Telephone: (561) 650-0545 Facsimile: (561) 655-5677 E-Mail Designations: slessne@gunster.com jhoppel@gunster.com eservice@gunster.com
T&S Registered Agents, LLC Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com	David Lanciotti Executive VP and General Counsel LaSalle National Trust NA CHICAGO TITLE LAND TRUST COMPANY, as Successor 10 South LaSalle Street Suite 2750 Chicago, IL 60603 David.Lanciotti@ctt.com
Joseph M. Leccese Chairman Proskauer Rose LLP Eleven Times Square New York, NY 10036 jleccese@proskauer.com	Brian Moynihan Chairman of the Board and Chief Executive Officer 100 N Tryon St #170, Charlotte, NC 28202 Phone:(980) 335-3561
ADR & MEDIATIONS SERVICES, LLC Diana Lewis 2765 Tecumseh Drive West Palm Beach, FL 33409 (561) 758-3017 Telephone Email: dzlewis@aol.com (Fla. Bar No. 351350)	

SERVICE LIST

Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com	Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 arose@pm-law.com and arose@mrachek-law.com mchandler@mrachek-law.com	John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 courtfilings@pankauskilawfirm.com john@pankauskilawfirm.com
Robert L. Spallina, Esq., Tescher & Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 rspallina@tescherspallina.com kmoran@tescherspallina.com ddustin@tescherspallina.com	Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com lisa.friedstein@gmail.com lisa@friedsteins.com	Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway Suite 200 Boca Raton, Florida 33432 ijb@ijblegal.com martin@kolawyers.com
Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net mrmlaw1@gmail.com	Donald Tescher, Esq., Tescher & Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 dtescher@tescherspallina.com dtescher@tescherspallina.com ddustin@tescherspallina.com kmoran@tescherspallina.com	Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com
Peter Feaman, Esquire Peter M. Feaman, P.A. 3615 Boynton Beach Blvd. Boynton Beach, FL 33436 pfeaman@feamanlaw.com service@feamanlaw.com mkoskey@feamanlaw.com	Kimberly Moran kmoran@tescherspallina.com	Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians 210 I Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com
Carley & Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 Lisa@friedsteins.com	Lindsay Baxley aka Lindsay Giles lindsay@lifeinsuranceconcepts.com	

lisa.friedstein@gmail.com		
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EXHIBIT LIST BINDER FOR FEBRUARY 16, 2016 HEARING JUDGE SCHER

1. Colin Order Staying Other Counts of Validity Hearing
2. Ted's Amended Complaint Shirley Trust
3. Phillips Trial Order which Continues the Stay on the Other Counts
4. Phillips Judgment after Bogus Validity Trial that does NOT Say Anything on Standing or Beneficiaries, etc
5. Rose Ted Complaint of Jan. 4th 2016
6. Copy of the Will 2012
7. Copy of 2007 -2008 Tax Returns LIC
8. Copy of Wilmington Statement
9. Copy of All Financial Docs in the All Writs Filing
 - a. Grant Thornton
 - b. Stanford Valuation
 - c. Bank One Statement Page
 - d. JP Morgan Simon Account
 - e. JP Morgan Simon Account % Arbitrage Int'l
 - f. JP Morgan Trustee Account Spallina Tescher
 - g. Oppenheimer Email Regarding Stanford Account Transfers
10. Copy of O'Connell Undated Statement Feb 9, 2017 filing
11. Copy of All Writs Act Filing
12. Copy of EXCERPT from Sept 2013 hearing Colin (Just Do First pages intro, the Relevant Pages needed, and the Last pages etc) - Get the Manceri section saying you are a Beneficiary - Get the sections where Colin discusses Miranda
13. Copy of Sept 15 2015 Case Management Phillips Transcript - Filing # 52565584 E-Filed 02/16/2017 06:54:43 AM
14. Copy of EIB Nov. 21, 2016 Filing in Opposition Bogus Rose Filings
 - a. Pages 1-30
 - b. Pages 163-217
15. Copy of Shirley Guardian Order
16. Copy of Standing Order Shirley
17. Colin Feb. 18, 2014 Order on Discovery against Tescher Spallina
18. Dr. Ronik Seecheran Letter Regarding Eliot Health

19. PBSO REPORTS TED AND ROSE STATEMENTS - Filing # 52566594 E-Filed
02/16/2017 08:24:38 AM

20. Nov 28, 2016 Letter to Judge Scher from Alan Rose

21. Filing # 32030300 E-Filed 09/14/2015 05:18:25 PM Trustee Omnibus Judge Phillips

22. Opposition to Jan 4 2016 Ted Filing On Standing
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20160106%20FINAL%20ESI%20GNED%20OPPOSITION%20IMPROPER%20ROSE%20TED%20HEARING%20GAG%20ORDER.pdf>

23. Opposition Jan 13 2016 to Ted Filing On Guardian
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20160113%20FINAL%20ESI%20GNED%20MOTION%20IN%20OPPOSITION%20TO%20GUARDIAN%20SHIRLEY%20TRUST%20Phillips%20Rose%20ECF%20STAMPED%20COPY.pdf>

24. Jan 19, 2016 Eliot Objections to Proposed Order
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20160119%20Final%20ESigned%20Objections%20to%20Proposed%20Order%20of%20Alan%20B.%20Rose%20ECF%20Stamped%20Copy.pdf>

25. December 15 2015 Validity Hearing Transcript - Filing # 52565600 E-Filed 02/16/2017 06:58:04 AM

26. September 01, 2016 Hearing RE TPP - Feaman exposes fraud - Filing # 52565684 E-Filed 02/16/2017 07:23:04 AM

27. September 13, 2013 Hearing Judge Colin - Filed with Court - Filing # 52565612 E-Filed 02/16/2017 07:00:50 AM

28. 15th Judicial Administrative Order 3.203-9/08 UNIFORM PRETRIAL PROCEDURES IN CIVIL ACTIONS
<https://15thcircuit.co.palm-beach.fl.us/documents/10179/15127/3.203.pdf>

29. Notice of Administration Simon Bernstein Estate

30. Sep 19, 2014 Ben Brown Letter

**EXHIBITS BY URL SUBMISSION - ALL URL'S FULLY INCORPORATED BY
REFERENCE HEREIN**

1. ESTATE & TRUST of Simon L. Bernstein Accounting Objections;

- a. Eliot Bernstein filed May 22, 2014⁴ to Simon Estate
- b. Jill Iantoni & Lisa Friedstein filed May 30, 2014⁵ to Simon Estate
- c. MOLLY SIMON, ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and MICHAEL BERNSTEIN filed June 01, 2014⁶ to Simon Estate
- d. Creditor William Stansbury filed June 02, 2014⁷ to Simon Estate
- e. PR Brian O'Connell, Esq. filed August 13, 2014⁸ to Simon Estate
- f. Eliot Bernstein filed September 02, 2015⁹ to Simon Bernstein Trust Accounting
- g. Brian O'Connell filed Amended September 30, 2015¹⁰ to Simon Bernstein Trust

2. May 13, 2013 Emergency Motion¹¹ - Halt Freeze All Assets
3. Nov. 21, 2016 Objections Filed in All 3 Cases¹² -
4. PRIOR MOTIONS TO REMOVE TED

⁴<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140522%20FINAL%20SIGNED%20PRINTED%20OBJECTION%20TO%20FINAL%20ACCOUNTING%20Low.pdf>

⁵<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140530%20Objections%20to%20Final%20Accounting%20Jill%20and%20Lisa.pdf>

⁶<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140601%20Objection%20to%20Final%20Accounting%20Molly%20Eric%20Michael.pdf>

⁷ June 02, 2014 Objection to Accounting Creditor Stansbury Simon Estate
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140602%20Objection%20to%20Spallina%20Tesch%20Accounting%20Stansbury%20Feaman.pdf>

⁸ August 13, 2014 Objection to Accounting PR Brian O'Connell Simon Estate
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140813%20Personal%20Representative%20OConnell%20Objection%20to%20Spallina%20and%20Tesch%20Final%20Accounting.pdf>

⁹ September 02, 2015 Objection to Accounting filed by Eliot Bernstein - Simon Trust Accounting
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150902%20FINAL%20Objection%20to%20Simon%20Bernstein%20Trust%20Accounting%20ECF.pdf>

¹⁰ September 30, 2015 Objection to Accounting filed by PR O'Connell - Simon Trust Accounting
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150930%20Simon%20Estate%20Accounting%20Objection%20of%20Ted%20Trust%20Accounting%20Brian%20O'Connell%20PR.pdf>

¹¹ May 06, 2013 Emergency Petition
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

¹² November 21, 2016 Opposition to Trustee's Motion to Close Estate
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20161121%20FINAL%20ESIGNED%20Motion%20in%20Opposition%20to%20Trustee%20Motion%201%20i%20ii%20and%202%20Simon%20Estate%20Case%204391%20ECF%20STAMPED%20COPY.pdf>

- a. May 06, 2013 – filed in both Simon and Shirley

“EMERGENCY PETITION TO: FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SHIRLEY BERNSTEIN AND MORE F/B: ELIOT IVAN BERNSTEIN”

- i. <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

- b. Filing # 17660459 Electronically Filed 08/28/2014 05:53:59 PM “AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN IN ALL FIDUCIAL CAPACITIES ON THE COURT'S OWN INITIATIVE- FLORIDA TITLE XLII 736.0706” - Simon Estate

- i. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140828%20SIMON%20ESTATE%20Amended%20Motion%20to%20Remove%20Theodore%20as%20PR%20and%20Trustee%20in%20the%20Estates%20and%20Trusts%20of%20Simon%20and%20Shirley%20Bernstein%20ECF%20STAMPED%20Copy.pdf>

- c. Filing # 17930130 Electronically Filed 09/06/2014 09:30:01 PM “PETITION TO REMOVE TED BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE OF THE ALLEGED SIMON BERNSTEIN REVOCABLE TRUST” - Simon Trust

- i. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140906%20PETITION%20TO%20REMOVE%20TED%20AS%20SUCCESSOR%20TRUSTEE%20OF%20THE%20SIMON%20BERNSTEIN%20REVOCABLE%20TRUST%20ECF%20STAMPED%20COPY.pdf>
- d. Filing # 18185199 Electronically Filed 09/12/2014 03:36:53 PM “PETITION TO REMOVE TED BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE OF THE ALLEGED SHIRLEY BERNSTEIN IRREVOCABLE TRUST” - Shirley Trust Construction Case
 - i. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20TRUST%20CONSTRUCTION%20CASE%20PETITION%20TO%20REMOVE%20TED%20AS%20SUCCESSOR%20TRUSTEE%20OF%20THE%20SIMON%20BERNSTEIN%20REVOCABLE%20TRUST%20ECF%20STAMPED%20COPY.pdf>
- e. Filing # 26593876 E-Filed 04/28/2015 03:51:33 AM “AMENDED COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS SUCCESSOR TRUSTEE”
 - i. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150428%20FINAL%20COMPLAINT%20TO%20REMOVE%20TED%20AS%20SUCCESSOR%20TRUSTEE%20OF%20THE%20SIMON%20BERNSTEIN%20REVOCABLE%20TRUST%20SIMON%20TRUST%20CASE%20ECF%20STAMPED%20COPY.pdf>

5. Eliot’s MOTIONS Filed in Opposition to Remove Standing from Jan - March 2016 -
6. Motion for New Trial - Denied Summarily in Violation of Due Process -

- a. January 07, 2016 - Order Denying New Trial
 - i. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160107%20ORDER%20Phillips%20Deny%20Motion%20for%20New%20Trial.pdf>
- b. Filing # 36072783 E-Filed 12/31/2015 10:14:18 PM “MOTION FOR NEW TRIAL”
 - i. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151231%20FINAL%20ESIGNED%20MOTION%20FOR%20NEW%20TRIAL%20STAY%20INJUNCTION%20PHILLIPS%20ECF%20STAMPED%20COPY.pdf>
- c. Filing # 35530283 E-Filed 12/15/2015 07:38:57 AM “ELIOT BERNSTEIN’S MOTION FOR STAY & CONTINUANCE OF TRIAL”
 - i. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20ESIGNED%20Phillips%20Trial%20Stay%20ECF%20STAMPED%20COPY.pdf>

7. Eliot Answer & Counter Complaint - Shirley Trust Validity Case

- i. Answer -
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Answer%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf>
- ii. Counter -
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf>

8. Eliot's Suggested Case Management Conference Schedule of Nov. 28 2016 - Not Fully Heard and Not Considered in Order of Dec. 13, 2016 Filing # 49329510 E-Filed
11/28/2016 02:51:29 PM¹³

Feaman and Stansbury Notification to Courts and Fiduciaries of criminal and civil misconduct in courts and related filings:

9. November 28, 20016 CLAIMANT, WILLIAM E. STANSBURY'S SUMMARY OF ISSUES

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20161128%20Claimant%20Stansbury%20Summary%20of%20Issues%20Simon%20Estate%20Status%20Conference.pdf>

10. November 28, 2016 Stansbury Letter to Judge Scher with copy of Stansbury Summary of issues for Status Conference.pdf

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20161128%20Stansbury%20Letter%20to%20Judge%20Scher%20with%20copy%20of%20Stansbury%20Summary%20of%20issues%20for%20Status%20Conference.pdf>

11. November 28, 2016 Stansbury Motion to Disqualify Alan Rose as Legal Counsel for the Estate of Simon Bernstein Due to Conflict of Interest.pdf

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20161128%20Stansbury%20Motion%20to%20Disqualify%20Alan%20Rose%20as%20Legal%20Counsel%20for%20the%20Estate%20of%20Simon%20Bernstein%20Due%20to%20Conflict%20of%20Interest.pdf>

¹³

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20161128%20Final%20Esigned%20Status%20Conference%20Agenda%20Simon%20and%20Shirley%20Estates%20and%20Trusts%20ECF%20STAMPED%20COPY%201162%20Simon%20Trust.pdf>

12. November 15, 2016 Feaman Stansbury FILED IN SHIRLEY TRUST Simon Estate

Demand for Accounting as to Missing Personal Property of Estate.pdf

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20161115%20Feaman%20Stansbury%20FILED%20IN%20SHIRLEY%20TRUST%20Simon%20Estate%20Demand%20for%20Accounting%20as%20to%20Missing%20Personal%20Property%20of%20Estate.pdf>

13. August 26, 2016 - Feaman Letter to Judge Phillips regarding Ted and Alan conflicts and more.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160826%20Feaman%20Letter%20to%20Judge%20Phillips%20re%20Simon%20Estate%20and%20Motion%20for%20Retention%20of%20Counsel%20and%20to%20Appoint%20Ted%20Administrator%20Ad%20Litem.pdf>

14. March 18, 2016 - Stansbury Motion for Protective Order as to Deposition of William Stansbury and Appearance at Evidentiary Hearing / Trial

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160318%20Feaman%20Stansbury%20Motion%20For%20Protective%20Order.pdf>

15. March 03, 2016 - Stansbury Statement Regarding Guardian Ad Litem hearing held improperly by Judge John Phillips to gain predatory guardianship on Eliot's two minor children and one adult child.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160302%20Signed%20William%20Stansbury%20Amended%20Eliot%20and%20Candice%20Bernstein%20GAL%20issue%203.2.2016.pdf>

16. February 27, 2016 Feaman Letter to Chief Judge Jeffrey Colbath informing him that Judge Martin Colin Violated Administrative Orders when he POST RECUSAL interfered

with the court process to transfer the cases and instead steered them in violation of court rules and procedures.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160217%20Feaman%20Letter%20to%20Chief%20Judge%20Jeffrey%20Colbath.pdf>

17. December 01, 2015 Petition of Claimant and Creditor William Stansbury to Intervene, notifying the Court of a multitude of reasons for the immediate removal of Ted and his counsel.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151201%20Petition%20of%20Claimant%20and%20Creditor%20Stansbury%20to%20Intervene%20Shirley%20Trust%20Feaman.pdf>

18. December 16, 2014 Feaman Letter to Brian O'Connell regarding Conflicts of Interest and more of Ted Bernstein and Alan Rose that should cause the removal of both parties, Ted from fiduciary roles and Alan as counsel for the fiduciary.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>

19. September 19, 2014 Feaman letter to O'Connell regarding missing and unaccounted for assets of the estate.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>

20. August 29, 2014 Feaman Letter to Successor Personal Representative Brian O'Connell stating assets were being illegally converted and more.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>

21. August 05, 2014 Feaman Letter to Alan Rose re Using the Grandchildren as Pawns and monies set aside for their schooling.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140808%20Response%20to%20Motion%20for%20Contempt%20-Exhibit%20Feaman%20Letter%20to%20Alan%20Re%20St%20Andrews%20Tuition.pdf>

22. July 29, 2014 Feaman filed “PETITION TO REMOVE TED BERNSTEIN AS SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN REVOCABLE TRUST”

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140729%20Petition%20to%20Remove%20Ted%20Bernstein%20as%20Successor%20Trustee%20of%20Simon%20Trust%20Stansbury%20Filed.pdf>

23. June 27, 2014 Peter Feaman filing on behalf of William Stansbury, “RESPONSE IN OPPOSITION TO THE APPOINTMENT OF TED BERNSTEIN AS SUCCESSOR PERSONAL REPRESENTATIVE AND MOTION FOR THE APPOINTMENT OF AN INDEPENDENT THIRD PARTY AS BOTH SUCCESSOR PERSONAL REPRESENTATIVE AND TRUSTEE OF THE SIMON BERNSTEIN TRUST AGREEMENT”

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140627%20Response%20in%20Opposition%20to%20the%20Appointment%20of%20Ted%20Bersntein%20as%20Successor%20PR%20etc%20filed%20by%20Feaman%20Stansbury.pdf>

24. June 02, 2014 Stansbury Objections to Final Accounting of Co-Personal Representatives Tescher and Spallina.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140602%20Objection%20to%20Spallina%20Tescher%20Accounting%20Stansbury%20Feaman.pdf>

25. May 22, 2014 “JOINDER IN PETITION FILED BY ELIOT IVAN BERNSTEIN FOR REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING” Notifying the Court of criminal and fiduciary misconduct in the Estates and Trusts of Simon and Shirley Bernstein involving Ted Bernstein and his counsel.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140522StansburyJoinder1.pdf>

26. March 14, 2014 Petition for Admin Ad Litem filed by Feaman

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140314%20Petition%20for%20Administrator%20Ad%20Litem%20Feaman%20Stansbury.pdf>

27. March 14, 2014 Feaman Letter to Curator Benjamin Brown, Esq. regarding fraud in Illinois Insurance Litigation involving Spallina fraudulent application for Life Insurance and Ted Bernstein and Robert Spallina’s fraudulent representation as alleged Trustee of a lost trust that neither possesses that filed a Federal Court action using said non-existent trust.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140304%20Stansbury%20Letter%20to%20Curator.pdf>

28. February 11, 2014 “RESPONSE IN OPPOSITION TO MOTION FOR APPOINTMENT OF TED BERNSTEIN AS CURATOR AND MOTION FOR THE APPOINTMENT OF ELIOT BERNSTEIN AS CURATOR OR SUCCESSOR PERSONAL REPRESENTATIVE OR, IN THE ALTERNATIVE, FOR APPOINTMENT OF AN INDEPENDENT THIRD PARTY AS SUCCESSOR PERSONAL REPRESENTATIVE OR CURATOR.” Outlines to conduct serious Misconduct in the Shirley Estate and Shirley Trust by Fiduciaries and Counsel, Ted Bernstein, Donald Tescher, Robert Spallina et al.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140217%20Stansbury%20Response%20in%20Opposition.pdf>

29. October 17, 2013 Feaman filed “Motion to Intervene” notifying court of misconduct of fiduciaries

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131017%20Stansbury%20Motion%20to%20Intervene%20Shirley%20Estate%20from%20record.pdf>

30. June 20, 2012 Letter from Peter Feaman to Ted Bernstein regarding allegations of fraud, check fraud, mail fraud and more by Ted Bernstein.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120620%20Feaman%20Stansbury%20Letter%20to%20Ted%20re%20Lawsuit.pdf>

31. Filing # 35151873 E-Filed 12/04/2015 09:59:01 AM - Disqualification of Judge Phillips
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%2015,%202015%20ECF%20STAMPED%20COPY.pdf>

32. Filing # 35176778 E-Filed 12/04/2015 02:44:59 PM - 2nd Disqualification of Judge Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FILED%20DOCKETED%20COPY%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

33. Filing # 48914108 E-Filed 11/15/2016 02:24:32 PM “AMENDED1 RENEWED PETITION TO RE-CLOSE ESTATE AND FOR DISCHARGE OF SUCCESSOR PERSONAL REPRESENTATIVE”

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20161115%20Amended%20Renewed%20Petition%20to%20ReClose%20Shirley%20Estate%20and%20Discharge%20of%20PR.pdf>

EXHIBIT 4

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD.,
WEST PALM BEACH, FL 33401

CASE NO. 4D16-3314
L.T. No.: 2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN v. TED BERNSTEIN, AS TRUSTEE,
ETC., ET AL.

Appellant / Petitioner(s) Appellee / Respondent(s)

**AMENDED APPELLANT'S RESPONSE TO SHOW CAUSE ORDER OF
DEC. 28, 2016 AND REQUEST FOR EXTENSION OF TIME**

1. I am the Appellant Eliot Bernstein Pro Se and respectfully submit this motion in response to this Court's Order of Dec. 28, 2016 and further seek an extension of time to file and serve the initial brief in this case.
2. As the 10th day from the date of the Show Cause Order fell on a weekend and today is the first business day thereafter, such response and extension request is timely.
3. This Court, the 4th District Court of Appeals, routinely grants extensions of time to submit Initial Briefs ranging from 30-45 days and there is no prejudice to the other parties for Appellant to receive such extension of time up to 45 days and minimally requests at least 30 days in good faith.
4. There is substantial merit to an Appeal of this Order deemed a "Final" Order by this Court as this Order of the Court below is part of an ongoing and

continuing series of frauds in the Estates and Trusts of Simon and Shirley Bernstein and this is a case of extra-ordinary and exceptional circumstances of statewide and public importance as it relates to the conduct of Fiduciaries and attorneys in Estate and Trust matters and for the detriment to proper beneficiaries and the rule of law in the State of Florida.

5. The Order of the Court below is both a fraud upon the Court and by the Court amounting to a fraudulent and criminal theft and conversion of substantial assets where no proper compliance with the Statutory requirements under Florida law for proper Accountings by Fiduciaries and attorneys has occurred.
6. Appellant has already exposed direct criminal frauds, including Proven and Admitted Fraud Upon the Court by Court Appointed Officers/Lawyers and Fiduciaries in the related cases in the Lower Tribunal including but not limited to admitted criminal conduct of six counts of forgery and fraudulent notarizations on Estate and Trust documents by one Kimberly Moran, notary public and employee at the now defunct law firm of Tescher & Spallina, PA and further criminal conduct in the creation and dissemination of a Fraudulent Shirley Bernstein Trust that changed beneficiaries fraudulently and has been admitted to by Fiduciary and attorney (acting as counsel on Ted Bernstein's behalf as Fiduciary) Robert Spallina, Esq. although such

admissions by Spallina have not been prosecuted criminally at this time to the best of Appellant's knowledge, despite Spallina's admitting such felony criminal acts as a witness in a December 15, 2015 hearing before the lower court.

7. Appellant has further provided and shown prima facie proof of further direct false conduct and fraudulent pleadings by attorney Alan Rose both in the lower tribunal and before this Court, the 4th DCA, although this Court has yet to fulfill legal obligations under law to address the frauds and misconduct and Appellant again respectfully pleads this Court to comply with such Court obligations and further obligations under the Statewide Court Fraud policy¹, FL Attorney Conduct Code, Judicial Canon and Law to report and regulate Fraud, Waste and Abuse of Court Resources by Court Officers and Court Appointed Officers under its jurisdiction.
8. While proper and full Discovery has never occurred or been complied with in the related cases despite multiple requests by Appellant, nonetheless the volume of documents and records in the related cases that Appellant must continually review to check and cross-check and verify and re-verify due to

¹ September 27, 2012 Office of the State Court Administrator - State Court Systems Fraud Policy
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120927%20Florida%20State%20Courts%20System%20Fraud%20on%20the%20Court%20Policy%20Procedure.pdf>

continuing and ongoing frauds including but not limited to documentary frauds exceeds over 10,000 (ten-thousand) pages.

9. The Order on Appeal herein is further defective for the lack and absence of any proper due process hearings and/or evidentiary hearings and further being conducted by a now retired Judge of the lower Court who should have mandatorily disqualified and is further the product of actions by fiduciaries and counsels who should have been removed and disqualified for their involvement in Fraud Upon the Court and more.

10. Appellant has further been addressing true “life threatening” medical issues (See Exhibit 1 - Medical Records) during the relevant time that this Appeal became due and was under express Medical instructions by a licensed Florida Doctor to avoid stress during the timeframe of October 2016 through December 2016 and yet has been forced to address repeated “sharp practices” by counsel, fraudulent pleadings, and coordinated abusive motion practice despite the fact that proper adjudication of the Estates and Trusts herein would have provided funds for proper Counsel for Appellant and the minor children herein who have been repeatedly denied counsel in the various cases and where prior counsel retained by Appellant either were “bullied” off the case by misconduct of the parties herein or turned out to have conflicts and be working with some of the parties herein.

11. Appellant has upcoming medical appointments relating to the same medical conditions in January of 2017.

12. Appellant incorporates and attached by reference herein a list of the various motions and pleadings and related Documents and transcripts and records that Appellant has had to address during the relevant timeframes for this Appeal and pre-dating the Order starting on or around June of 2016 up through November of 2016 and does not include those motions and filings for December of 2016 nor those pre-dating June 16, of 2016.

13. Said list is incorporated herein to further demonstrate Appellant's good faith in requesting an extension herein and to show due diligence in prosecuting all of the various cases to date. It is noted that such list contains Hyperlinks so the Court or parties may review the involved motion, pleading or filing etc., all fully incorporated by reference in entirety herein. See, List below:

20160616 APPELLE OPPOSITION TO MOTION REHEARD ENI BANC
4thDCA 4D16 0222 ECF STAMPED COPY.pdf

20160616 Received but no date on letter no name ERISA Pension Systems
Arbitrage Intl Retirement Plan.pdf

20160617 Supplemental Record Hearings Shirley Estate Trust Simon Estate
Trust with Transcripts.pdf

20160617 Supplemental Record Hearings Shirley Estate Trust Simon Estate
Trust.pdf

20160620 Final Esigned 4thDCA Motion To Supplement Record on Appeal

Transcripts ECF Stamped Copy.pdf

20160621 4th DCA Reject Filing of Supplemental Record not in separate files.pdf

20160621 ORDER 4thDCA 4D16 0222 DENYING MOTION EXTENSION AND REHEARD EN BANC.pdf

20160622 15th Judicial Notice of Mediation.pdf

20160622 4th DCA 4D15-222 Appellee Ted Second Motion to Dismiss Court Stamped Copy.pdf

20160623 ORDER 4th DCA 4d16-0222 Show Cause to Motion to Dismiss by July 01 2016.pdf

20160627 FINAL ESGNED OPPENHEIMER 4TH DCA EXTENSION INITIAL BRIEF ECF STAMPED COPY.pdf

20160627 Gunster Lessne Letter to Eliot and Candice Bernstein.pdf

20160630 4th DCA Case 161449 Motion to Dismiss Appeal Oppenheimer Lessne.pdf

20160702 FINAL ESGNED NOTICE OF APPEAL 4THDCA PHILIPS FINAL JUDGMENT OPPENHEIMER ORDER ECF STAMPED COPY.pdf

20160705 APPELLANTSGOODFAITHDRAFTBRIEFRESPONSESHOWCAUSEAPPEAL VALIDITY4THDCA.pdf

20160705 FINAL ESGNEDAPPELLANTSGOODFAITHDRAFTBRIEFRESPONSESHOWCAUSEAPPEAL VALIDITY4THDCA ECF STAMPED COPY.pdf

20160706 Acknowledge New Appeal 4th DCA Case 162249 Oppenheimer Final Judgment.pdf

20160706 FINAL ESGNED NOTICE OF APPEAL 4THDCA PHILIPS FINAL JUDGMENT OPPENHEIMER ORDER JUNE 07 2016 ECF 4th DCA Stamped Copy.pdf

20160707 ORDER 4th DCA 4D16 0222 Shirley Trust.pdf

20160708 ORDER 4th DCA Case 161449 Brief Due July 23 2016.pdf

20160711 Final ESIGNED INITIAL BRIEF APPEAL VALIDITY TRIAL PHILLIPS 4TH DCA.pdf

20160711 MOTION FOR ONE DAY EXTENSION INITIAL BRIEF FILING 4THDCA and Draft Brief ECF STAMPED COPY.pdf

20160712 4th DCA 4D16-0222 FINAL ESIGNED INITIAL BRIEF APPEAL VALIDITY TRIAL PHILLIP ECF STAMPED COPY.pdf

20160712 FINAL ESIGNED Motion for Extension of Time LateFiling and Page Limit Request ECF STAMPED COPY.pdf

20160712 FINAL ESIGNED MOTION TO CORRECT WHEREFORE CLAUSE IN APPELLANTS MOTION FOR ONE DAY LATE FILING EXT OF TIME TO FILE INITIAL BRIEF ECF STAMPED COPY.pdf

20160715 Huhem FOIA documents.pdf

20160720 Final Appendix Brief 4d16-0222 ECF STAMPED COPY.pdf

20160720 PBSO NEW Huhem Pics.pdf

20160722 Petition For Attorney's Fees for PR O'Connell Ciklin for June 1 2016 to June 30 2016.pdf

20160722 Petition For Attorney's Fees for PR O'Connell Ciklin for March 24 2015 to April 24 2015.pdf

20160725 Final ESIGNED Motion for Extension of Time Reply to Order to Show Cause 4thDCA Case4D161476 ECF STAMPED COPY.pdf

20160725 FINAL ESIGNED Motion for Extension of Time Reply to Order to Show Cause 4thDCACase4D161478 ECF STAMPED COPY.pdf

20160725 FINAL ESIGNED Motion to Accept Late Filing Extension Time 4thDCACase4D161449 ECF STAMPED COPY.pdf

20160727 Motion to Schedule Motion Calendar Hearing Feaman Stansbury.pdf

20160727 Notice Of Hearing Motion Calendar for Motion to Schedule Calendar Hearing 8 2 2016.pdf

<u>20160728 Notice Of Cancellation of Hearing Feaman Cancels 8 2 2016 Motion to Schedule Motion Hearing.pdf</u>
<u>20160728 Notice Of Hearing UMC O'Connell Fees and TPP 9 24 2016.pdf</u>
<u>20160728 ORDER 4th DCA Motion for Extension and Motion to Accept Late Filing Granted 4d15 0222.pdf</u>
<u>20160728 Re-Notice Of Hearing Feaman Motion for Discharge.pdf</u>
<u>20160730 4th DCA 4D16 1478 Appellee Response to Motion for Ext of Time.pdf</u>
<u>20160803 Letter O'Connell Ciklin to Judge Phillips enc Not of Spec Set Hearing on 8-30-16 and pending CLO Petitions for Fees - from BMO 8-3-16.pdf</u>
<u>20160803 Notice Of Hearing Special Set 15 min 08 30 2016 Pending Atty Fees.pdf</u>
<u>20160803 ORDER 4th DCA Case 4D16 1478 Ext Granted.pdf</u>
<u>20160803 Trustee Motion to Consolidate Appeals ECF STAMPED COPY with comments.pdf</u>
<u>20160803 Trustee Motion to Consolidate Appeals ECF STAMPED COPY.pdf</u>
<u>20160804 ORDER on Pet for Auth and Ratification for Payment of Moving Storage and Auth to Sell TPP located at Lions Head.pdf</u>
<u>20160805 ORDER 4th DCA Case 4D16 1476 Oppenheimer Ext Initial Brief Granted 30 days.pdf</u>
<u>20160805 TRUSTEE'S MOTION TO APPROVE RETENTION OF COUNSEL AND, TO APPOINT TED AS ADMIN AD LITEM TO DEFEND CLAIM AGAINST ESTATE.pdf</u>
<u>20160809 Rose 2nd Letter Regarding St Andrews Transcripts.pdf</u>
<u>20160809 Rose Letter to Eliot re Settling.pdf</u>
<u>20160810 Amended AMENDED1 RENEWED PETITION TO RE-CLOSE ESTATE AND FOR DISCHARGE OF SUCCESSOR PR.pdf</u>
<u>20160810 Motion to Ratify and Confirm Appt of Ted as Successor Trustee of</u>

Trust which is sole Beneficiary of Estate.pdf

20160810 Renewed Petition For Discharge to ReClose Estate and Discharge of PR.pdf

20160810 Trustees Motion to Approve Agreement Between Ted and O'Connell as PR regarding Estate Personal Property Sold with Trust Real Estate.pdf

20160810 Trustees Motion to Approve Agreement Between Ted and O'Connell as PR regarding Estate TPP Sold with Trust Real Estate.pdf

20160811 US Department of Justice Intake Letter Dated July 18, 2016 delivered 8.11.16 envelope opened on arrival.pdf

20160815 Appellee Joinder in Motion to Consolidate 4th DCA Oppenheimer 2014CP2815.pdf

20160815 Appellee Response to Motion for Extension and Joinder in Motion to Consolidate 4th DCA Oppenheimer 2014CP2815.pdf

20160815 FINAL ESGINED OPPOSITION TO APPELLEE TED BERNSTEIN MOTION TO CONSOLIDATE APPEAL Cases 4D16-14494D16-1476 and 4D16-1478 ECF STAMPED COPY.pdf

20160816 4th dca Appellee Motion for Enlargement of Time to Serve Answser Brief.pdf

20160819 4th DCA 4D16 2249 Index on Record on Appeal Oppenheimer.pdf

20160819 Index on Record on Appeal Oppenheimer.pdf

20160823 FINAL ESGINED OPPOSITION TO PR OCONNELL SIMON ESTATE JEWELRY SALE AND TPP AUTH MOTIONS ECF STAMPED COPY.pdf

20160823 Notice Of Hearing Trustee Motion to Approve Agreement between Ted Bernstein and O'Connell re PR Estate Regarding Il Lit 9.1.16 8.30am.pdf

20160823 Notice Of Hearing Trustee Motion to Approve Agreement between Ted Bernstein and O'Connell re PR Estate Regarding PPT SOLD and TED AS ADMIN AD LITEM IN STANSBURY LIT 9.1.16 8.30am.pdf

20160823 Re-Notice Of Hearing O'Connell Fees Cancels 8.30.16 hearing.pdf

20160824 IL Insurance 13-cv-03643 Blakey Plaintiff APPENDIX Supplemental Statement of Undisputed Facts in Support of Motion for Summary Judgment 255-1.pdf

20160824 IL Insurance 13-cv-03643 Blakey Plaintiff EXHIBIT 37 SPALLINA AFFIDAVIT Supplemental Statement of Undisputed Facts in Support of Motion for Summary Judgment Doc 255-2.pdf

20160824 IL Insurance 13-cv-03643 Blakey Plaintiff EXHIBIT 38 Final Judgment on Count Two Amended Complaint Doc 255-3.pdf

20160824 IL Insurance 13-cv-03643 Blakey Plaintiff Full Supplemental Statement of Undisputed Facts in Support of Motion for Summary Judgment.pdf

20160824 IL Insurance 13-cv-03643 Blakey Plaintiff Notice of Filing Doc 256-1.pdf

20160824 IL Insurance Blakey Plaintiff EXHIBIT 38 Corrected Supplemental Statement of Undisputed Facts in Support of Motion for Summary Judgment DOC 256.pdf

20160824 Simon Law Firm Letter Found in House by CMB 8.23.16 Unopened with stamp date messed up and covered.pdf

20160825 ORDER 4th DCA 4D16-0222 Appellee Enlargement of Time Granted to file Answer Brief.pdf

20160825 ORDER 4th DCA 4D16-1449 - 4D16-1476 - 4D16-1478 Motion to Consolidate Granted to 4D116-1449 Brief Due 9.6.16.pdf

20160826 Feaman Letter to Judge Phillips re Simon Estate and Motion for Retention of Counsel and to Appoint Ted Adminsitrator Ad Litem.pdf

20160826 FINAL ESGNED ILLINOIS DECLARATION OF ELIOT BERNSTEIN OPPOSITION TO SUMMARY JBY INTERVENOR.pdf

20160826 FINAL ESGNED MEMO OF LAW TO SUPPORT OPPOSITION TO TED SSUMMARY JUDGMENT DISMISSING COUNTERCLAIMS BLAKEY 13-cv-03643 ECF STAMPED COPY DOCKET 261.pdf

20160826 FINAL ESGNED Response to Plaintiffs Movants Statement of Undisputed Material Facts Blakey Il Ins 13cv3643 ECF STAMPED COPY DOC 260.pdf

20160826 FINAL ESIGNED Response to Plaintiffs Movants Statement of Undisputed Material Facts Blakey IL Ins 13cv3643 ECF STAMPED COPY.pdf

20160826 FINAL ESIGNED Response to Intervenor Statement of Undisputed Material Facts BLAKEY IL INS 13cv3643 ECF STAMPED COPY WITH EXHIBITS.pdf

20160827 FINAL ESIGNED ILLINOIS MEMORANDUM OF LAW OPPOSITION TO INTERVENOR ESTATE SUMMARY JUDGMENT ECF STAMPED COPY.pdf

20160827 Tescher and Spallina Production Documents for Blakey IL Fed Court Filing from 4th DCA copy.pdf

20160901 Phillips Hearing Transcript re TPP.pdf

20160923 Feaman Stansbury Response In Opp to Motion to Ratify and Confirm Appt of Ted Bernstein as Successor Trustee.pdf

20161020 Palm Beach Sheriff Internal Affairs Receipt USPS.pdf

20161027 ORDER APPEAL DISMISSED 4th DCA 4D-163162 CIKLIN IS ON PANEL.pdf

20161028 AMENDED ORDER APPEAL DISMISSED 4th DCA 4D-163162 CIKLIN IS NOT ON PANEL.pdf

20161031 Appellee Ted Response 4th DCA Motion for Disclosure from Court as to Judges Names for Each and Every Order in Each Case 4d15-0222.pdf

20161031 FINAL ESIGNED 4th DCA Motion for Disclosure from Court as to Judges Names for Each and Every Order in Each Case 4d15-3849 ECF STAMPED COPY.pdf

20161101 4th DCA Index and Record on Appeal Stansbury Case 4D163314_153_11012016_02235159_e.pdf

20161101 ORDER Granting in Part Denying in Part Disclosure of Judges and more Cases 4th DCA 160222 3824 64 1449 1476 1478 2249 3162 3314.pdf

20161102 ORDER 4th DCA 4D162249 Order for Extension Granted Brief Due in 30 Days.pdf

20161103 ORDER INTIAL BRIEF DUE CASES \$D161449 1476 1478 Opp and

Shirley Trust Cases Guardianship.pdf

20161104 15th Judicial Case 502012ca013933 Stansbury v MOTION TO ALTER OR AMEND STYLE OF THE CASE.pdf

20161104 Notice of Hearing 15th Judicial Nov 07 2016 8.45am Case 502012ca013933 Stansbury re MOTION TO ALTER OR AMEND STYLE OF THE CASE.pdf

20161107 Dr Jamal Halim Stress Letter Continued to Dec 15 2016BERNSTEIN ELIOT NOTE.pdf

20161107 ORDER 15th Judicial Stansbury Case Order on Defendants Estate of Simon Motion to Alter Amend Case Style 13933 Order.pdf

20161109 Notice Hearing 11 22 16 Simon Estate Case 4391 - Trustee Motion (i) APPROVE COMPROMISE AND SETTLEMENT, Appoint Trustee for Trusts Created for Josh Jake Danny & Comp for Guardian.pdf

20161109 Simon Estate Case 4391 - Trustee Motion (i) APPROVE COMPROMISE AND SETTLEMENT, Appoint Trustee for Trusts Created for Josh Jake Danny & Comp for Guardian.pdf

20161111 Request Rose to Reschedule Hearing due to MD.pdf

20161114 FINAL E SIGNED 4TH DCA OPPENHEIMER - SHIRLEY TRUST CONSOLIDATED APPEALS EXTENSION EXHIBIT 1.pdf

20161114 FINAL E SIGNED 4TH DCA OPPENHEIMER - SHIRLEY TRUST CONSOLIDATED APPEALS EXTENSION MOTION AFTER DRAFT BRIEF ECF STAMPED COPY.pdf

20161114 Oppenheimer Letter To Eliot with BFR water bill.pdf

20161115 Amended Renewed Petition to ReClose Shirley Estate and Discharge of PR.pdf

20161115 Feaman Stansbury FILED IN SHIRLEY TRUST Simon Estate Demand for Accounting as to Missing Personal Property of Estate.pdf

20161115 Feaman Stansbury Simon Estate Demand for Accounting as to Missing Personal Property of Estate.pdf

20161115 NOTICE OF HEARING Amended Renewed Petition to ReClose

Shirley Estate and Discharge of PR.pdf

20161115 Notice Of Hearing Feaman Objection to Scheduling and Motion for Special Set 11 22 2016.pdf

20161115 Notice Of Hearing SHIRLEY TRUST Feaman Objection to Scheduling and Motion for Special Set 11 22 2016.pdf

20161115 Objection Feaman Stansbury to Scheduling of Hearings on Motion Calendar and Motion for Special Set Hearings.pdf

20161115 Objection SHIRLEY TRUST Feaman Stansbury to Scheduling of Hearings on Motion Calendar and Motion for Special Set Hearings.pdf

20161117 4th DCA ORDER DENY EXTENSION FOR MD REASON - Case 4D16-1449 4D16-1476 4D16-1478.pdf

20161117 Notice Of Unavailability Feaman Simon Estate Case.pdf

20161117 Notice Of Unavailability Feaman Stansbury Lawsuit.pdf

20161120 Notice Of Hearing Status Conference Judge Rosemarie Scher Shirley Estate Case.pdf

20161120 Notice Of Hearing Status Conference Judge Rosemarie Scher Shirley Trust Case.pdf

20161120 Notice Of Hearing Status Conference Judge Rosemarie Scher Simon Estate Case.pdf

20161121 FINAL ESIGNED Motion in Opposition to Amended Renewed Petition to Reclose Estate and Discharge of PR Shirley Estate Case 653 ECF STAMPED COPY.pdf

20161121 FINAL ESIGNED Motion in Opposition to Trustee Motion 1 i ii and 2 Shirley Trust Case 3698 ECF STAMPED COPY.pdf

20161121 FINAL ESIGNED Motion in Opposition to Trustee Motion 1 i ii and 2 Simon Estate Case 4391 ECF STAMPED COPY.pdf

20161121 Notice Of Taking Deposition William Stansbury Simon Bernstein Estate Case.pdf

20161122 CourtCallConfirmation for NOV 29 2016 STATUS CONFERENCE

7984026_20161122095148_CONFX.pdf

20161122 HEARING JUDGE ROSMARIE SCHER SIMON SHIRLEY
ESTATE SHIRLEY TRUST .MP3

20161123 Ted Rose List of Pending Matters to be Heard or Set for Hearing.pdf

20161123 Version 3 - Ted Rose List of Pending Matters to be Heard or Set for
Hearing.pdf

20161128 Claimant Stansbury Summary of Issues Simon Estate Status
Conference.pdf

20161128 Final Esigned Status Conference Agenda Simon and Shirley
Estate....pdf

20161128 Final Esigned Status Conference Agenda Simon and Shirley Estates
and Trusts.pdf

20161128 Rejected Filings 15th Judicial.pdf

20161128 Stansbury Letter to Judge Scher with copy of Stansbury Summary of
issues for Status Conference.pdf

20161128 Stansbury Motion to Disqualify Alan Rose as Legal Counsel for the
Estate of Simon Bernstein Due to Conflict of Interest.pdf

20161128 Trustee Omnibus Response in Opp to Stansbury Motion to Vacate in
Part and Motion to Appoint Ted As Administrator Ad Litem.pdf

20161129 HEARING Judge Scher Status Conf.MP3

2016114 USDC IL Blakey Simon Insurance Case 13cv03643 Clerk Regarding
Attorney Rep.pdf

2016114 USDC IL Blakey Simon Insurance Case 13cv03643 Clerk Regarding
Attorney Thomas Underwood Rep.pdf

2016115 Motion to Vacate Feaman Stansbury Estate of Simon Pages 9-79.pdf

2016115 Motion to Vacate Feaman Stansbury Estate of Simon.pdf

2016116 4th DCA Case 4D16-1449 Appellee Response to Appellant Fourth
Successive Motion for Extension and Stay.pdf

WHEREFORE, it is respectfully prayed for an Order granting an Extension of time to submit the Initial brief herein of 45 days from today's date but no less than at least 30 days from today's date and for such other and further relief as to this Court may seem just and proper.

Respectfully submitted,

Dated January 9, 2017

/s/ Eliot Ivan Bernstein
Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
561-245-8588
iviewit@iviewit.tv

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the within has been served upon all parties on the attached Service List by E-Mail Electronic Transmission, Court ECF on this 9th day of January, 2017.

/s/ Eliot Ivan Bernstein
Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
561-245-8588

iviewit@iviewit.tv

SERVICE LIST

John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 (561) 833-0766-Telephone (561) 833-0867 -Facsimile Email: John P. Morrissey (john@jrnoiTisseylaw.com)	Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 lisa@friedsteins.com
Peter M. Feaman, Esq. Peter M. Feaman, P.A. 3695 West Boynton Beach Blvd., Suite 9 Boynton Beach, FL 33436 (561) 734-5552 -Telephone (561) 734-5554 -Facsimile Email: service@feamanlaw.com: mcoskey@feamanlaw.com	Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com
Gary R. Shendell, Esq. Kenneth S. Pollock, Esq. Shendell & Pollock, P.L. 2700 N. Military Trail, Suite 150 Boca Raton, FL 33431 (561)241-2323 - Telephone (561)241-2330-Facsimile Email: gary@shendellpollock.com ken@shendellpollock.com estella@shendellpollock.com britt@shendellpollock.com grs@shendellpollock.com	Counter Defendant Robert Spallina, Esq. Donald Tescher, Esq. Tescher & Spallina 925 South Federal Hwy., Suite 500 Boca Raton, Florida 33432
Brian M. O'Connell, Esq. Joelle A. Foglietta, Esq. Ciklin Lubitz Martens & O'Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900-Telephone 561-833-4209 - Facsimile Email: boconnell@ciklinlubitz.com; ifoglietta@ciklinlubitz.com; service@ciklinlubitz.com; slobdell@ciklinlubitz.com	Counter Defendant John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 courtfilings@pankauskilawfirm.com john@pankauskilawfirm.com
Counter Defendant Mark R. Manceri, Esq., and	Counter Defendant Donald Tescher, Esq.,

<p>Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net</p>	<p>Tescher & Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein 880 Berkeley Boca Raton, FL 33487 tbernstein@lifeinsuranceconcepts.com</p>	<p>Counter Defendant TESCHER & SPALLINA, P.A.. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein Life Insurance Concepts, Inc. 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 tbernstein@lifeinsuranceconcepts.com</p>	<p>Counter Defendant Alan B. Rose, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 561-355-6991 arose@pm-law.com arose@mrachek-law.com</p>
<p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	<p>Counter Defendant L. Louis Mrachek, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 561-355-6991 lmrachek@mrachek-law.com</p>
<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>	<p>Counter Defendant Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401</p>
<p>Lisa Sue Friedstein 2142 Churchill Lane Highland Park, IL 60035 lisa.friedstein@gmail.com lisa@friedsteins.com</p>	<p>Dennis McNamara Executive Vice President and General Counsel Oppenheimer & Co. Inc. Corporate Headquarters 125 Broad Street New York, NY 10004 800-221-5588 Dennis.mcnamara@opco.com info@opco.com</p>

<p>Dennis G. Bedley Chairman of the Board, Director and Chief Executive Officer Legacy Bank of Florida Glades Twin Plaza 2300 Glades Road Suite 120 West – Executive Office Boca Raton, FL 33431 info@legacybankfl.com DBedley@LegacyBankFL.com</p>	<p>Hunt Worth, Esq. President Oppenheimer Trust Company of Delaware 405 Silverside Road Wilmington, DE 19809 302-792-3500 hunt.worth@opco.com</p>
<p>James Dimon Chairman of the Board and Chief Executive Officer JP Morgan Chase & CO. 270 Park Ave. New York, NY 10017-2070 Jamie.dimon@jpmchase.com</p>	<p>Neil Wolfson President & Chief Executive Officer Wilmington Trust Company 1100 North Market Street Wilmington, DE 19890-0001 nwolfson@wilmingtontrust.com</p>
<p>William McCabe Oppenheimer & Co., Inc. 85 Broad St Fl 25 New York, NY 10004 William.McCabe@opco.com</p>	<p>STP Enterprises, Inc. 303 East Wacker Drive Suite 210 Chicago IL 60601-5210 psimon@stpcorp.com</p>
<p>Charles D. Rubin Managing Partner Gutter Chaves Josepher Rubin Forman Fleisher Miller PA Boca Corporate Center 2101 NW Corporate Blvd., Suite 107 Boca Raton, FL 33431-7343 crubin@floridatax.com</p>	<p>Ralph S. Janvey Krage & Janvey, L.L.P. Federal Court Appointed Receiver Stanford Financial Group 2100 Ross Ave, Dallas, TX 75201 rjanvey@kjllp.com</p>
<p>Kimberly Moran Teschner & Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 kmoran@tescherspallina.com</p>	<p>Lindsay Baxley aka Lindsay Giles Life Insurance Concepts 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 lindsay@lifeinsuranceconcepts.com</p>
<p>Gerald R. Lewin CBIZ MHM, LLC 1675 N Military Trail Fifth Floor Boca Raton, FL 33486</p>	<p>CBIZ MHM, LLC General Counsel 6480 Rockside Woods Blvd. South Suite 330 Cleveland, OH 44131 ATTN: General Counsel generalcounsel@cbiz.com (216)447-9000</p>

<p>Albert Gortz, Esq. Proskauer Rose LLP One Boca Place 2255 Glades Road Suite 421 Atrium Boca Raton, FL 33431-7360 agortz@proskauer.com</p>	<p>Heritage Union Life Insurance Company A member of WiltonRe Group of Companies 187 Danbury Road Wilton, CT 06897 cstrup@wiltonre.com</p>
<p>Estate of Simon Bernstein Brian M O'Connell Pa 515 N Flagler Drive West Palm Beach, FL 33401 boconnell@ciklinlubitz.com</p>	<p>Counter Defendant Steven Lessne, Esq. Gray Robinson, PA 225 NE Mizner Blvd #500 Boca Raton, FL 33432 steven.lessne@gray-robinson.com</p>
<p>Byrd F. "Biff" Marshall, Jr. President & Managing Director Gray Robinson, PA 225 NE Mizner Blvd #500 Boca Raton, FL 33432 biff_marshall@gray-robinson.com</p>	<p>Steven A. Lessne, Esq. Gunster, Yoakley & Stewart, P.A. 777 South Flagler Drive, Suite 500 East West Palm Beach, FL 33401 Telephone: (561) 650-0545 Facsimile: (561) 655-5677 E-Mail Designations: slessne@gunster.com jhoppel@gunster.com eservice@gunster.com</p>
<p>T&S Registered Agents, LLC Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com</p>	<p>David Lanciotti Executive VP and General Counsel LaSalle National Trust NA CHICAGO TITLE LAND TRUST COMPANY, as Successor 10 South LaSalle Street Suite 2750 Chicago, IL 60603 David.Lanciotti@ctt.com</p>
<p>Joseph M. Leccese Chairman Proskauer Rose LLP Eleven Times Square New York, NY 10036 jleccese@proskauer.com</p>	<p>Brian Moynihan Chairman of the Board and Chief Executive Officer 100 N Tryon St #170, Charlotte, NC 28202 Phone:(980) 335-3561</p>
<p>ADR & MEDIATIONS SERVICES, LLC Diana Lewis 2765 Tecumseh Drive West Palm Beach, FL 33409 (561) 758-3017 Telephone Email: dzlewis@aol.com</p>	

(Fla. Bar No. 351350)

EXHIBIT 1 - MEDICAL RECORDS - VASOVAGAL

WEST PALM BEACH NEUROLOGY, P.A.

JAMAL A. HALIM, M.D.

WELLINGTON RESERVE

1035 SOUTH STATE ROAD 7, SUITE 214

WELLINGTON, FL 33414-6137

(561) 422-1006 TEL.

(561) 422-1078 FAX

BATCH # MDI16012603027791054

DEA # _____

LIC. # ME85753

NAME Eliot Bernstein DOB _____

ADDRESS _____ DATE _____

TAMPER-RESISTANT SECURITY FEATURES LISTED ON BACK OF SCRIPT

11/17/16

Rx

Patent should avoid
all types of stren till
his ENT evaluation
on Dec 15, 16

Label

Refill NR 1 2 3 4 5

(Signature)

In order for the brand name product to be dispensed, the prescriber must write 'Medically Necessary' on the front of this prescription.



002934

6ANE0302779

MEDISRIPTS – TAMPER-RESISTANT SECURITY FEATURES

STANDARD FEATURES:

- ✓ SAFETY-BLUE ERASE-RESISTANT BACKGROUND
- ✓ "ILLEGAL" PANTOGRAPH
- ✓ REFILL INDICATOR
- ✓ SERIALIZATION
- ✓ ARTIFICIAL WATERMARK ON BACK
- ✓ MICROPRINTING

ADDITIONAL FEATURES (where applicable):

- ✓ QUANTITY CHECK-OFF BOXES (optional in some states)
- ✓ UNIQUE TRACKING IDENTIFICATION NUMBER (FL)
- ✓ THERMOCHROMIC APPROVED STATE SEAL (WA)

WEST PALM BEACH NEUROLOGY, P.A.
JAMAL A. HALIM, M.D.
WELLINGTON RESERVE
1035 SOUTH STATE ROAD 7, SUITE 214
WELLINGTON, FL 33414-6137

(561) 422-1006 TEL.

(561) 422-1078 FAX

BATCH # MDI16012603027791054

DEA #

LIC. # ME85753

NAME *Elie Bernstein* DOB _____
ADDRESS _____ DATE _____

TAMPER-RESISTANT SECURITY FEATURES LISTED ON BACK OF SCRIPT

R

10/94/16

Patient should avoid
all type of strain over
the next 2 wks pending
CTG /swallowing
evaluation for recurrent
syncope

Label

Refill NR 1 2 3 4 5

(Signature)

In order for the brand name product to be dispensed, the prescriber must
write 'Medically Necessary' on the front of this prescription.



002750

6ANE0302779

Patient: Bernstein, Eliot
 MD ED: Cohen, Terry M.D.

 DI Printed: 9/6/2016 1248
 RN Eval: Karen F R.N.
 RN Dispo:

AFTERCARE INSTRUCTIONS

We are pleased to have been able to provide you with emergency care. Please review these instructions when you return home in order to better understand your diagnosis and the necessary further treatment and precautions related to your condition. Your diagnoses and prescribed medications today are:

This page is not a prescription.

 Dx 1: Ex L rib, closed

 Rx 1: Percocet Tablets 325mg,5mg (acetaminophen,oxycodone)
1 tablet by mouth every 6 hrs as needed for pain

Orders performed during ED visit

Order

XR RIBS UNILATERAL LEFT

Procedures performed during ED visit

Procedure

Follow Up Info

 Follow-up 1: Dr. Esener

F/U MD Ph: _____

F/U MD Fax: _____

Specialty: _____

 Follow-up 1 Date: As needed

Msg F/U MD: _____

EKGs and X-Rays: If you had an EKG or X-Ray today, it will be formally reviewed by a specialist tomorrow. If there is any change from today's Emergency Department reading, you will be notified.

IMPORTANT NOTICE TO ALL PATIENTS: The examination and treatment you have received in our Emergency Department have been rendered on an emergency basis only and will not substitute for definitive and ongoing evaluation and medical care. If you have an assigned physician, or physician of record, it is essential that you make arrangements for follow-up care with that physician as instructed. If you do not currently have a physician locally, please contact our Health Navigator at 561-955-4714 and they will assist you with scheduling an appointment. Report any new or remaining problems to your physician at your scheduled appointment, because it is impossible to recognize and treat all elements of injury or disease in a single Emergency Department visit. *Significant changes or worsening in your condition may require more immediate attention. The Emergency Department is always open and available if this becomes necessary.*

General Information on BROKEN RIBS

The ribs are long, thin bones that curve around each side of the chest. There are twelve ribs on each side. Any firm blow to the chest can break a rib(s). Most of the time this results from sports injuries, falls or motor vehicle accidents. Medically speaking, the words "broken", "cracked" and "fractured" all mean the same thing.

What are the symptoms?

Ordinarily there is a sharp pain in the chest, usually in the area of the broken rib(s). The pain is often worse with bending,



Emergency Department
800 Meadows Road
Boca Raton, FL 33486
(561) 955-4425

Patient: Bernstein, Eliot
Pt Acnt: 1625001096
Med Rcrd: 000446213
DI Printed: 9/6/2016 1248

lifting, deep breathing or any strenuous activity.

What can be done?

Simple rib fractures usually heal on their own within TWO TO SIX WEEKS. Splinting and other therapies used in the past have proven not to be helpful and are generally not recommended.

What are the risks?

Rib fractures usually heal completely and produce no serious medical problems. There are, however, some risks:

1. Because of the pain, many people with broken ribs avoid breathing deeply. Persistent, shallow breathing increases the risk of developing pneumonia.
2. A severe blow to the chest sometimes damages the lungs, heart, liver or spleen. This damage can be serious and is occasionally even life-threatening.

INSTRUCTIONS

- 1) Acetaminophen (Tylenol) or ibuprofen (Advil) will help ease the pain. **WARNING:** Do not take these drugs if you are allergic to them. Do not take these drugs if you are already taking a prescription pain medication that contains acetaminophen or ibuprofen.
- 2) Every two or three hours, while you are awake, take several deep breaths and cough. This will help keep your lungs well expanded. You can challenge yourself to take deep breaths by trying to blow up a balloon, or blow to knock down an empty paper cup. You should continue this routine until the pain is gone (usually two to six weeks).
- 3) Except for deep breathing, avoid any strenuous activity that makes your pain worse.
- 4) **SEEK IMMEDIATE MEDICAL ATTENTION** if you develop difficulty breathing, pain in the belly, vomiting, severe chest pain, persistent dizziness, cough up blood, pass out or if your condition worsens in any other way.

1625001096

Medication Reconciliation

MEDICATION RECONCILIATION (Discharge)

 MD ED: Cohen, Terry M.D.
 PA:

 Triage: Fettner, Karen R.N.
 RN Eval: Karen F.R.N.

Local P Esener

PMD Ph:

Allergies		
Allergic Substance	Reaction	Severity
NKDA		

Home Meds (Discharge Reconciliation)		
Arrival Medication	Instructions	Modified Medication
Lisinopril <unknown dose>	NO CHANGE - keep taking & ask your physician	

The table above shows the home medication(s) you are currently taking; information which was provided to the Emergency Department.

Read the last column (MD Review) for further medication instructions.

The list below shows any prescription(s) provided to you upon discharge from the Emergency Department.

Prescription / Rx

Rx 1: Percocet Tablets 325mg,5mg (acetaminophen,oxycodone)

1 tablet by mouth every 6 hrs as needed for pain

2060149564



Health Information Management Department
634 Glades Road
Boca Raton, FL 33431
Phone Number: 561-955-4072

BERNSTEIN, CANDICE
2753 NW 34TH STREET
BOCA RATON, FL 33434

RELEASE OF INFORMATION INVOICE

For Producing Copies of Medical Records for:

Patient Name:	MRN:	Invoice Date:	Invoice Number:
---------------	------	---------------	-----------------

BERNSTEIN, ELIOT	000446213	Monday, January 09, 2017	185226
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Number of Pages: 8

Billing Tier:	PATIENT	Billing Tier Pages:	8	Subtotal:	\$8.00
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Payment (\$8.00) Cash

Adjust/Payment Total: (\$8.00)

Balance Due: \$0.00

Boca Raton Regional Hospital
Health Information Department
634 Glades Road
Boca Raton, FL 33431
Phone Number: 561-955-4072

Requester: BERNSTEIN, CANDICE

Balance Due: \$0.00

Patient Name:	MRN:	Invoice Date:	Invoice Number:
BERNSTEIN, ELIOT	000446213	Monday, January 09, 2017	185226

BOCA RATON REGIONAL HOSPITAL
Eliot Bernstein DOB:09/30/1963
Patient:Bernstein, Eliot
Mailing Address:2753 Nw 34Th Street
City:Boca Raton
State:FL Zip:33434
Home Ph:(561)245-8588

EMERGENCY REPORT
ACCT:1625001096 MRN:000446213

Arrival:9/6/2016 1132
Registration Time:9/6/2016 1134
Disposition:Home
Condition at DispStable
Time Left ED:9/6/2016 1254

Mode of Arrival:Personal Transport
Dispo Summary Printed:9/6/2016 1248
Mode of Departure:Ambulatory
Accompanied By:wife
Diagnostic Eval9/6/2016 1141
Admit Decision:

Chief Cmplnt:Possible Broken Rib Per Pt
Triage ImpressiPain, Local
Acuity:4 Pt Weight:93 kg (205 lbs)
Precautions:
Ebola Exposure?No
Travel Outside No

=====

Allergies

=====

Allergic Substance	Reaction	Severity
NKDA		

=====

Home Medications (MDM)

=====

Arrival Medication	Last Dose
Lisinopril <unknown dose>	

=====

Past Medical History (Problem List)

=====

Condition	Confirmed By
Kidney stone	Fettner, Karen R.N.
Diverticulitis	Fettner, Karen R.N.
HTN - Hypertension	Fettner, Karen R.N.
Multiple trauma	Fettner, Karen R.N.
Vasovagal syncope	Fettner, Karen R.N.
Cerebral hemorrhage after vasovagal syncope	Fettner, Karen R.N.

=====

Past Surgical History (Procedures)

=====

Procedure	Confirmed By
Lithotripsy	Fettner, Karen R.N.
Cystoscopy	Fettner, Karen R.N.
Reconstructive surgery face and neck, sp trauma	Fettner, Karen R.N.
Dental implants	Fettner, Karen R.N.
Tracheotomy	Fettner, Karen R.N.

Meds Given-ED(IF Blank-See Orders/Notes)

Medication	Dose	Route/Sit	Rate	Start/Gi	End	Entered By
------------	------	-----------	------	----------	-----	------------

No Entries

Orders ED Record (MDM)

Order	Providers	Sched	D/In	Prog	Comp	D/T
-------	-----------	-------	------	------	------	-----

XR RIBS UNILATERAL LEFT	316-Cohen, Terry M.D.; same	9/6/201 6 1204	9/6/201 6 1218	9/6/201 6 1242		
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Clinical Alerts

Description	Origin	Result	Alert Text	Reason to Co	Date	User Name
-------------	--------	--------	------------	--------------	------	-----------

No Entries

vital signs (MDM)

Sys	Dia	Pul	Resp	SAT	O2	Route	Pain Scale	Taken at	User Name
-----	-----	-----	------	-----	----	-------	------------	----------	-----------

136	82	77	16	97%	RA	97.7	oral	10/10	9/6/2016	Fettner, F
								Standard	1153	Karen R.N.

Input Output

Fluid Type	Intake	Output	I/O Time
------------	--------	--------	----------

No Entries

Calls

Name	Requested By	Call 1	Returned
------	--------------	--------	----------

No Entries

MD ED:Cohen, Terry M.D.

MD ED ID:316

PA:

PA ID:

Triage Full:Fettner, Karen R.N.

Triage ID:32560

RN Eval Full:Fettner, Karen R.N.

RN Eval ID32560

RN Dispo:Fettner, Karen R.N.

RN Dispo I

EMS/PMD

PMD Ph:

LocalEsener

RN Notes

Fettner, Karen R.N. Created: 9/6/2016 1154 Last Entry: 1200

>>> HPI:

Pain - Onset 16hrs prior to arrival. occurred in left middle chest.
(?)injury. Associated Symptoms:, pain left chest to touch or breathing.

>>> PMH List (See PMH Table) PSH List (See PSH Table)

>>> TRIAGE DATA:

Travel outside US (<= Click to view/enter)

Ebola Exposure (<= Click to view/enter)

Last Tetanus: less than 10yrs.

Pneumonia Vaccine: Potential candidate (> 5 years).

Influenza Vaccine: Potential candidate.

LMP: Not applicable.

Safety of Living Environment: Safe

>>> SH: (+)smokes, patient advised on smoking cessation, drinks socially,

no drugs

>>> PREHOSPITAL CARE: Took one of his wife's Vicodin last pm.

>>> TRIAGE INTERVENTION: ED physician notified.

Fettner, Karen R.N. Created: 9/6/2016 1154 Last Entry: 1205

Nurse Note: 9/6/2016 1137

ASSESSMENT CARE CENTER - Adult

Patient's wife at bedside.

Cohen, Terry M.D. at the bedside 9/6/2016 1201

>>> PHYSICAL EXAM: Pt reports while taking a drink and coughing about 16 hrs prior to arrival he passed out. Pt reports his 17 yo son was w/ him, caught him and lowered him to the ground. Pt reports his 17 yo son then "pounded" on the left side of his chest and he "woke right up."

GENERAL APPEARANCE: alert, cooperative.

PAIN: pain scale: 10/10 Standard.

location: left middle chest

quality: sharp.

aggravating factors: activity.

alleviating factors: rest.

MENTAL STATUS: speech clear, oriented X 3, normal affect, responds appropriately to questions.

SKIN: warm, dry, good color, (-)cyanosis, no rash, no ulcers.

Nutritional Screening: normal nutrition

>>> COMMUNICATION DEFICIT: None Identified.

Learning Aids Needed: (+)none, (-)Signer, (-)Interpreter.

Educational Needs: patient and wife needs information on (+)current illness, (-)medications, (-)equipment, (-)home care, (-)activity, (-)diet, (-)community resources.

>>> SH: Support system: lives w family or significant other

Suspected Violence: none

Referrals Reporting: none

Patient verbalizes suicidal or homicidal ideations: no suicidal homicidal ideations

>>> JHFRAT FALL RISK Assessment

If patient has any of the following KNOWN conditions, select it and apply Fall Risk interventions as indicated. If any of these KNOWN fall risks are selected, do NOT continue with the Fall Risk Score Calculation. If there are NO KNOWN fall risks, choose the option for NO KNOWN fall risks and proceed with the Fall Risk calculation.

Fall Risk Status NO KNOWN Fall Risk

Age: _____ 0=Less than 60 years

Fall History: _____ 0=No fall 6 months prior to admit

Elimination bowel urine: _____ 0=No incontinence

Medications: _____ 0=No high fall risk drugs
Equipment: _____ 0=None present

Pg 4

Mobility: _____ 0=No mobility issues

Cognition: _____ 4=Lack of understanding of one's physical
and cognitive limitations

JHFRAT Total Score:, Low Risk(less than 6) Green.

>>> Fall Prevention Interventions:

(+)bed in lowest position (L-M-H), (+)bedside rails up times 2,
(+)educated patient how to use call bell call bell within reach,
(+)educated patient and or family about preventing falls.

Fettner, Karen R.N. Created: 9/6/2016 1221 Last Entry: 1221

Nurse Note:

RADIOLOGY Transport - Patient transported without RN accompanying to XRay
Plain films via walking escorted by radiology technologist.

Fettner, Karen R.N. Created: 9/6/2016 1253 Last Entry: 1254

Nurse Note:

DSP DISCHARGE with Prescription(s) - Plan of care discussed with patient
and wife. Patient discharged with printed instructions. Prescriptions
given to patient. Reviewed prescribed medications with patient;
including potential interactions with other substances. (-)Adverse Drug
Reactions (ADR) during this ED visit: if ADR see details in RN Notes.
Patient encouraged to follow-up with PMD or clinic. Patient verbalized
understanding and ability to comply. Medical Driving Restrictions: none.
Patient is stable and condition is now unchanged. Extended stay less
than 4 hours.

Time of Departure - 9/6/2016 1254 to home

=====Other Notes=====

=====MD/PA Notes=====

Sarvary, Sophia (Scribe) Created: 9/6/2016 1158 Last Entry: 1158

MD Note:

ATTENDING NOTE (Scribe) - I, Sarvary, Sophia (Scribe), am scribing for,
and in the presence of, Cohen, Terry M.D..

Sarvary, Sophia (Scribe) Created: 9/6/2016 1158 Last Entry: 1208
Cohen, Terry M.D. First Entry: 9/6/2016 1251 Last Entry: 1253

PHYSICIAN H P (Medical)

(+)Nursing Notes Reviewed Travel outside US (<= click to view/enter) Ebola
Exposure (<= Click to view/enter)
Physician/PA Evaluation Time: 9/6/2016 1141

>>> HPI:

Patient with h/o vaso vagal syncopal episodes with coughing spells c/o L
sided rib pain. Last night, patient had a syncopal episode during a
coughing spell and was caught by his son who laid him on the floor. Son
immediately started to perform CPR, heard a loud pop and patient woke up
almost immediately. Patient denies head trauma, dizziness, headache,
visual change, speech change, nausea, vomiting, chest pain, SOB,
diaphoresis, fever or chills. Has been worked up extensively for these
syncopal episodes which are associated with coughing spells and they have

been dx'd as vasovagal. This episode was typical.
Sx began after CPR.

Pg 5

breathing out, breathing in, laying, movement worsens Sx.
standing still improves Sx.

Previous Episodes: prior hx of similar problem.

Additional HPI Information: none

>>> ROS: no fever, (-)chills, (-)LOC, (-)headache, (-)visual changes, (-)sore throat, no cough, (-)SOB, (-)chest wall pain, (-)chest pain, (-)nausea, (-)vomiting, (-)myalgias, (-)rash, (-)dysuria, in addition to the systems reviewed, all other systems reviewed are negative.

PREHOSPITAL CARE:

>>> PMH List (PMH Table Reviewed) PSH List (PSH Table Reviewed)

(+)Medical Records Reviewed

>>> FH: (-)DM, (-)HTN, (-)CAD.

>>> SH: no tobacco, no alcohol, no drugs.

>>> PHYSICAL EXAM:

VITAL SIGNS: reviewed as documented.

GENERAL APPEARANCE: well nourished, alert, cooperative, no acute distress, no discomfort.

MENTAL STATUS: speech clear, oriented x 3, normal affect, responds appropriately to questions.

NEURO: CNS normal as tested, motor intact, sensory intact.

FACE: no tenderness on the face.

EYES: PERRL, EOMI, conjunctiva clear.

NOSE: no nasal discharge.

MOUTH: (-)decreased moisture.

THROAT: no tonsilar inflammation, no airway obstruction.

NECK: supple, no neck tenderness, (-)thyromegaly.

BACK: no CVAT, no back tenderness.

CHEST WALL: exquisite point tenderness L anterolateral lower ribs which exactly reproduces his pain

HEART: normal rate, normal rhythm, normal S1, normal S2, no murmur, no rub.

LUNGS: no wheezing, no rales, no rhonchi, (-)accessory muscle use, good air exchange bilateral.

ABDOMEN: (-)ascites, normal BS, soft, no abd tenderness, (-)guarding, (-)rebound, no organomegaly, no abd masses.

EXTREMITIES: good pulses in all extremities, no extremity tenderness, no edema.

SKIN: warm, dry, good color, no rash.

>>> DIFFERENTIAL Dx: Including but not limited to; chest wall contusion, rib fracture, intercostal strain

Sarvary, Sophia (Scribe) Created: 9/6/2016 1245 Last Entry: 1246
Cohen, Terry M.D. First Entry: 9/6/2016 1250 Last Entry: 1251

MD Note:

I have counseled the patient regarding their (-)labs, (+)radiological exams, (-)EKG, (+)diagnosis. Although no fx seen on x-ray, he clinically has one. Will treat accordingly.

DISCUSSION - Discussed diagnosis and condition of patient with patient.

DISCHARGE with Prescription(s) - Plan of care discussed and questions answered. The patient was discharged with verbal and printed instructions. Prescription(s) were given and prescribed medications were reviewed, including potential interactions with other substances. The importance of outpatient follow up was emphasized and should be followed as noted in the discharge instructions. The understanding of the instructions and ability to comply was verbalized. The condition at

discharge is stable. Instructions to return to the emergency department for worsening symptoms.

Pg 6

Sarvary, Sophia (Scribe) Created: 9/6/2016 1246 Last Entry: 1246

MD Note: /////////////// Author: wellsoft Interface /////////////// 9/6/2016
12:42pm ///////////////

Patient: BERNSTEIN, ELIOT ; Date/Time: 9/6/2016 1217 ; 1016697767

- - - - - HXR RIBS LT UNILAT - - - - -

EXAM START: 9/6/2016 1216

EXAM STOP: 9/6/2016 1218

Left RIBS, 3 views

Clinical history- Trauma

Findings- Multiple views of the left ribs were obtained. There is no evidence of fracture or bone destruction.

IMPRESSION-

Negative left ribs.

-Authenticated and electronically signed by- Jonathan Shapir, M.D.

Electronically signed- 9/6/2016 12:40 PM

Read By- JONATHAN SHAPIR M.D.

Released Date Time- 09/06/16 1241

READ BY: JONATHAN SHAPIRM.D.

RELEASED BY: JONATHAN SHAPIRM.D.

Cohen, Terry M.D. Created: 9/6/2016 1247 Last Entry: 1247

Results Reviewed by ED Physician:

XR RIBS UNILATERAL LEFT

Cohen, Terry M.D. Created: 9/6/2016 1248 Last Entry: 1248

MD Note:

ATTENDING NOTE (Scribe attestation) - I, Cohen, Terry M.D., personally performed the services described in this documentation, as scribed by Sarvary, Sophia (Scribe) in my presence, and it is both accurate and complete.

Cohen, Terry M.D. Created: 9/11/2016 0920 Last Entry: 0921

MD Note:

Addendum: The ROS should include the following (+): cough, chest wall pain

=====Results=====

===== Dx/Instr =====

Dx 1:Fx L rib, closed
Follow-up 1:Dr. Esener

Follow-up 1 Date:As needed

===== Patient Belongings =====

Belongings 1:caSent_home

===== Prescription / RX =====

Rx 1:Percocet Tablets 325mg,5mg (acetaminophen,oxycodone)
Dose/Conc:

Freq/Rte:1 tablet by mouth every 6 hrs as needed for pain
Disp:#24 (twenty four) ta Refill:zero

Pg 7

=====Work/School Excuse=====

===== Signatures =====

MD Sgntr:Cohen, Terry M.D. 9/6/2016 1248

RN Sgntr:Fettner, Karen R.N. 9/6/2016 1254

Triage Sgntr:Fettner, Karen R.N. 9/6/2016 1206

== (C) 2009 Wellsoft, Elsevier ===== THIS IS THE LAST PAGE ==

DELRAY MEDICAL CENTER
5352 Linton Boulevard
Delray Beach, FL 33484

Name: BERNSTEIN, ELIOT TR
MRN: 000188764
ACCT: 012940564

RICHARD H KIM, MD
ADM: 06/04/2013

Consultation

DATE OF CONSULTATION: 06/04/2013

CHIEF COMPLAINT: Syncope.

HISTORY OF PRESENT ILLNESS: The patient is a 49-year-old gentleman who was at dinner at a friend's house. His wife apparently told a joke. He began laughing and then coughing. He then thinks he passed out. He apparently had urinary incontinence. He fell and hit his head on a marble floor. He sustained a subarachnoid hemorrhage. He also complains of chest discomfort now. Cardiology consultation is requested.

ALLERGIES: IODINE which has apparently caused anaphylaxis in the past.

PAST MEDICAL HISTORY: Borderline hypertension. No history of diabetes, myocardial infarction, CVA. He does have hyperlipidemia. He is now vegetarian.

FAMILY HISTORY: Mother and father both have had myocardial infarction at a premature age.

PAST SURGICAL HISTORY: Facial reconstruction, lower extremity surgery secondary to trauma in his late teens.

SOCIAL HISTORY: Still smokes 3 cigarettes a day, used to smoke 40, social alcohol.

REVIEW OF SYSTEMS:

CONSTITUTIONAL: No fevers, chills or sweats.

VISION: No double vision, blurry vision or cataracts.

HEENT: No hearing loss or tinnitus.

LUNGS: No wheezing, cough or hemoptysis.

GASTROINTESTINAL: No nausea or vomiting.

GENITOURINARY: No hematuria or dysuria.

CENTRAL NERVOUS SYSTEM: No strokes or seizures.

ENDOCRINE: No diabetes or thyroid.

HEMATOLOGIC: No anemia or leukemia.

CARDIOVASCULAR: No chest pain or pressure, but he does complain his chest pain as described above.

PHYSICAL EXAMINATION:

GENERAL: Pleasant, well-developed, well-nourished gentleman, in no acute distress.

VITAL SIGNS: 98.4, 69, 144/75.

Work Type: Consultation
T001

Work Type Code: CON
Page: 1

DATE 07/18/2013

PRINTED BY: MariaGeribon

RECEIVED AND INDEXED
RECORDED AND FILED

DELRAY MEDICAL CENTER
5352 Linton Boulevard
Delray Beach, FL 33484

Name: BERNSTEIN, ELIOT TR
MRN: 000188764
ACCT: 012940564

RICHARD H KIM, MD
ADM: 06/04/2013

Consultation

HEENT: Anicteric sclerae. Mucous membranes are moist.

NECK: Supple, no jugular venous distention, no carotid bruits.

CARDIAC: Regular rate and rhythm.

LUNGS: Lung fields are clear to auscultation.

ABDOMEN: Soft, nontender.

EXTREMITIES: No clubbing, cyanosis or edema. His left chest wall is clearly extremely tender to palpation.

ASSESSMENT:

1. Atypical musculoskeletal chest discomfort.
2. Syncope.
3. Subarachnoid hemorrhage.
4. Family history of _____ heart disease.
4. Tobacco abuse.
5. Hypertension
5. Borderline hyperlipidemia.

PLAN: Check echo color Doppler study when he can tolerate pain on his left chest. This is clearly not cardiac pain, but musculoskeletal. Syncope is probably vagal posttussive. Monitor on tele. We will be happy to follow this patient with you.

Richard H. Kim, MD

TR:RHK/HN
DD:06/04/2013 13:12 EDT
DT:06/04/2013 20:03 EDT
Dictation ID: 9462482/Confirmation #: 3900064
R:

Authenticated by RICHARD H KIM MD [1397] on 06/07/2013 at 13:03:19

Work Type: Consultation
T001

Work Type Code: CON
Page: 2

DATE 07/18/2013

PRINTED BY: MariaGribbon

DELRAY MEDICAL CENTER

RADIOLOGY REPORT
5352 LINTON BOULEVARD
AREA CODE (561) 495-3170

DELRAY BEACH, FL

PT NAME: BERNSTEIN, ELIOT I

DOB: 09/30/1963

LOCATION: ER -

ACCT. # 012940564

DR. ROYCRAFT, EDWARD L

MR # 000188764

ORDER # 714438281

06/04/2013

CT HEAD OR BRAIN W/O CONT

Abbrv: CTHD1

INDICATION: Trauma

A CT scan of the brain was performed from the base of the skull through the vertex without intravenous contrast.

No prior images are available for comparison.

The ventricles and CSF spaces appear normal. This addendum is made of a cavum the cecum, normal anatomic variant. There is no mass or mass effect present. Small amount of subarachnoid blood is seen within sulci within the a right temporal lobe in right sylvian fissure. Brain parenchyma is normal in attenuation. There is no evidence of acute infarct or intracranial hemorrhage. The mastoid air cells, paranasal sinuses and orbits appear normal.

IMPRESSION:

1. Small amount of subarachnoid blood within sulci right temporal lobe and right sylvian fissure likely posttraumatic
2. No midline shift or mass effect.
3. No evidence of infarct or hydrocephalus.

Edward Roycraft, MD was notified of critical results at 12:27 a.m. on June 4, 2013

*** Final ***

Dictated By: THAME, CRAIG (06/04/2013 00:26)

Signed By: THAME, CRAIG (06/04/2013 00:28)

DATE 07/18/2013

PRINTED BY: MariaGeribon

DELRAY MEDICAL CENTER

PT NAME: BERNSTEIN, ELIOT TR I

LOCATION: TI 0282-A

DR. ROYCRAFT, EDWARD L

ORDER # 714438281

06/04/2013

CT HEAD OR BRAIN W/O CONT

Abbrv: CTHD1

RADIOLOGY REPORT
5352 LINTON BOULEVARD
AREA CODE (561) 495-3170

DELRAY BEACH, FL

DOB: 09/30/1963

ACCT. # 012940564

MR # 000188764

ADDENDUM:

Trauma over read:

Quality assurance review of the head and cervical spine CT examinations was performed and is in agreement with the initial interpretation of mild right-sided subarachnoid hemorrhage. The cervical spine is intact, as reported.

Final assessment: No discrepancy.

*** Addendum ***

Dictated By: MARTELLO, RICHARD (06/04/2013 10:55)

Signed By: MARTELLO, RICHARD (06/04/2013 10:57)

INDICATION: Trauma

A CT scan of the brain was performed from the base of the skull through the vertex without intravenous contrast.

No prior images are available for comparison.

The ventricles and CSF spaces appear normal. This addendum is made of a cavum the cecum, normal anatomic variant. There is no mass or mass effect present. Small amount of subarachnoid blood is seen within sulci within the a right temporal lobe in right sylvian fissure. Brain parenchyma is normal in attenuation. There is no evidence of acute infarct or intracranial hemorrhage. The mastoid air cells, paranasal sinuses and orbits appear normal.

IMPRESSION:

1. Small amount of subarachnoid blood within sulci right temporal lobe and right sylvian fissure likely posttraumatic
2. No midline shift or mass effect.
3. No evidence of infarct or hydrocephalus.

Edward Roycraft, MD was notified of critical results at 12:27 a.m. on June 4, 2013

*** Final ***

Dictated By: THAME, CRAIG (06/04/2013 00:26)

DATE 07/18/2013

PRINTED BY: MariaGeribon

DELRAY MEDICAL CENTER

PT NAME: BERNSTEIN, ELIOT TR I

LOCATION: TI 0282-A

DR. ROYCRAFT, EDWARD L

ORDER # 714438281

06/04/2013

CT HEAD OR BRAIN W/O CONT

Abbrv: CTHD1

Signed By: THAME, CRAIG (06/04/2013 00:28)

RADIOLOGY REPORT
5352 LINTON BOULEVARD
AREA CODE (561) 495-3170

DELRAY BEACH, FL

DOB: 09/30/1963

ACCT. # 012940564

MR # 000188764

DATE 07/18/2013

PRINTED BY: MariaGeribon

DELRAY MEDICAL CENTER

PT NAME: BERNSTEIN, ELIOT TR I

LOCATION: TI 0282-A

DR. PACKER, EVAN

ORDER # 714507263

06/04/2013

MRA HEAD W/O CONTRAST

Abbrv: MRAHD1

RADIOLOGY REPORT
5352 LINTON BOULEVARD
AREA CODE (561) 495-3170

DELRAY BEACH, FL

DOB: 09/30/1963

ACCT. # 012940564

MR # 000188764

MRA brain without gadolinium

HISTORY: Subarachnoid hemorrhage

FINDINGS: Study performed utilizing 3-D MIPS. The circle of Willis appears normal with no occlusion or stenosis. No aneurysm or AVM identified. Specifically in the region of the right MCA trifurcation there is no aneurysm identified. No AVM. In the posterior circulation there is robust intracranial vertebral sterile flow with a normal basilar artery. The right posterior vertebral artery is supplied by the large posterior communicating artery from the right ICA.

IMPRESSION: Normal study

*** Final ***

Dictated By: ROBERTSON, STEPHEN (06/04/2013 16:24)

Signed By: ROBERTSON, STEPHEN (06/04/2013 16:26)

DATE 07/18/2013

PRINTED BY: MariaGeribon

DELRAY MEDICAL CENTER

PT NAME: BERNSTEIN, ELIOT TR I

LOCATION: TI 0282-A

DR. STAFF, PHYSICIAN NOT ON

ORDER # 714820363

06/05/2013

CT HEAD OR BRAIN W/O CONT

Abbrv: CTHD1

RADIOLOGY REPORT
5352 LINTON BOULEVARD
AREA CODE (561) 495-3170

DELRAY BEACH, FL

DOB: 09/30/1963

ACCT. # 012940564

MR # 000188764

BERNSTEIN, ELIOT TR I

INDICATION: Evaluate brain.

CT scan of the brain was performed from the base of the skull through the vertex without intravenous contrast.

Comparison is made to prior exam dated June 4, 2013 crit

Previously identified subarachnoid blood within sulci of the right temporal lobe and right sylvian fissure has significantly decreased. No new area of hemorrhage is present. There is no midline shift the there is no mass effect present. No parenchymal hematoma is seen. Incidental note is made of a cavum septum pellucida. Brain parenchyma normal in attenuation. Mastoid air cells, paranasal sinuses and orbits are normal.

IMPRESSION:

1. Decrease in volume of subarachnoid blood within the sulci of the right temporal lobe and right sylvian fissure.
2. No midline shift or mass effect.

*** Final ***

Dictated By: THAME, CRAIG (06/05/2013 05:39)

Signed By: THAME, CRAIG (06/05/2013 05:43)

DATE 07/18/2013

PRINTED BY: MariaGekibon

7/10/13
16:11:53

ADMISSION
RECORD-F01

EMER CONTACT: CANDICE BERNSTEIN REL: SPOUSE
ADDRESS: 72753 NW 34TH ST PHONE: (561) 245-8588
CITY/STATE: BOCA RATON FL 33434 1111
NEAREST RELT: REL:
ADDRESS: PHONE: ()
CITY/STATE: RESEARCH ID:

GUARANTOR: BERNSTEIN, ELIOT I REL: SELF
 ADDRESS 1: 2753 NW 34TH ST PHONE: (561) 245-8588
 ADDRESS 2: SOCIAL SECURITY: 361622566
 CTY/STE/ZIP: BOCA RATON FL 33434 3459 OCC: AF:
 PAYOR NAME 1: BCBS-FL INS. PLAN ID: 07033 SRV/TYPE: ALLIP
 PLAN NAME: BC FL PPO/ADVANTAGE 65/PPC/BLUE CHO IPA:
 BILL C/O NAME: BC FL PPC AUTH #: 10251606
 BILL ADDRESS: P.O. BOX 1798 CERT-SSN-HIC-ID#: QCB6046973501
 CTY/STE/CNTRY: JACKSONVILLE FL 32231 0014 BILL PHONE: (800) 275-2583
 BILLING NAME: GP #: 509415
 INSURED: BERNSTEIN, ELIOT I SEX/REL: M SELF
 EMPLOYER: MSP: TRACKING#:
 ADDRESS: EMP PHONE: () 000-0000
 CITY/STATE: 00000 0000 ESC: 1
 PAYOR NAME 2: INS. PLAN ID:
 PLAN NAME:
 BILL C/O NAME: CERT-SSN-HIC-ID#:
 BILL ADDRESS: AUTH #:
 CTY/STE/CNTRY: BILL PHONE: () 000-0000
 BILLING NAME: GP #:
 INSURED: SEX/REL:
 EMPLOYER: TRACKING#:
 ADDRESS: EMP PHONE: () 000-0000
 CITY/STATE: ESC:

SPAN CODE: PRIOR VISIT: 6/09/13
FROM/TO DATE: PRIOR HOSPITAL:
CONDITION CD CONDITION CD OCCURRENCE CD/DATE OCCURRENCE CD/DATE
P7 05 6/03/13
11 6/03/13

COMMENTS: ER ADMIT TO TICU
1ST ORIGINAL-CHART COPY 2-PHYSICIAN COPY 3-MEDICAL RECS COPY 4-UTL REV

DATE 07/18/2013

PRINTED BY: MariaGeribon