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.: 4D16-0222
L.T. No.: 2011CP000653XXXXSB
2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN	v.	TED BERNSTEIN, AS TRUSTEE, ET AL.
Appellant / Petitioner(s)		Appellee / Respondent(s)

INITIAL BRIEF OF APPELLANT

On Appeal to the 4th District Court of Appeals from the "FINAL JUDGMENT ON COUNT II OF THE AMENDED COMPLAINT" of Judge John Phillips dated December 16, 2015.

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PRELIMINARY STATEMENT

This is an Appeal of a Final Judgement and Order of Judge John Phillips dated December 16, 2015 deemed a Final Order under Florida Rules of Appellate Procedure 9.170. This Court also has jurisdiction under Florida Rules of Appellate Procedure 9.0309b0(1)(A) and 9.110(a)(1).

[1] http://www.jud6.org/News/StateCourtsSystemFraudPolicy.pdf

The Scope of Review is established by Florida Rules of Appellate Procedure 9.110(h) and 9.170(e).

Appellant Eliot Bernstein is referred herein as “Appellant” and Appellee Ted Bernstein referred as Appellee.

The Record on Appeal consists of 2 parts, ROA1 shall refer to the Record on Appeal in Case No. CASE NO. 502011 CP000653XXXXSB which is the Shirley Bernstein Estate and Trust case while ROA2 shall refer to the Record on Appeal in Case No. 502014CP003698XXXXNB which is a separate case created by Alan Rose for Ted Bernstein at the direction of Judge Colin.

Appellant maintains an objection and claim of prejudice for the record prohibiting Appellant from full and fair litigation for being denied access to the Index and Records on Appeal from the Simon Bernstein Estate case No. 502012CP004391XXXXSB which is the case that was noticed for Case-Management on the date the Trial Order was issued and that while testamentary documents from the Simon Bernstein Estate case and Simon Bernstein Trust case No. 502015CP001162XXXXNB are part of the Final Judgement on Appeal, Appellant has been denied as an indigent litigant pro se access to these Records and Indexes certified by 15th Judicial Circuit Clerk Sharon Bock despite repeated requests.

Appellant further notes an objection and preservation for the record as set out herein for prejudice on appeal due to the fraud upon the Court in the lower tribunal which has yet to be fully corrected impacting Appellant's rights herein. Appellant seeks full compliance by this Court and all entities with the State Court Fraud Policy herein. See, Office of the State Courts Administrator, September 27, 2012 Memo

at http://iviewit.tv/Simon%20and%20Shirley%20Estate/Florida%20State%20Courts%20System%20Fraud%20on%20the%20Court%20Policy%20Procedure.pdf

STATEMENT OF THE CASE AND FACTS

Nature of the Appeal and Standard of Review

This is an appeal from a Final Judgment of a One-Count Validity trial entered by Judge John Phillips of the North Branch, 15th Judicial Circuit on December 16th, 2015 which determined after a "pre-judged" and "predetermined" Trial held on the day before on December 15th, 2015 erroneously limited to "one day" the "validity" of certain Testamentary instruments (Wills and Trusts) of Shirley and Simon Bernstein and made other findings regarding Ted Bernstein purporting to act in various fiduciary capacities herein as Trustee and Personal Representative in the Shirley Trust and Estate case and Trustee in the Simon Bernstein Trust case and his involvement in certain frauds. Attorney Brian O'Connell is the Personal Representative in the Simon Bernstein Estate case who abandoned the Estate of

Simon Bernstein at the validity trial and did not appear nor participate in the "validity" Trial whatsoever despite having filed before Trial to remove Ted Bernstein as Trustee claiming Ted was not a "valid" trustee in the Simon Bernstein Trust, see ROA2 #001041 - #001062 (See Affirmative Defense O'Connell #001068.)

Appellant Eliot Bernstein is one of five natural children to the marriage of Shirley and Simon Bernstein and a named Beneficiary in the Shirley Bernstein Estate, Estate of Simon Bernstein, Shirley Bernstein Trust and Simon Bernstein Trust. Appellant Eliot Bernstein was forced to Trial acting pro se as an indigent litigant after repeatedly being denied "interim" distributions by the lower tribunal to afford counsel despite the costs mainly due to fraud on the beneficiaries and the court by the fiduciaries and attorneys at law and then being denied a continuance before Trial to have Texas counsel admitted pro hac vice to represent Eliot Bernstein's three minor children.

The standard of review for the legal conclusions in the Final Judgement on appeal is de novo and lacking in competent substantial evidence to permit a rational trier of fact to reach the conclusion that was reached.

As the scope of review provides for review of other rulings the standard of review abuse of discretion by the lower tribunal.

Factual Background

This is an appeal of a “one-day” validity trial of One Count of a complaint which purported to determine certain testamentary instruments, Trusts and Wills, of Shirley and Simon Bernstein.

Appellant Eliot Bernstein is one of five natural children born to the marriage of Shirley and Simon Bernstein. Shirley Bernstein pre-deceased her husband Simon passing away in December of 2010 while Simon Bernstein passed away in September of 2012.

Simon Bernstein had been a very successful Insurance businessman and Pioneer of Multi-Billion dollar Proprietary Insurance Plans for high net worth individuals for nearly 50 years, a national leader in sales of life insurance and having amassed significant wealth during his lifetime and having created various companies and entities to protect his wealth and provide for estate planning throughout his life. See (ROA1 pages #000079 - #000094.) COPIES, as no Original Documents were turned over by Tescher & Spallina to the new Curator, Benjamin Brown, Esq. in their 7,202 page Production ordered by the Court upon their resignations steeped in fraud, despite the Court’s Order to turn over ALL records, of alleged Financial records produced thus far show Simon’s one company “Life Insurance Concepts” (LIC) earning over $38 Million and 39 Million in gross revenue in years 2008, 2009 respectively with Simon drawing over $4 Million in salary in one year alone.

See, (Appendix #2, #3, #4 and #5) Simon Bernstein also invested monies and together with Shirley Bernstein owned two multimillion dollar debt free known real properties prior to their passing, a beach-front condo in Boca Raton at the Aragon on Ocean Boulevard listed at over $2 Million dollars (See ROA1 Pages #001118 - #001121) and a homestead estate home at the prestigious Saint Andrews Country Club at 7020 Lions Head Lane, Boca Raton, Fl listed at $3.2 million prior to his passing. See (ROA2 Pages #001128.)

Simon Bernstein later became an initial seed funding investor in technologies invented and developed by his son Appellant Eliot Bernstein with patents pending, known as “Iviewit Technologies” which had been valued in the “hundreds of billions” by leading experts in the industry and tested, used and validated at a company called Real3d Inc., (a consortium of Lockheed Martin 70%, Intel 20% and SGI 10%) on property owned by Lockheed Martin located in Orlando, Florida, Real3d Inc., Simon Bernstein was a 30% shareholder in Iviewit Stock and the Intellectual Properties filed worldwide which was handled by the Proskauer Rose law firm. See, (ROA1 pages #000625 - 000650 and #000859 - #000882.)

Simon Bernstein undertook specific Estate planning to protect his interests including a Will and Estate Planning performed by Proskauer Rose. Upon his passing in 2012, a copy of a 2000 Will of Simon Bernstein was filed by an

unknown entity in the Palm Beach County Probate Courts. See, (Proskauer 2000 Will at ROA1 pages #000296 - 000299.)

Simon Bernstein's planning also specifically provided for the needs of his son Appellant Eliot Bernstein and wife Candice Bernstein and their 3 minor children contemplating the complexity of the "Iviewit" matters after theft of the technologies and intellectual properties had occurred and Appellant's family mini-van was car-bombed in Boynton Beach, Florida on or around 2005. See (ROA1 Page #000136.) The Proskauer Rose law firm was directly implicated in the theft of the technologies and intellectual properties. See, (ROA1 Pages #000129 - #000154.) The "Iviewit" thefts and related matters had been reported by Appellant to a variety of federal and state investigative authorities and Appellant had directly worked providing case information to FBI Agent Stephen Luchessi of the West Palm Beach FBI Field Office and another agent as well with certain matters ultimately being elevated to the highest levels in the US Justice Department, USDOJ Inspector General and the DOJ Office of Professional Responsibility as the "Iviewit" technologies in addition to massive value in the private sector also had a mass of applications for Defense and Space industries as well. See, (ROA1 Pages #000129 - #000154.)

This specific planning by Simon Bernstein included but was not limited to an Advanced Inheritance Agreement (AIA). See (ROA1 Pages #000313 - #000318)

as well as the formation of certain Trusts in the name of Appellant's minor children, Josh, Jake and Danny Bernstein and the formation of certain entities such as Bernstein Family Holdings Inc., Bernstein Family Investments, and Bernstein Family Realty. See, (Appendix #17.) This planning also included the payment for Appellant's home in Boca Raton, Fl at 2753 NW 34th Street, Boca Raton, Fl 33434 owned through Bernstein Family Realty which is owned by Appellant's three minor children, through Trusts held currently at Oppenheimer and subject to related litigation Case Nos.; 502014CP002815XXXXSB; 502010CP003123XXXXSB; 502010CP003125XXXXSB; 502010CP003128XXXXSB.

Prior to Simon's passing, Appellant had been receiving at least $100,000.00 (one-hundred thousand) per year after tax according to this Advanced Inheritance Agreement.

After Shirley Bernstein passed away in December of 2010, Appellant and others noticed the significant toll this loss had on the life of Simon Bernstein. See (ROA1 Emergency Petition May 2013 pages #000070 - #000544.)

Apparently, Simon Bernstein also was having significant pressures from some of Appellant's siblings during this time with Appellant later discovering after Simon's death that Appellant's sister Pamela Bernstein Simon living in the Chicago area had found out through one of Simon Bernstein's other Estate

Planners attorney Robert Spallina that Simon and Shirley had disinherited Pamela Simon and her children from taking under Trusts and Wills due to the significant income her family had received being in business with Simon Bernstein for years. See, (Appendix #1.) and (ROA1 Emergency Petition May 2013 pages #000070 - #000544.)

Before Appellant became aware of these facts after Simon's passing, Appellant had previously been contacted by Simon during his lifetime in on or about May of 2012 to join a family conference call attempting to resolve certain family matters by making some changes to certain Trust agreements from Shirley Bernstein who had passed in 2010. Simon was not aware until that time that Appellant had not been receiving any documentation and information from Simon's Estate Planners attorneys Donald Tescher and Robert Spallina of the now defunct law firm Tescher & Spallina, PA. The Tescher and Spallina law firm had apparently been hired by Simon and Shirley Bernstein at the urging of Ted Bernstein who was a close personal friend and business associate of Tescher to draft and create Wills and Trusts for Simon and Shirley in 2008 that were supposed to "mirror" each other. See, (ROA1 pages #000325 - #000333 - 2008 Will of Simon Bernstein; ROA1 Pages #002064 - 002072 - 2008 Will of Shirley Bernstein; ROA1 Pages #001902

and #001915 and #002053 - #002054 and #002076 - #002104 - 2008 Shirley Trust; ROA1 Pages #000295 - #000324 - 2008 Simon Bernstein Trust.)

There was an alleged quid pro quo between Ted and Tescher and Spallina whereby for getting the prestigious account of his father Ted was to get a mass of referrals for his insurance business from them and where commission kickbacks for referrals may have been paid through consulting services for one of Tescher's company. Appellant did not find out until a substantial time later upon Tescher and Spallina being forced to produce via court order after resigning due to the fraud on the court and fraud on the beneficiaries that said Wills and Trusts in 2008 did not "mirror" each other as claimed by both Tescher in Deposition and Spallina under oath at the December 15, 2015 hearing as Simon's Documents named William Stansbury as Fiduciary, PR and Trustee and Shirley's allegedly chose Ted Bernstein despite language in her trust document that specifically precluded Ted for All Purposes of the Shirley Trust and All Purposes of Dispositions.

Ultimately, on or around May of 2012 Appellant received some form of "Waiver" from the Tescher & Spallina law firm in relation to the Shirley Bernstein Estate which Appellant had signed Not Notarized and with the attached condition that Appellant receive all the Documentation and records that had not been provided. See, (ROA1 Pages #000055 Un-notarized Waiver and #000065 Forged and

Fraudulently Notarized Waiver and #000200 Eliot Disclaimer on Waiver to Tescher & Spallina.)

Just a few short months later after the May 2012 conference call on September 12, 2012, Simon Bernstein was taken to the hospital in Boca Raton, Florida in emergency condition. Appellant spent substantial hours at the hospital speaking to Simon's heart specialist who had cleared Simon of a heart incident in the early evening but had Simon undergoing other testing for possible West Nile Virus or other unknown viral condition due to the highly irregular test results and various organ irregularities he found. Ted Bernstein had been called in the early morning about the incident involving an initial call that was it could be a heart attack but did not show up to the hospital until the late afternoon stating he was tied up in meetings only a few miles away. See (ROA1 pages #000070 - #000544 - Emergency Petition May 2013.)

Appellant was later called back to the hospital in the late evening hours on an Emergency "Code Blue" the hospital stating they were resuscitating Simon and upon arriving at the Hospital Appellant was initially restricted from access to Simon by Hospital staff claiming "Security" was involved due to a possible "poison" that was reported. Ted Bernstein showed up to the hospital shortly after Appellant and where Simon was already being resuscitated several times and immediately demanded that all life saving efforts cease as Simon did not want to

be on life support according to Ted. The hospital however would only take direction from Appellant as he was designated by Simon upon entering the hospital that day and Appellant did not think resuscitation was the same as ending life support as Simon was not yet on any life support. After Simon was finally declared deceased after 20 or so times that he revived and then would relapse and need further resuscitation. Ted Bernstein then made public claims of possible "murder" of Simon indicating his attorneys would "handle" things with the Palm Beach County Sheriff and Palm Beach County Medical Examiner both of whom Ted contacted later that day for a formal murder investigation and autopsy. Appellant was directed back to Simon's home at 7020 Lions Head Lane by Ted where upon looking to access Simon's contact database he noticed that Simon's entire Computer hard drives and computer Records which contained valuable business information including "Iviewit" information had been completely wiped clean, lost and destroyed and some computers were wholly missing their hard drives. See, (ROA1 Pages #000593 - #000595.)

Thus beginning at the 7020 Lions Head Lane home of Simon Bernstein on the night of Simon's passing in Sept. 2012 up to and including the present has been an ongoing and continuous series of actions by Ted Bernstein and parties working in concert with Ted Bernstein to make false claims and an evolving "story" about who had fiduciary powers in the Estate, deny records and information to Appellant

as a Named Beneficiary in violation of multiple Florida codes and statutes, and deny and delay rights of inheritance to Appellant Eliot Bernstein and illegally seize Dominion and Control of the Estates and Trusts and submit fraudulent documents to the court and others to loot the estates and trusts of millions of wholly unaccounted for dollars and assets. See (ROA1 Emergency Petition May 2013 pages #000070 - #000544.)

Although Appellant did not discover this until years later, within 2 weeks or so of Simon Bernstein's passing in Sept. 2012, the Florida Supreme Court issued a Statewide Fraud Policy for Fraud in the Courts with obligations and requirements imposed and sent to all District Courts and Circuit Courts of the State. See, (State of Florida Fraud Policy already referenced and exhibited herein.)

While autopsy, Coroner and Sheriff investigations into Simon Bernstein's death were still pending, Ted Bernstein and his attorney Robert Spallina began violating Florida codes and statutes in the first week after Simon's death by refusing to provide documents, information and the Testamentary instruments to Appellant who was a beneficiary. Appellant was forced to hire counsel at Tripp Scott who not only was being refused documents from Ted Bernstein and Tescher & Spallina, but was told in Nov. 2012 by the Spallina law firm that they had not even heard of the Bernstein case. Subsequent discovery of documents and court filings showed this occurred on or about the same time that Judge Martin Colin's office had Ex

Parte contact with Robert Spallina via Court Officer Astrid Limouzine. See (ROA1 Ex Parte Clerk Memo Nov. 6, 2012 at page #000061.) Ultimately, due to bullying and the difficulty in getting documents from Tescher & Spallina and Ted Bernstein making the representation more costly, counsel from Trip Scott, Christine C. Yates, Esq. discontinued representation of Appellants minor children. See, (ROA1 Pages #000249, #000255 and #001115 - 001117.)

By May of 2013, Appellant had discovered sufficient information to show widespread fraud upon the Court in the Shirley Bernstein Estate case leading to the filing of an Emergency Motion seeking injunctive relief, notifying the Court with specificity of fraud in the documents upon the Court, seeking Discovery of documents and information, seeking validation of Testamentary instruments and documents,specifically requesting an Investigation of the fraud even without knowing of the Official Fraud Policy adopted in the weeks before substantial fraud in the Shirley Bernstein Estate after Simon's passing and other relief. See (ROA1 Emergency Petition May 2013 pages #000070 - #000544.). This motion not only showed fraud but specifically "forgery" by Tescher and Spallina Notary Public and Legal Assistant Kimberly Moran on multiple counts, for multiple parties and also showed other Frauds on the Court that did not involve Moran in depositing documents with the Court by Simon acting as Personal Representative months after his death, committed and now admitted to in the December 15, 2015 hearing on

Appeal by Spallina, who stated under oath that he committed certain crimes and had not yet disclosed them to any party prior to Judge Phillips in the hearing of December 15, 2015.

Judge Martin Colin, however, not only instantly denied the Emergency Motion in the Shirley Bernstein case, but also instantly denied this Motion in the Simon Bernstein Estate case, which he had not even been Assigned to at that time. See Orders of Denial for Simon and Shirley cases (ROA1 pages #000546) and (Appendix #18) Judge Martin Colin proceeded to deny subsequently filed motions seeking the same relief in the ordinary course. Only after a Governor's Office Investigation and Palm Beach County Sheriff of Tescher & Spallina P.A.'s legal assistant and notary public Kimberly Moran was underway did Judge Martin Colin call for a Court date on the fraud allegations raised by Appellant's May 2013 Emergency Petition, occurring in Sept. of 2013 some 4 months later leaving all files, records, documents and instruments in possession of attorneys Tescher & Spallina which clearly implicated them and their employees in various combinations of fraud upon the Court and fraud upon the Beneficiaries and Interested Parties.

Key parties implicated in the fraud upon the Court being attorney Donald Tescher, principal Owner and Managing Partner at the firm and Kimberly Moran herself were not even ordered to be present at this Sept. 2013 court date with Judge Colin.

See, (Appendix #15.) Nowhere in the Records and Indexes of any and all of the cases will this 4th District Court of Appeals find that lower tribunal Judges Martin Colin or Judge Phillips ever sought testimony from Donald Tescher or Kimberly Moran to determine the fraud upon the Court consistent with the State Court Fraud policy even though Kimberly Moran was directly involved and Tescher the Managing Partner. See, (ROA1 in its entirety, ROA2 in its entirety and the herein APPENDIX in its entirety and while Not produced for this Appeal over objection of Appellant, the Records of all related cases under Case Numbers:

502012CP004391XXXXSB; 502015CP001162XXXXNB; 502014CA014637XXXXMB; 502011CP000653XXXXSB; 502014CP003698XXXXNB; 502014CP002815XXXXSB; 502010CP003123XXXXSB; 502010CP003125XXXXSB; 502010CP003128XXXXSB; 502015CP002717XXXX; 502014CA014637XXXXMB; 50-2010-CP-003128-XXXX-SB; 50-2010-CP-003125-XXXX-SB; 50-2010-CP-003123-XXXX-SB.)

Further, what the Records show from the Shirley Bernstein Estate case is clear fraud on the face of the Records of the Court below with Robert Spallina signing and filing an April 9th, 2012 document alleged to be signed by Simon Bernstein on April 9, 2012 yet clearly this was fraud when filed and signed since Robert Spallina knew and had to know that NO Waivers had even been sent out or obtained by this date in the Petition for Discharge, something that Simon Bernstein knew and had to know as of April 9, 2012 since the “family phone call” did not even occur until May 2012. Yet this document was filed and used several months

later in Oct. 2012 by the Tescher Spallina law firm AFTER Simon Bernstein passed away using a deceased person to close up the Estate of Shirley Bernstein fraudulently. See, (ROA1 pages #000049 - #000051 - April 9, 2012 Petition for Discharge signed allegedly by Simon April 09, 2012 and not filed with the Court **by Simon acting as PR** on October 24, 2012 over a month after his death.) See further (ROA1 pages #000070 - #000544 - May 2013 Emergency Petition.) Judge Colin used this document to close the Shirley Estate case in Jan. 2013 with Simon still acting as PR months after he passed away, See (ROA1 pages #000069 and #000059 where this document is dated February 15, 2012 but not recorded with the Court until October 24, 2012 after Simon's death and again deposited by Simon as PR post mortem.) despite the Estate of Simon Bernstein having been Petitioned for Administration on Oct. 2, 2012 even Before the April 9, 2012 Petition for Discharge document was filed in Shirley thus Notifying the Court system of Palm Beach County that Simon Bernstein was deceased. See (Appendix #11 - Oct. 2, 2012 Simon Petition for Administration.) Further, fraud upon the Court on the face of the Court records can be found on the same date of Oct. 2. 2012 when an "unknown" and "undisclosed" Judge issued an Order admitting Simon's alleged 2012 Will to Probate EVEN BEFORE the Will was filed on this date. See, (Appendix #19.)

While Judge Colin claims on the Record that he had enough evidence and admission at that time to Read the parties, Robert Spallina, Esq., Donald Tescher, Esq., Ted Bernstein and Mark Manceri, Esq. their “Miranda Warnings” with Ted Bernstein and Robert Spallina present at the September 13, 2013 hearing, Judge Colin took no such action to report the felony misconduct of his Court Appointed Fiduciaries and Counsel and the Transcript Record makes it clear that the identity of who filed the April 9th 2012 document was never determined nor ever determined who in fact filed and how they filed such documents. See (Appendix #15 Sept. 13, 2013 Transcript page 16, note there are two separate and distinct crimes committed by separate and distinct parties for the two threatened Miranda Warnings by Colin, one for the fraudulent documents submitted by Moran and one for documents misusing Simon’s identity at a time after his death to close his wife's estate.)

Even more glaring for determination of the Fraud upon the Court directly relevant to the Appeal herein is the fact that Ted Bernstein announced for the first time in Sept. 2013 on the Record to Judge Colin that he was the PR of Shirley’s Estate and Trustee of Shirley’s Estate YET IF this was true according to a Valid Will and Trust for Shirley Bernstein, Ted Bernstein was directly involved and responsible as PR of Shirley’s Estate for these fraudulent filings by the Tescher Spallina firm and yet NO determination of Ted’s involvement by Judge Colin ever took place nor did

it ever occur after Judge Colin's removal from the case nearly 2 years later in May of 2013. This would only beg the question of any reasonable non-conflicted Jurist acting according to US and Florida Constitutional standards of due process of how and why Ted Bernstein was not filing as PR of Shirley's Estate IF in fact Valid documents had already made him PR? See, (Appendix #15.)

Instead of complying with the Statewide Fraud Policy and seeking proper Investigation by the Inspector General, and at least Ordering proper hearings to determine the fraud, Judge Colin allowed Tescher and Spallina to proceed in the case another 4 months with ALL records and documents in their possession until Tescher & Spallina sought to voluntarily resign in Jan. of 2014 timed around the disclosure by Spallina to the Palm Beach Sheriff's that further fraud had occurred as he had "altered" language in an alleged Amendment of the Shirley Bernstein Trust with thus even more fraud by the Fiduciaries occurring in the case. See, (ROA2 - Pages #001009 - #001027 and #002110 - #002111 - Tescher and Spallina Resignation letter.)

Even more striking is that in the only pre-Validity Trial deposition of any involved party being that of Donald Tescher, Donald Tescher admits as follows:

"It came to light -- it was brought to my
21 attention that the -- there was an amendment --
22 there was an altered document altering the
23 amendment to Shirley Bernstein's revocable trust,
24 which document had been forwarded to Christine
25 Yates, who was then serving as counsel to Eliot

1 Bernstein's children; and that document added a
2 provision." See (Appendix #13 Tescher Transcript, Pages 52-53)
Tescher goes on to say under questioning by Peter Feaman, counsel to William

Stansbury as follows:

"Q. Okay. Now, the -- you identified the
8 altered document as what again -- the Shirley
9 Bernstein Trust?
10 A. The Amendment to Shirley Bernstein's
11 Revocable Trust Agreement.
12 Q. Okay. And who in your office brought that
13 to your attention?
14 A. Our associate.
15 Q. And who is that?
16 A. Lauren Galvani.
17 Q. And when did that take place?
18 A. January 2013." See (Appendix #13 page 53.)

Yet Donald Tescher admits that his firm did not move to resign for an entire year later in Jan. 2014 withholding the fraud from Appellant, fraud directly involving the testamentary instruments at issue. See (Appendix #13)

Thus for an entire year the Tescher and Spallina law firm working together with their client Ted Bernstein defrauded Appellant and yet the Court below took no action to correct or determine.

Tescher also admitted under oath in this "limited" pre-trial deposition contradicting his own prior sworn statements that the Tescher & Spallina law firm had "business relationships" with Ted Bernstein that went as far back as at least 2006 with a Tescher related company Twin Oaks Consulting receiving multiple payments from

Ted Bernstein through Arbitrage International, a company owned by Simon and Ted Bernstein, payments totaling at least $130,000.00 although Tescher had originally stated he met Ted in 2007 all of which pre-dated the time hiring of Tescher and Spallina by Simon Bernstein and the Will and Trust drafting and Estate planning in 2008. See (Appendix #13 pages 78-82 and 276-282.)

It is important to note that not only was this only Pre-trial Deposition of Tescher a "limited" Deposition of Tescher by stipulation and not scheduled in relation to any "Validity Trial" but further that Appellant Eliot Bernstein herein was afforded NO time or opportunity during this Deposition to depose and ask questions of Tescher. To the contrary, the Deposition clearly shows it was abruptly cut off and ended as soon as Appellant asked his first question. See (Appendix #13 page 105.)

In a case where "further fraud" appears almost each time a new layer of the onion is peeled back, Appellant discovered further fraud in the related Trust cases for his minor children tying Robert Spallina in with Judge Colin dating back to June of 2010 when Spallina purports to file a Petition to Transfer Trustees under his signature as an attorney apparently "forging" the names of myself as Appellant and my wife Candice Bernstein on said Petition to allegedly Transfer the Trusts to the related Oppenheimer case. See (ROA1 #001734 - 001756 - 2010 Petition and Orders of Colin July 2010. This fraud was discovered on or about summer of 2014 in the Oppenheimer case and reported on the Record to Judge Colin and then

reported to the Palm Beach Sheriff for Investigation yet nothing has been done to date to correct this fraud which further calls into question all of the actions of Tescher and Spallina herein on all documents valid or invalid.

More importantly, this fraud from the related Oppenheimer case further shows why the lower tribunal erred by not treating the cases as "Complex" under the Florida Rules of Civil Procedure as it intertwines actions from the related cases including but not limited to the fact that Traci Kratish who Spallina claimed took action in the Children's Trusts "pre-Stanford" in the June 2010 fraudulent petition is contradicted by the statement Kratish gives to the PBSO where she claims she took no action pre-Stanford and was not even working for Simon Bernstein on the dates the alleged Trusts were created. See (Appendix #20 - Traci Kratish, Esq. Statements to Palm Beach County Sheriff.)

This also shows why Pre-trial Depositions were necessary as Kratish contradicts filed documents by Spallina and yet Kratish is claimed as an attesting Witness on certain Testamentary instruments which are the subject of the Appeal and yet was never allowed to be deposed Pre-trial nor was Appellant afforded a proper Trial and time at trial to introduce such Witnesses since Judge Phillips had predetermined the Trial to only be a "one-day" trial which was an abuse of discretion and error below. Kratish having already given statements that contradicted filed documents by Spallina as Fiduciary could and should have been

a necessary witness at Trial that goes to the heart of the truth seeking process and judgment on Appeal.

Judge Colin, meanwhile, despite Ordering Tescher and Spallina to turn over "ALL" documents and records in Feb, of 2014, See (Appendix #8 - Order of Feb 2014) upon their resignation, never held any compliance hearing to determine if this was complied with nor did successor PR of the Simon Bernstein Estate or alleged Trustee and PR Ted Bernstein. See (ROA1 in the entirety, ROA2 in the entirety and the herein attached Appendix in the entirety.)

Instead, having provided months for Tescher & Spallina to "prepare the records and files" in their possession despite their involvement in clear frauds upon the court, despite saying Miranda warnings could be issued, despite stating the need for "validity" of the instruments to be determined, Judge Colin instead proceeds to allow involved party Ted Bernstein to continue business as usual and proceed to Sell the Shirley Condo without ever being determined as a valid Trustee or PR and then proceed to Order the sale of the 7020 Lions Head Lane estate in a NON "arm's length" transaction to a then unknown buyer all the while having never obtained ANY accounting from Tescher & Spallina while millions of dollars go unaccounted for. See (ROA2 Pages #001120 - #001298; Pages #001090 - #001093.) Judge Colin had further repeatedly denied all of Appellant's motions for Interim Distributions to pay for counsel for himself and minor children which

could have included Forensic Document Experts that the Trustees should have been paying for Pre-trial and other necessary living expenses forcing Appellant into poverty and indigent status, having electricity shut off and going on food stamps despite extensive Estate planning and agreements with Simon Bernstein predicated upon the underlying business ventures in the Iviewit technologies. See (ROA1 Pages #001994 - #002005; Pages #001123 - #001235.)

Ultimately, Appellant filed a Mandatory Disqualification against Judge Colin which was legally sufficient but denied by Judge Colin who then mysteriously issued a voluntary recusal within 24 hours but "steered" the case to the North District after having conversations with other Palm Beach Judges despite the Disqualification indicating he should be a necessary witness. See (ROA1 Pages #001337 - #001387 - Disqualification of Colin; ROA1 Pages #001388 - #001392 - Denial of Disqualification Order and Order of Recusal and Transfer.)

Appellant then filed a Writ of Prohibition and Mandamus with the Florida Supreme and while this application was "pending" Judge Phillips came into the case after a recusals from Judge Coates who had been a Proskauer Partner in Boca Raton and actually worked in the same office building as Appellant while the Iviewit technologies were being handled by Proskauer. See, (Appendix #21 - Writ of Prohibition.)

At the first status conference with Judge Phillips on or about June 30, 2015, the Court indicated twice on the record that Appellant would have an opportunity to be heard on the pending Writ of Prohibition. Yet, when the case was next scheduled by the PR of the Estate of Simon Bernstein by Brian O'Connell's office and Noticed for that case only, the record is clear that the lower tribunal not only denied Appellant an opportunity to be heard on the Writ but denied any meaningful opportunity to be heard in the case at all. See (Appendix #14 - Sept 15 2015 Transcript.)

More egregiously, the lower tribunal showed clear bias and prejudice in favor of Judge Colin and pre-judging all matters by pre-judging he would not do anything to disagree with Judge Colin even before being heard, by professing his love for Judge Colin on the record and by generally denying Appellant an opportunity to be heard going as far as not even allowing Appellant to clarify what case was being heard. The Transcript records speaks for itself. See (Appendix #14 - Sept 15, 2015.)

Appellant was denied the opportunity to be heard to explain the fraud, explain why hearings on removal of Ted Bernstein should come first since he was involved in the fraud and had control over the very documents and instruments that were at issue in fraud and had control of the Trust and assets which could pay for forensic examination due to fraud. Appellant was denied an opportunity to tie the cases

together to show why these should be treated as “complex”, denied opportunity to seek compliance with Discovery outstanding, denied opportunity to seek pre-trial depositions in the truth seeking process, denied request for funds for counsel for Appellant and his minor children, denying funds for experts and denying virtually all of the procedural rights to a fair trial under the Civil Procedure laws of Florida. After filing a mandatory Disqualification of Judge Phillips which was denied, Appellant was then denied a continuance to have Texas counsel admitted pro hac vice for himself and minor children, and other rights. See (ROA2 Pages #001560 - #001577 - Motion for Continuance and Stay.)

The Records are clear that the lower tribunal issued no Order for the orderly proceeding of trial, no Order governing witnesses or exhibits or any like procedure. Ted Bernstein and Alan Rose filed multiple Witnesses and Exhibit Lists pre-trial changing these up to the point of Trial. It was clearly impossible that a “one day” pre-judged limit to the Trial would never accommodate the Witnesses listed by Ted Bernstein and counsel much less witnesses for Appellant. Thus Appellant and the Court left the trial up to “surprise” as to who would be called. See (ROA2 Pages #001792 - #001792 - Pre-Trial Exhibit List and APPENDIX #22 - Pre-Trial Witness List that appears to be filed in the Shirley Trust Case but does not seem to appear in the ROA2 as having been docketed on the day filed.)

Further last minute “surprise” occurred in the days before Trial when the PR of Simon’s Estate abandoned the proceedings altogether and chose not to appear or attend despite having filed motions against Ted Bernstein based upon the language of the alleged Trusts. See, (ROA2 Pages #001555 - #001559 - Ted Filing Regarding PR of Simon Estate Brian O’Connell Not Being Present at Simon Estate and Will Validity Hearing filing pre-trial.)

The Trial Record is clear that the lower tribunal cut off meaningful cross exam to Appellant having had no opportunity for pre-trial deposition repeatedly cutting off cross exam of the only 2 witnesses Robert Spallina and Ted Bernstein. In fact Appellant was denied and cut off 50 times or more and then rushed by the Court to finish. See (APPENDIX #23 - December 15, 2015 Trial Transcript.)

The Trial Record is further clear that Ted Bernstein took no action to validate any involved Testamentary instrument forensically despite extensive fraud including actual forgery by employees and agents of Tescher and Spallina and their office withholding fraud of the Shirley Amendment for a year. Ted’s counsel further mislead and committed fraud on the Court claiming that Judge Colin had not issued any Order to turn over all records to Tescher and Spallina. See (APPENDIX #23 - Pages 138 - 142 of the APPENDIX exhibit not the trial transcript pages contained therein - December 15, 2015 Trial Transcript.)

The Trial record is further clear that Ted Bernstein had never even seen any "original" Trust document in the case and Spallina did not know what happened to the originals of many documents and admitted to fraud before the Court while misleading the Court about a Federal Consent Order with the SEC for misusing confidential client information and Insider Trading. See (APPENDIX #23 - Pages 91-94 of the APPENDIX exhibit not the trial transcript pages contained therein - December 15, 2015 Trial Transcript.)

The Record is further clear that there would never have been sufficient time for proper witnesses such as Donald Tescher who was "in and around" the Courthouse but not "available", Traci Kratish, Kimberly Moran, Lindsley Baxley, Diana Banks and those involved in the transactions.

Appellant filed a post-trial motion for a new Trial raising these grounds but was denied.

The Petition of Administration for Shirley Bernstein's Estate, see (ROA1 Pages #000014 - #000015 and Petition for Administration for Simon Bernstein's Estate (Appendix #11) clearly listed Appellant as a Beneficiary in both Estate Cases further listing ONLY the children of Simon and Shirley as Beneficiaries in the Notice of Administration, contradicting the entire theory put forth by Ted Bernstein at Trial. Eliot is further a named beneficiary in both the Simon and Shirley Bernstein Trusts. Donald Tescher signed such document as an attorney in

Simon Bernstein's case which alone should have made him a necessary witness for trial.

The entirety of the Records on Appeal and any appendices is clear that Ted Bernstein sued in his complaint entities that do not exist and thus had no capacity to be sued having sued non-existent Trusts under Simon's Will dated 9/13/12. No such Trusts have ever been provided or disclosed as these do not exist furthering due process notice and subject matter jurisdiction problems requiring reversal of the Judgment in the entirety. Necessary parties such as the minor children of Appellant and Lisa Friedstein and Jill Iantoni were not added and joined but were indispensable. Not only were these minor parties missing and not sued but also lacking counsel.

Multiple other items have never been disclosed to date such as the alleged "Family" Trust Document and "Marital" Trust document referenced in the Shirley Trust denying due process to Appellant and denying competent evidence in the proceedings. At minimum said documents should have been available for inspection pre-trial but were not since such items do not exist fundamentally calling into question the actual Estate Planning performed by Tescher and Spallina and the validity of any of the instruments. Other major items of Estate Planning such as the Bernstein Family Investments and Bernstein Holdings and Bernstein Realty should have been part of pre-trial proceedings so a fair and neutral court

could actually figure out what the Totality of the Estate planning was which would impact the validity of the instruments and Judgment to see if these even made logical sense. The failure to account at all in Shirley's case and missing millions from Simon's can lead a reasonable and rational member of the Judiciary to conclude these have proceedings orchestrated to avoid the truth seeking process while extorting the Appellant in poverty.

SUMMARY OF ARGUMENT

Under the totality of facts and circumstances herein including widespread fraud in actual dispositive documents involving fraud by the very fiduciaries who created them, a reasonable jurist acting non-conflicted according to US Constitutional standards would have ensured proper pre-trial procedures including hearings and remedies for fraud, depositions and discovery compliance to further the truth seeking process and a proper Trial Order to further the truth seeking process. The Order of Trial was clearly issued in error and against Florida Rules of Civil Procedure having been issued in a case not noticed for Case management under 1.200 of the Rules. The record is clear that the lower tribunal showed prejudice and bias against Appellant and denied a meaningful opportunity to be heard pre-trial including being heard on witnesses who had already contradicted filings herein and thus going to the heart of the validity of the Judgment on Count II.

The Florida Supreme Court has recognized that Experts can be necessary witnesses for determine fraud in documents including Will and Trust cases and it was an abuse of discretion to deny funds and the opportunity to have Experts pre-trial in a case with rampant fraud including actual forgery of dispositive documents. It was an abuse of discretion to deny a continuance under the circumstances herein and abuses of discretion to deny the motion for a new trial. Under these facts and circumstances there was insufficient competent evidence to uphold the validity of such documents in the gross absence of truth seeking process and where the only witness Spallina himself could be considered as not "disinterested" not only by the great amount of monies taken under his dominion and control by placing himself into fiduciary positions over the Trusts and Estates but also by being involved in the fraud and admitting to the fraud. Additional witnesses were thus necessary to validate the Wills and Trusts herein to meet the competent evidence standard. The discrepancies in the attestation and notarization of the instruments was sufficient to deny validity without further truth seeking processes particularly where fraud upon the Court appears on the face of the records themselves. The Records on Appeal and Indexes having only been produced in the Shirley Estate and Trust case, the entirety of Judgment relating to the Simon Bernstein Will and Trust should be reversed and remanded for further proceedings on that ground alone. Any such "power of appointment" was a "limited" power as confirmed by Donald Tescher (

See Appendix Deposition) and could not change the class of Shirley's beneficiaries when the Trust if valid became Irrevocable upon death. Proper pre-trial proceedings are necessary to determine the truth of the matters herein. The Trial by its terms, Order and Sept. 15, 2015 Conference was limited to "validity" only and not "construction", no "construction" pretrial proceedings occurred and the Judgement exceeds any such Notice and due process notice and must be vacated and reversed. The face of the Records such as the April 9, 2012 Petition for Discharge, clearly fraudulent document signed by Fiduciary Spallina and allegedly signed by Simon Bernstein created sufficient presumption of undue influence on Simon prior to any alleged changed to his Will and Trust in July 2012. Ted Bernstein did not rebut said undue influence nor was one day sufficient for such a trial. The missing mail, missing records, missing discovery, missing account statements and missing millions are sufficient to support and bolster the undue influence Simon Bernstein was under rendering any changes to his Will and Trust in 2012 invalid. The Court abused its discretion by not applying adverse inferences against Ted Bernstein for missing and spoliation of evidence and records and failure to call the other witnesses at Trial.

ARGUMENT

I. The lower tribunal acted illegally and in violation of Florida Rules of Civil Procedure by Ordering a Trial in a complex case not noticed to be heard, abusing its discretion and violating procedural and substantive due process including but not limited to denying Appellant the fair right and opportunity to be heard at a Case-Management Conference and at trial.

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).

In this case, the lower tribunal clearly Ordered a Trial in a case that was not noticed for Case-Management in violation of the Rules of Procedure, procedural due process and then denying Appellant a fair opportunity to be heard to clarify the matter violating substantive due process. See, (Appendix #14 - September 15th, 2015 Transcript.) See further, (APPENDIX #24 - Case-Management Notice in the Simon Bernstein Estate case.)

"Fundamental to the concept of due process is the right to be heard. The right to be heard assures a full hearing before a court having jurisdiction of the matter, the

right to introduce evidence at a meaningful time and in a meaningful manner, and judicial findings based upon that evidence. It includes also an opportunity to cross-examine witnesses, to be heard on questions of law, and the right to have judgment rendered after trial." (citations omitted) Brinkley v. County of Flagler, 769 So.2d 468 (Fla. 5th DCA 2000).

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).”,

See, BINGER v. KING PEST CONTROL, 401 So.2d 1310 (1981).

As the Florida Supreme Court said in Dodson v. Persell, 390 So.2d 704, 707 (Fla. 1980), “The goals underlying discovery practice are readily apparent in Florida Rules of Civil Procedure 1.200(c), which provides that a trial court's pretrial order detailing the agreements made by the parties "shall control the subsequent course of the action unless modified at the trial to prevent injustice." Consistent with this rule, we now hold that a pretrial order directing the parties to exchange the names of witnesses requires a listing or notification of all witnesses that the parties reasonably foresee will be called to testify, whether for substantive, corroborative, impeachment or rebuttal purposes. Obviously, a general reference to "any and all necessary" impeachment or rebuttal witnesses, as was the case here, constitutes inadequate disclosure.”

These procedures were lacking herein and the Final Judgement must now be vacated and reversed.

A. **The lower tribunal abused its discretion and abandoned the truth seeking policy of the Courts and law of the Florida Supreme Court by failing to determine outstanding Discovery and the need for pre-trial Depositions.**

Full and fair discovery is essential to the truth-finding function of our justice system, and parties and non-parties alike must comply not only with the technical provisions of the discovery rules, but also with the purpose and spirit of those rules.

The search for truth and justice as our court system and constitution demand 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.

Courts should not countenance or tolerate actions during litigation that are not forthright and that are designed to delay and obfuscate the discovery process. See, Bainter v. League of Women Voters of Fla., 150 So. 3d 1115, 1129 (Fla. 2014).

An orderly trial is most likely to occur when the judge enforces discovery and pretrial orders strictly and requires each party to make full and proper disclosure before trial.

The Fourth District Court of Appeal in Central Square Tarragon LLC v. Great Divide Insurance Company, reiterated the need to “strictly enforce” provisions of pretrial stipulations. This prevents last minute gamesmanship, and makes

disruption of the trial and error on appeal less likely. Generally, last-minute additions of witnesses and substantial changes to testimony should not be admissible at trial. Failure to exclude such testimony prejudices the opposing party and constitutes reversible error.

In this case, there was no Orderly pre-trial procedures which were abandoned in their entirety by the lower tribunal who Ordered a Trial in a case not even Noticed for Case Management. There was no inspection of evidence pre-trial despite last minute “originals” offered by Alan Rose See (ROA2 Pages #001560 - #001577 - Motion for Continuance and Stay.) With fraud shown in dispositive documents by fiduciaries and no Originals being made available the Court abused its discretion in formulating improper pre-trial truth seeking procedures, failing to determine outstanding discovery and records and the need for Experts and pre-trial depositions.

Appellant’s May 2013 Emergency Motion was sufficient to be deemed a Petition to revoke probate Admin in both the Shirley and Simon Estate cases. The vast majority of the motion having never been addressed by the lower tribunals was not only an abuse of Discretion but also in violation of the State Court fraud policy rendering the Judgement void and should be vacated and reversed. See (ROA1 Pages 000560 - # - #001040 Emergency Motion and Statewide Court Fraud Policy already exhibited herein.)

As this Court has already made clear, “While the complaint at issue is not a model of clarity, we find that it adequately constituted a will contest. “A petition for revocation of probate shall state the interest of the petitioner in the estate and the facts constituting the grounds on which revocation is demanded.” Fla. Prob. R. 5.270(a). “All technical forms of pleadings are abolished” and “[n]o defect of forms impairs substantial rights.” Fla. Prob. R. 5.020(a). Though the complaint does not specifically identify the 2005 will, count I challenges the validity of all testamentary documents executed after 2000[, thus by implication challenging the 2005 will] . . . Additionally, the complaint was filed in response to the notice of administration of the 2005 will, wherein the decedent completely revoked the Pasquales’ interest in the trust.Compare Feather v. Sanko’s Estate, 390 So.2d 746, 747 (Fla. 5th DCA 1980) (interpreting older version of probate code, finding that pleading filed by decedent’s disinherited child, entitled “Notice of Appearance,” was sufficient to contest will where pleading stated that she had interest in estate, and the will at issue disinherited her, making it clear that she opposed it)”. . . .See, Pasquale v. Loving (Fla. 4th DCA March 21, 2012)

Non-Existent Entities Sued and Missing Indispensable Parties violated procedural and substantive due process and improper Notice making the Trial a “surprise” to such an extent the Judgement must be reversed entirely.

Ted Bernstein sued entitities which do not exist, have never existed and thus lacked the capacity to be sued such as suing Eliot as Trustee of Trusts dated 9/13/12 which never existed and were never turned over and never shown to Appellant.

Ted Bernstein also failed to sue indispensable parties such as Appellant's minor children and the Court further abused its discretion in denying counsel for such parties.

Generally, beneficiaries are necessary parties to a suit by or against a trustee relating to the trust or its property. In those cases where the issue is whether or not the trust instrument is valid, the law is clear in Florida that the beneficiaries are proper and necessary parties.

"Florida has long followed the rule that the beneficiaries of a trust are indispensable parties to a suit having the termination of the beneficiaries' interest as its ultimate goal." Fulmer v. N. Cent. Bank, 386 So. 2d 856, 858 (Fla. 2d DCA 1980) (citing Byers v. Beddow, 142 So. 894, 896 (Fla. 1932), which held that a court called upon "to dissolve or terminate a trust . . . must decline to act when there are, or may be, persons interested in the trust who are not before the court").

"Indispensable parties are necessary parties so essential to a suit that no final decision can be rendered without their joinder." Sudhoff v. Fed. Nat'l Mortgage Ass'n, 942 So. 2d 425, 427 (Fla. 5th DCA 2006)…

Crescenze v. Bothe, et al, 34 Fla.L.Weekly D284a (Fla.2nd DCA Case 2D08-2202, February 4, 2009):

Sufficient proof in the Record existed to Raise Undue Influence at least in the Simon Bernstein case and it was error to not shift the burden and further error to deny proper pre-trial procedures and limit the Trial to "one day".

F.S. §733.107(2) specifically mandates that the "presumption of undue influence implements public policy . . . and is therefore a presumption shifting the burden of proof under ss. 90.301–90.304." Accordingly, when the presumption of undue influence arises, the alleged wrongdoer bears the burden of proving there was no undue influence.

Undue influence is rarely susceptible of direct proof because of secret or private dealings between the decedent and the alleged wrongdoer; the latter typically testifies that he did nothing wrong, and the decedent never testifies to the contrary. Self-serving testimony of the alleged wrongdoer is inherently suspect, but is often difficult to overcome for lack of more compelling direct evidence.

The April 9, 2012 document alone shows facial undue influence of Simon Bernstein as assuming arguendo this was his signature, it was clearly done fraudulently as Simon knew the Waivers had not been signed for the Petition for Discharge. See ROA1 ___ . Further is the very need for the "May 2012" family meeting and Simon's fiduciary Spallina communicating confidential information to

Pam Simon about being cut out of the Wills and Trusts which presumably was communicated to Ted Bernstein who had a long standing business relationship with Spallina and brought Spallina and Tescher into Simon's life. Further, if Simon was truly so "poor" as Ted Bernstein would maintain in failing to account for literally millions, this would be reflective of undue influence on Simon as well. The Court abused its discretion by not structuring pre-trial procedures to establish this challenge to the Wills and Trusts and by limiting the Trial to one day. Moreover, for Shirley to allegedly have made Ted a "trustee" when otherwise making him "pre-deceased" is reflective of some improper influence particularly where Simon's 2008 documents named William Stansbury to all fiduciary positions and the documents were supposed to "mirror" each other. A new trial must be ordered. Moreover, there being no basis legally to alter Shirley's Trust after it became "irrevocable", the great efforts of Ted and Spallina to allegedly due so through an alleged Power of Appointment is reflective of the undue influence on Simon. Further, denial of proper discovery of all the missing records, mails, accounts and monies improperly precluded this challenge to the Wills and Trusts. The Judgment must now be reversed and vacated.

II. The lower tribunal abused its discretion and violated the Statewide Fraud policy of the Courts and Judicial Canons by failing to hold hearings to correct and eliminate the fraud in the cases and remove, sanction and report criminal misconduct of officers and fiduciaries of the court and subsequently failed to protect the litigants that were injured by the fraud, including six minor children.

This error in itself is a basis to vacate and reverse the Final Judgment. See Statement of Facts and Summary of Argument above.

Pre-Trial Depositions in Trust and Will validity cases are proper.

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).

The Records are clear that the only pre-trial Deposition in the matter was a "limited' Depo of Donald Tescher which not only was limited but was abruptly

ended on Appellant's first question. See, (APPENDIX #13 - Tescher Deposition)

Given the maze of conflicting statements and positions amongst various witnesses, widespread fraud, pre-trial depositions would have aided the truth seeking process and it was an abuse of discretion to proceed to trial under these circumstances. The Judgment must now be reversed and vacated and remanded for proper proceedings.

The Florida Supreme Court Recognizes The Need for Experts in Forgery Will-Trust Cases and It was an Abuse of Discretion to Deny:

In a case where "voluminous testimony" was taken over days unlike the instant case herein, the Florida Supreme Court has upheld the use of Expert Witnesses in proving forgeries of Wills and Trusts. It was error and abuse of discretion to deny Appellant funds for Experts and to properly schedule proceedings both pre-trial and trial to allow for Expert testimony particularly where the lower Tribunal itself has not rooted out the fraud consistent with the State Fraud Court policy through proper proceedings.

"Without detailing the inconsistencies and contradictions in the testimony of the proponents of the will, we will say only that they were sufficient to deprive such testimony of its credibility; and, indeed, the situation itself, as recounted above, carries with it its own ring of implausibility. The handwriting experts were

920*920 of the highest order of integrity, and we have heretofore held that such testimony alone is sufficient to establish a forgery. See Boyd v. Gosser, 78 Fla. 64, 82 So. 758. The County Judge, who heard and observed the witnesses, and the Circuit Judge, who reviewed the entire record in the proceedings relating to the administration of Mrs. Kearney's estate, gave no credence to the testimony of the proponents of the will and agreed with the handwriting experts that the will was a forgery. From our examination of the record, we think there can be no question that this was the correct decision." See, Mauldin v Reel, et al, 56 So.2d 918 (1951).

III. The lower tribunal abused its discretion by failing to mandatorily Disqualify both pre-trial and at trial.

Judicial neutrality is critical to our legal system. Florida judges have the obligation to voluntarily recuse themselves for a variety of reasons, including bias or prejudice regarding a party or an economic interest in the matter. Canon 3E of the Florida Judicial Conduct Code applies to all.

"A judge's targeted personal remarks may create a well-grounded fear of bias mandating disqualification. Although a judge is permitted to make civil remarks expressing frustration with attorneys, comments exceed the bounds when the judge calls an attorney a "liar" or a "substandard Miami lawyer."

Remarks demonstrating a subject matter predisposition can also lead to disqualification. In a marital dissolution case, the judge's use of the term "alimony

drone" indicated a negative view of alimony, and warranted disqualification. General remarks — like "tough on crime" — will not necessitate removal, but a judicial suggestion that the death penalty was inappropriate due to the defendant's advanced age required disqualification." See, Florida Bar, October, 2000 Volume LXXIV, No. 9

Judicial Disqualification: What Every Practitioner (and Judge) Should Know.

It was an abuse of discretion for Judge Phillips to deny disqualification. The Transcript of Sept. 15th 2015 and Trial for conduct toward Appellant. See, (APPENDIX #14 - Sept. 15, 2015 Transcript and APPENDIX #23 - December 15, 2015 Transcript, as Appellant could not find a copy in the ROA1 or ROA2.)

IV. The lower tribunal abused its discretion by failing to grant a continuance for Appellant to have Texas counsel admitted pro hac vice for Trial denying counsel to three minor children at the hearing and opposing counsel Rose refused to tender to Texas retained counsel the alleged Trust Documents that Appellant and his children were sued under (that are now admitted by Rose not to exist) further blocking access to counsel.…

"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).

In Strader v. Zeide, 796 So.2d 591 (Fla. 4th DCA 2001) although the trial court granted Plaintiff's attorney's motion to withdraw, it denied the request to stay the proceedings until the Plaintiff could obtain new counsel. The Appellate Court found that the "Plaintiff was prejudiced as a result of the trial court's refusal to grant a continuance or allow the Plaintiff additional time to retain new counsel." Id at 593.

Without the benefit of counsel, the court found that the Plaintiff was unable to conduct a meaningful cross-examination. "This Court has noted that there are special circumstances which exist where the denial of a motion for continuance creates an injustice for the moving party and in such cases, it is the court's obligation to rectify the injustice." Strader at 593.

"While trial courts necessarily enjoy broad discretion in deciding whether to grant or deny a motion for continuance, the exercise of that discretion is not absolute." Rice v. NITV, LLC, 19 So.3d 1095 (Fla. 2nd DCA 2009); Baron v. Baron, 941 So.2d 1233 at 1236 (Fla. 2nd DCA 2006).

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))."

In this case, not only did the lower tribunal abuse its discretion and act outside and in violation of established Florida Civil Procedure law by Ordering a Trial in a case which was not noticed to be heard, the Trial Court further abused its discretion in denying a Continuance where Appellant had outside counsel attempting to come into the case pro hac vice denying Appellant counsel and more importantly, denying counsel to Appellant's minor children. Appellant had been trying to obtain fundamental documents he and the children were sued under in the case before this Court from opposing counsel Rose. THE COURT CAN SEE THESE DOCUMENTS THAT PARTIES WERE SUED UNDER DO NOT EXIST IN THE RECORD IN EITHER SHIRLEY'S ESTATE OR TRUST CASES. WHERE ALAN ROSE HAS RECENTLY ADMITTED THAT THE PARTIES HE SUED DO NOT AT THIS TIME EXIST OR EVER EXISTED. The Defendants sued in this Shirley Trust case are from Simon Bernstein's Trust and not Shirley's that is before the Court. This is part of the reason why the

RECORD FOR SIMON WAS REQUESTED AS PART OF THE SHIRLEY RECORD IN THIS CASE.

Appellant had been trying to obtain fundamental documents he and the children were sued under in the case before this Court from opposing counsel Rose. THE COURT CAN SEE THESE DOCUMENTS THAT PARTIES WERE SUED UNDER DO NOT EXIST IN THE RECORD IN EITHER SHIRLEY'S ESTATE OR TRUST CASES. WHERE ALAN ROSE HAS RECENTLY ADMITTED THAT THE PARTIES HE SUED DO NOT AT THIS TIME EXIST OR EVER EXISTED. The Defendants sued in this Shirley Trust case are from Simon Bernstein's Trust and not Shirley's that is before the Court. This is part of the reason why the RECORD FOR SIMON WAS REQUESTED AS PART OF THE SHIRLEY RECORD IN THIS CASE.

This is particularly true in a case where over 2 years had gone by from the time Appellant first notified the lower Court, then Judge Martin Colin and Judge David E. French, of direct fraud upon the Court involving the very attorneys and fiduciaries who allegedly prepared the documents sought to be validated until the time that Judge Martin Colin “suddenly” and “mysteriously” “Recused” within 24 hours of denying a Mandatory Disqualification motion.

Clearly there had been no “rush” to validate the alleged testamentary and trust documents for that 2 year period despite knowledge of fraudulent documents

having been submitted to the court by fiduciaries and counsel and the brief delay of a 30 day continuance to allow counsel to be admitted pro hac vice for unrepresented minors would not have caused any undue delay or prejudice to the other parties.

The Trial transcript is clear that Appellant and his three minor children were prejudiced by the denial of the continuance in being a non-attorney acting pro se during the complexities of a trial and three parties without representation and there is nothing in the record to show Appellant had engaged in any dilatory tactics nor that any of the other parties would be prejudiced. The record reflects that Judge Phillips knew the minors were not represented by counsel and that opposing counsel Rose had stated that Appellant could not represent his minor children due to conflicts of interest that all the children of Simon and Shirley have with their children due to the frauds that have caused the beneficiaries to become questionable.

Under these circumstances, the denial of the motion for continuance was an abuse of discretion that must now be reversed and a new trial ordered.

V. The Trial Record clearly shows the bias and prejudice of the lower tribunal toward the Appellant and the lower tribunal's abandonment of the truth seeking process.

The Trial transcript shows bias and prejudice toward Appellant, repeatedly cutting off cross-examination of key questions and denying proper time to Appellant. See ROA2 Trial Transcript. Appellant was denied, cut off or sustained nearly 50 or more times all which cut off the truth seeking process. Appellant was not even allowed to see the Pre-prepared Order of Alan Rose which was rushed signed by the lower court within one day. The Court even made it difficult to see what exhibits and charts Alan Rose for Ted Bernstein was using. The Judgement must now be reversed.

Even the limited Records and Indexes provided and certified by Sharon Bock demonstrate the error and abuse of discretion of the lower tribunal in improperly limiting the Trial to "one-day" in advance which was clearly inadequate for appropriate witnesses and evidence including but not limited to the testimony of Donald Tescher, Kimberly Moran, Traci Kratish, Lindsay Baxley, Alan Rose et al.

The records are full of conflicting statements, contradictory statements, filings which contradict other positions herein. A one day trial was clearly inadequate,

pre-judged, predetermined and an abuse of discretion and the Final Judgment on Count II must now be reversed. This Court would benefit from Full Records on Appeal and Appellant has been prejudiced on appeal and in general in being denied same as an indigent pro se litigant caused by the wrongful conduct of the fraud.

VI. The lower tribunal abused its discretion in failing to grant a new trial particularly where signed statements by the core attorneys involved in other fraud in the case, Tescher and Spallina, signed as attorneys at law and filed with the Court below in the Notice of Administration of the Estate of Simon Bernstein showed Appellant is a Beneficiary and where No Minor Children were ever Noticed as Beneficiaries and where Donald Tescher should have been allowed to be Deposed pre-trial but at minimum should have been a Witness at trial.

The Notice of Administration of Shirley and Simon's Estates alone show Appellant as beneficiary. The Simon notice was signed by Donald Tescher and fundamentally contradicts the position of Ted Bernstein at Trial. It was error and an abuse of discretion to limit the trial to one day as Tescher and Traci Kratish certainly had valuable testimony to contradict testimony at trial and undo the Judgment. This must now be reversed and remanded.

A. **The lower tribunal committed reversible error by failing to hold a hearing to determine the fraud.**

Factors the trial court should consider in determining whether to reopen the case to allow presentation of additional evidence include whether the opposing party will be unfairly prejudiced and whether it will serve the best interests of justice. Amador v. Amador, 796 So. 2d 1212 (Fla. 3d DCA 2001); Hernandez v. Cacciamani Dev. Co., 698 So. 2d 927 (Fla. 3d DCA 1997); Silber; Bieley v. Bieley, 398 So. 2d 932 (Fla. 3d DCA), review denied, 411 So. 2d 380 (Fla. 1981); Akins v. Taylor, 314 So. 2d 13 (Fla. 1st DCA 1975); see also Register v. State, 718 So. 2d 350 (Fla. 5th DCA 1998).

“ Moreover, given the allegations of fraud made by Robinson to support her motion, we think an evidentiary hearing was essential for the trial court to properly determine whether to grant the request to present the testimony of Adams. See Robinson v. Kalmanson, 882 So. 2d 1086, 1088 (Fla. 5th DCA 2004) ("A court can seldom determine the presence or absence of fraud without a trial or evidentiary proceeding.").” See,

“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) ("[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 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."

While Appellant has not filed a motion under Civil Procedure 1.540, such motion has been filed under 1.530 for a new trial. With the fraud shown herein, it was an abuse of discretion to deny a New Trial particularly without a Hearing. The Final Judgment and Orders therein must be reversed and vacated and compliance with the State Fraud policy obtained.

CONCLUSION

For all of the foregoing reasons, this Court should reverse the Final Judgment dated December 16, 2015 and remand the proceedings to the lower tribunal Disqualifying Judge John Phillips and ensuring the case is assigned to a non-conflicted Judge or other venue and non-conflicted jurisdiction consistent with fundamental due process, to force implementation of the Statewide Policy for Fraud on the Court in this case and the related cases for the Bernstein family, report all Officers and Fiduciaries of the Court alleged to be involved in the Fraud on the Courts, Beneficiaries and Interested Parties to the proper State and Federal, Criminal and Ethical Authorities as required and for such other and further relief as may be just and proper.

Dated: July 12th, 2016

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

Dated: July 12th, 2016

/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 CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 12th day of July, 2016.

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

SERVICE LIST LOWER CASES DEFENDANTS, RESPONDENTS, COUNTER DEFENDANTS

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 (iohn@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.	Counter Defendant Robert Spallina, Esq. Donald Tescher, Esq.

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	Tescher & Spallina 925 South Federal Hwy., Suite 500 Boca Raton, Florida 33432
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@ciklinliibitz.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 Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net	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
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.	Counter Defendant Alan B. Rose, Esq.

950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 tbernstein@lifeinsuranceconcepts.com	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	Hunt Worth, Esq. President Oppenheimer Trust Company of Delaware

Glades Twin Plaza 2300 Glades Road Suite 120 West – Executive Office Boca Raton, FL 33431 info@legacybankfl.com DBedley@LegacyBankFL.com	405 Silverside Road Wilmington, DE 19809 302-792-3500 hunt.worth@opco.com
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	Neil Wolfson President & Chief Executive Officer Wilmington Trust Company 1100 North Market Street Wilmington, DE 19890-0001 nwolfson@wilmingtontrust.com
William McCabe Oppenheimer & Co., Inc. 85 Broad St Fl 25 New York, NY 10004 William.McCabe@opco.com	STP Enterprises, Inc. 303 East Wacker Drive Suite 210 Chicago IL 60601-5210 psimon@stpcorp.com
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	Ralph S. Janvey Krage & Janvey, L.L.P. Federal Court Appointed Receiver Stanford Financial Group 2100 Ross Ave, Dallas, TX 75201 rjanvey@kjllp.com
Kimberly Moran Tescher & Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 kmoran@tescherspallina.com	Lindsay Baxley aka Lindsay Giles Life Insurance Concepts 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 lindsay@lifeinsuranceconcepts.com
Gerald R. Lewin CBIZ MHM, LLC 1675 N Military Trail Fifth Floor	CBIZ MHM, LLC General Counsel 6480 Rockside Woods Blvd. South Suite 330

Boca Raton, FL 33486	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 cstroup@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 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)	

APPENDIX

App#	Document	Reference/Bates #'s
1	2006 IRS Form 1120S showing Gross Receipts of LIC Holdings	Tescher and Spallina Production Bates #TS000925
2	2007 IRS Form 1120S showing Gross Receipts of LIC Holdings	Tescher and Spallina Production Bates #TS002419 -
3	2008 IRS Form 1120S showing Gross Receipts of LIC Holdings	Tescher and Spallina Production Bates #TS002421
4	2007 IRS 1099 Simon Bernstein showing income of	Tescher and Spallina Production Bates #TS002961
5	2008 IRS 1099 Simon Bernstein showing income of	Tescher and Spallina Production Bates #TS002962
6	Aug 31, 2012 Market Value Simon Wilmington Trust 49.5% owned by Simon Trust and 49.5% owned by Shirley Trust through Bernstein Family Investments. Simon Trust value Total Income and Total Principal =	Tescher and Spallina Production Bates #TS004807-TS004814
7	Aug 31, 2012 Market Value Simon Wilmington Trust 49.5% owned by Simon Trust and 49.5% owned by Shirley	Tescher and Spallina Production Bates #TS004808-TS004814

	Trust through Bernstein Family Investments. Shirley Trust value Total Income and Total Principal = Shirley Trust not Accounted for as NO Trust Accounting exists Simon Trust Accounting done by Ted shows no Wilmington accounts. No Simon Trust Accounting by Tescher Spallina in violation of Probate Rules and Statutes.	
8	February 18, 2014 “ORDER ON PETITION FOR RESIGNATION AND DISCHARGE” Tescher and Spallina Discharge Order	Simon Bernstein Estate Order Applies to ALL Simon and Shirley Bernstein Estate and Trust Records
9	May 31, 2012 Tescher & Spallina Billing Record for Heritage Life Insurance Work	TS005879
10	Docs / Orders showing O’Connell’s Office had Inspected, Taken Custody of Items from Lion’s Head Lane	
11	NOTICE of ADMIN SIMON showing ELIOT as Beneficiaries and ONLY 5 Children as Beneficiaries	
12	Magically Timed Order of Admin by Unknown Judge from same date	
13	Tescher Deposition Transcript - ELIOT gets NO Opportunity to DEPOSE	

14	Transcript of Management Conference Sept 15, 2015	
15	Transcript of Colin Sept 13, 2013 Hearing - Colin never asks Ted why he wasn't simply doing the Filings IF he was PR etc - Holds off on April 9th and who does Filings etc - No Testimony of Moran EVER before Colin	
16	Tescher & Spallina Production	Tescher & Spallina Production all 7202 Pages Bates #'d included in entirety by reference herein @ http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140602%20PRODUCTION%20OF%20DOCUMENTS%20SIMON%20ESTATE%20BY%20COURT%20ORDER%20TO%20BEN%20BROWN%20CURATOR%20DELIVERED%20BY%20TESCHER%20AND%20SPALLINA.pdf
17	Corporate Records for Bernstein Family Realty, Bernstein Family Holdings, Bernstein Family Investments	
18	Order of Denial of May 06, 2013 Emergency Motion in Simon Estate case	
19	Order Admitting Will of	

	Simon Bernstein	
20	Traci Kratish, Esq. Statements to Palm Beach County Sheriff	
21	June 10, 2015 Writ Of Prohibition	
22	Pre-Trial Witness List	
23	December 15, 2015 Trial Transcript	
24	Notice of Hearing Case Managment	

APPENDIX 1

Form **1120S**

Department of the Treasury
Internal Revenue Service (77)

U.S. Income Tax Return for an S Corporation

▶ Do not file this form unless the corporation has filed Form 2553 to elect to be an S corporation.

EXTENSION GRANTED TO 09/15/07

OMB No. 1545-0130

2006

For calendar year 2006, or tax year beginning SEPTEMBER 1, 2006 , and ending DECEMBER 31, 2006

A Effective date of S election: 09/01/2006	Use the IRS label. Other-wise, print or type. **Name:** LIC HOLDINGS INC	**C** Employer identification number: 20-5290314
B Business activity code number (see instructions): 524290	Number, street, and room or suite no. If a P.O. box, see instructions.: 950 PENINSULA CORP. CIRCLE, SUITE 3010	**D** Date incorporated: 09/01/2006
	City or town, state, and ZIP code: BOCA RATON, FL 33487	**E** Total assets (see instructions): $ 3,383,779.

F Check if: (1) [X] Initial return (2) [ ] Final return (3) [ ] Name change (4) [ ] Address change (5) [ ] Amended return

G Enter the number of shareholders in the corporation at end of the tax year ▶ 13

H Check if Schedule M-3 is required *(attach Schedule M-3)* ▶ [ ]

Caution: *Include* **only** *trade or business income and expenses on lines 1a through 21. See the instructions for more information.*

Income	1 a	Gross receipts or sales 6,113,843. b Less returns and allowances c Bal ▶		1c	6,113,843.
	2	Cost of goods sold (Schedule A, line 8)		2	
	3	Gross profit. Subtract line 2 from line 1c		3	6,113,843.
	4	Net gain (loss) from Form 4797, Part II, line 17 *(attach Form 4797)*		4	
	5	Other income (loss) *(attach statement)*		5	
	6	**Total income (loss).** Add lines 3 through 5 ▶		6	6,113,843.
Deductions (See instructions for limitations)	7	Compensation of officers		7	200,000.
	8	Salaries and wages (less employment credits)		8	2,007,567.
	9	Repairs and maintenance		9	9,139.
	10	Bad debts		10	
	11	Rents		11	1,688.
	12	Taxes and licenses STATEMENT 1		12	82,280.
	13	Interest		13	6,476.
	14	Depreciation not claimed on Schedule A or elsewhere on return *(attach Form 4562)*		14	5,127.
	15	Depletion **(Do not deduct oil and gas depletion.)**		15	
	16	Advertising		16	18,795.
	17	Pension, profit-sharing, etc., plans		17	
	18	Employee benefit programs		18	
	19	Other deductions *(attach statement)* STATEMENT 2		19	2,302,973.
	20	**Total deductions.** Add lines 7 through 19 ▶		20	4,634,045.
	21	**Ordinary business income (loss).** Subtract line 20 from line 6		21	1,479,798.
Tax and Payments	22 a	Excess net passive income or LIFO recapture tax *(see instructions)*	22a		
	b	Tax from Schedule D (Form 1120S)	22b		
	c	Add lines 22a and 22b		22c	
	23 a	2006 estimated tax payments and 2005 overpayment credited to 2006	23a		
	b	Tax deposited with Form 7004	23b		
	c	Credit for federal tax paid on fuels *(attach Form 4136)*	23c		
	d	Credit for federal telephone excise tax paid *(attach Form 8913)*	23d		
	e	Add lines 23a through 23d		23e	
	24	Estimated tax penalty *(see instructions)*. Check if Form 2220 is attached ▶ [ ]		24	
	25	**Amount owed.** If line 23e is smaller than the total of lines 22c and 24, enter amount owed		25	
	26	**Overpayment.** If line 23e is larger than the total of lines 22c and 24, enter amount overpaid		26	
	27	Enter amount from line 26 **Credited to 2007 estimated tax** ▶ **Refunded** ▶		27	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature of officer | Date | ▶ Title

May the IRS discuss this return with the preparer shown below (see instr.)? [X] Yes [ ] No

Paid Preparer's Use Only

Preparer's signature ▶	Date	Check if self-employed [ ]	Preparer's SSN or PTIN: P00127193
Firm's name (or yours if self-employed), address, and ZIP code: ▶ GOLDSTEIN LEWIN & CO. 1900 N.W. CORPORATE BLVD. STE E-300 BOCA RATON, FL 33431-8502		EIN: 59-2147155	Phone no. (561)994-5050

APPENDIX 2

Form **1120S**

Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for an S Corporation

▶ Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.

EXTENSION GRANTED TO 09/15/08

OMB No. 1545-0130

2007

For calendar year 2007, or tax year beginning , and ending

A S election effective date 09/01/2006	Use the IRS label. Otherwise, print or type. Name: LIC HOLDINGS INC	D Employer identification number 20-5290314
B Business activity code number (see instructions) 524290	Number, street, and room or suite no. If a P.O. box, see instructions. 950 PENINSULA CORP. CIR., SUITE 3010	E Date incorporated 09/01/2006
C Check if Sch. M-3 attached [X]	City or town, state, and ZIP code BOCA RATON, FL 33487	F Total assets (see instructions) $ 10,509,513.

G Is the corporation electing to be an S corporation beginning with this tax year? [ ] Yes [X] No If "Yes," attach Form 2553 if not already filed

H Check if: (1) [ ] Final return (2) [ ] Name change (3) [ ] Address change (4) [X] Amended return (5) [ ] S election termination or revocation

I Enter the number of shareholders in the corporation at end of the tax year ▶ 13

Caution: *Include* **only** *trade or business income and expenses on lines 1a through 21. See the instructions for more information.*

Income	1 a	Gross receipts or sales 38,419,667. b Less returns and allowances c Bal ▶		1c	38,419,667.
	2	Cost of goods sold (Schedule A, line 8)		2	
	3	Gross profit. Subtract line 2 from line 1c		3	38,419,667.
	4	Net gain (loss) from Form 4797, Part II, line 17 *(attach Form 4797)*		4	<1,520.>
	5	Other income (loss) *(attach statement)* STATEMENT 1		5	58,945.
	6	**Total income (loss).** Add lines 3 through 5 ▶		6	38,477,092.
Deductions (See instructions for limitations)	7	Compensation of officers STATEMENT 2		7	5,498,526.
	8	Salaries and wages (less employment credits)		8	4,103,690.
	9	Repairs and maintenance		9	20,041.
	10	Bad debts		10	
	11	Rents		11	201,637.
	12	Taxes and licenses STATEMENT 3		12	167,695.
	13	Interest		13	118,560.
	14	Depreciation not claimed on Schedule A or elsewhere on return *(attach Form 4562)*		14	61,587.
	15	Depletion **(Do not deduct oil and gas depletion.)**		15	
	16	Advertising		16	106,971.
	17	Pension, profit-sharing, etc., plans		17	
	18	Employee benefit programs		18	20,350.
	19	Other deductions *(attach statement)* STATEMENT 4		19	16,576,999.
	20	**Total deductions.** Add lines 7 through 19 ▶		20	26,876,056.
	21	**Ordinary business income (loss).** Subtract line 20 from line 6		21	11,601,036.
Tax and Payments	22 a	Excess net passive income or LIFO recapture tax *(see instructions)*	22a		
	b	Tax from Schedule D (Form 1120S)	22b		
	c	Add lines 22a and 22b		22c	
	23 a	2007 estimated tax payments and 2006 overpayment credited to 2007	23a		
	b	Tax deposited with Form 7004	23b		
	c	Credit for federal tax paid on fuels *(attach Form 4136)*	23c		
	d	Add lines 23a through 23c		23d	
	24	Estimated tax penalty (see instructions). Check if Form 2220 is attached ▶ [ ]		24	
	25	**Amount owed.** If line 23d is smaller than the total of lines 22c and 24, enter amount owed		25	
	26	**Overpayment.** If line 23d is larger than the total of lines 22c and 24, enter amount overpaid		26	
	27	Enter amount from line 26 **Credited to 2008 estimated tax** ▶ **Refunded** ▶		27	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature of officer | Date | ▶ Title

May the IRS discuss this return with the preparer shown below (see instr.)? [X] Yes [ ] No

Paid Preparer's Use Only

Preparer's signature ▶	Date	Check if self-employed [ ]	Preparer's SSN or PTIN P00127193
Firm's name (or yours if self-employed), address, and ZIP code ▶ GOLDSTEIN LEWIN & CO. 1675 N. MILITARY TRAIL, FIFTH FLOOR BOCA RATON, FL 33486		EIN	59-2147155
		Phone no.	(561)994-5050

JWA 711701 12-28-07

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Form **1120S** (2007)

TS002419

APPENDIX 3

Form **1120S**

Department of the Treasury
Internal Revenue Service (77)

U.S. Income Tax Return for an S Corporation

▶ Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.

EXTENSION GRANTED TO 09/15/09

OMB No. 1545-0130

2008

For calendar year 2008 or tax year beginning , and ending

A S election effective date 09/01/2006	Use the IRS label. Otherwise, print or type. Name: LIC HOLDINGS INC	D Employer identification number 20-5290314
B Business activity code number (see instructions) 524290	Number, street, and room or suite no. If a P.O. box, see instructions. 950 PENINSULA CORP. CIR., SUITE 3010	E Date incorporated 09/01/2006
C Check if Sch. M-3 attached [X]	City or town, state, and ZIP code BOCA RATON, FL 33487	F Total assets (see instructions) $ 4,151,405.

G Is the corporation electing to be an S corporation beginning with this tax year? [ ] Yes [X] No If "Yes," attach Form 2553 if not already filed

H Check if: (1) [ ] Final return (2) [ ] Name change (3) [ ] Address change (4) [ ] Amended return (5) [ ] S election termination or revocation

I Enter the number of shareholders who were shareholders during any part of the tax year ▶ 13

Caution: *Include* **only** *trade or business income and expenses on lines 1a through 21. See the instructions for more information.*

Income	1 a	Gross receipts or sales 39,421,306. b Less returns and allowances c Bal ▶		1c	39,421,306.
	2	Cost of goods sold (Schedule A, line 8)		2	
	3	Gross profit. Subtract line 2 from line 1c		3	39,421,306.
	4	Net gain (loss) from Form 4797, Part II, line 17 *(attach Form 4797)*		4	
	5	Other income (loss) *(attach statement)* STATEMENT 1		5	150,154.
	6	**Total income (loss).** Add lines 3 through 5 ▶		6	39,571,460.
Deductions (See instructions for limitations)	7	Compensation of officers STATEMENT 2		7	9,402,142.
	8	Salaries and wages (less employment credits)		8	5,391,007.
	9	Repairs and maintenance		9	4,295.
	10	Bad debts		10	
	11	Rents		11	350,691.
	12	Taxes and licenses STATEMENT 3		12	505,672.
	13	Interest		13	22,222.
	14	Depreciation not claimed on Schedule A or elsewhere on return *(attach Form 4562)*		14	113,751.
	15	Depletion **(Do not deduct oil and gas depletion.)**		15	
	16	Advertising		16	194,719.
	17	Pension, profit-sharing, etc., plans		17	103,791.
	18	Employee benefit programs		18	
	19	Other deductions *(attach statement)* STATEMENT 4		19	21,637,874.
	20	**Total deductions.** Add lines 7 through 19 ▶		20	37,726,164.
	21	**Ordinary business income (loss).** Subtract line 20 from line 6		21	1,845,296.
Tax and Payments	22 a	Excess net passive income or LIFO recapture tax *(see instructions)*	22a		
	b	Tax from Schedule D (Form 1120S)	22b		
	c	Add lines 22a and 22b		22c	
	23 a	2008 estimated tax payments and 2007 overpayment credited to 2008	23a		
	b	Tax deposited with Form 7004	23b		
	c	Credit for federal tax paid on fuels *(attach Form 4136)*	23c		
	d	Add lines 23a through 23c		23d	
	24	Estimated tax penalty (see instructions). Check if Form 2220 is attached ▶ [ ]		24	
	25	**Amount owed.** If line 23d is smaller than the total of lines 22c and 24, enter amount owed		25	
	26	**Overpayment.** If line 23d is larger than the total of lines 22c and 24, enter amount overpaid		26	
	27	Enter amount from line 26 **Credited to 2009 estimated tax** ▶ **Refunded** ▶		27	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature of officer | Date | ▶ Title

May the IRS discuss this return with the preparer shown below (see instr.)? [X] Yes [ ] No

Paid Preparer's Use Only

Preparer's signature ▶	Date	Check if self-employed [ ]	Preparer's SSN or PTIN P00127193
Firm's name (or yours if self-employed), address, and ZIP code ▶ GOLDSTEIN LEWIN & CO. 1675 N. MILITARY TRAIL, FIFTH FLOOR BOCA RATON, FL 33486		EIN	59-2147155
		Phone no.	(561)994-5050

APPENDIX 4

9595 ☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SIMON BERNSTEIN 950 PENINSULA CORPORATE CIRCLE STE 3010 BOCA RATON FL 33487	$	2007 Form 1099-MISC	
	2 Royalties $		
	3 Other income $	4 Federal income tax withheld $	Copy A For Internal Revenue Service Center
PAYER'S federal identification number / RECIPIENT'S identification number [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $	File with Form 1096.
RECIPIENT'S name ARBITRAGE INTERNATIONAL MANAGEMENT	7 Nonemployee compensation $ 8795654.45	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2007 General Instructions for Forms 1099, 1098, 5498, and W-2G.
Street address (including apt. no.) 950 PENINSULA CORPORATE CIRCLE SUITE 3010	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	10 Crop insurance proceeds $	
City, state, and ZIP code Boca Raton FL 33487	11	12	
Account number (see instructions) / 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $	15b Section 409A income $	16 State tax withheld $	17 State/Payer's state no.	18 State income $

Form 1099-MISC — 38-2099803 — Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page -- Do Not Cut or Separate Forms on This Page

9595 ☒ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
	$	2007 Form 1099-MISC	
	2 Royalties $		
	3 Other income $	4 Federal income tax withheld $	Copy A For Internal Revenue Service Center
PAYER'S federal identification number / RECIPIENT'S identification number	5 Fishing boat proceeds $	6 Medical and health care payments $	File with Form 1096.
RECIPIENT'S name	7 Nonemployee compensation $	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2007 General Instructions for Forms 1099, 1098, 5498, and W-2G.
Street address (including apt. no.)	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	10 Crop insurance proceeds $	
City, state, and ZIP code	11	12	
Account number (see instructions) / 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $	15b Section 409A income $	16 State tax withheld $	17 State/Payer's state no.	18 State income $

Form 1099-MISC — 38-2099803 — Department of the Treasury - Internal Revenue Service

DETACH BEFORE MAILING

BMISFED NTF2371113

LIC-AIM-TB-000033

TS002961

APPENDIX 5

9595 ☐VOID ☐CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SIMON BERNSTEIN 950 PENINSULA CORPORATE CIRCLE STE 3010 BOCA RATON FL 33487	$ 2 Royalties $	2008 Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy A For Internal Revenue Service Center
PAYER'S federal identification number [redacted] / RECIPIENT'S identification number	5 Fishing boat proceeds $	6 Medical and health care payments $	File with Form 1096.
RECIPIENT'S name Arbitrage International Marketing	7 Nonemployee compensation $ 15766018.47	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G.
Street address (including apt. no.) 950 Peninsula Corporate Circle Suite 3010	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	10 Crop insurance proceeds $	
City, state, and ZIP code Boca Raton FL 33487	11	12	
Account number (see instructions) 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $	15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Form 1099-MISC 38-2099803 Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

9595 ☒VOID ☐CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
	$ 2 Royalties $	2008 Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy A For Internal Revenue Service Center
PAYER'S federal identification number / RECIPIENT'S identification number	5 Fishing boat proceeds $	6 Medical and health care payments $	File with Form 1096.
RECIPIENT'S name	7 Nonemployee compensation $	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G.
Street address (including apt. no.)	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	10 Crop insurance proceeds $	
City, state, and ZIP code	11	12	
Account number (see instructions) 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $	15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Form 1099-MISC 38-2099803 Department of the Treasury - Internal Revenue Service

DETACH BEFORE MAILING

BMISFED NTF257879

LIC-AIM-TB-000034

TS002962

APPENDIX 6

WILMINGTON TRUST

Relationship Summary

088949-000 TT/SIMON L BERNSTEIN IRREV TR

As of August 31, 2012

CONTACTS

Private Client Advisor:	*CARECE M. RUFE*	*302-651-8248*	*crufe@wilmingtontrust.com*

CORPORATE HEADQUARTERS

Rodney Square North
1100 North Market Street
Wilmington DE 19890-0001

877-836-9206 *www.wilmingtontrust.com*

IMPORTANT INFORMATION

On July 1, 2012, Wilmington Trust converted to a new trust and investment management system. This statement is produced from our new system which reflects information in a slightly different format. Please note that year to date fields will include cumulative data with a start date of July 1, 2012, but will not include data or totals from the first six months of 2012. If you have any questions, please contact your relationship team.

For clients invested in the Wilmington Trust Common Trust Funds, audited financial reports are prepared annually for the funds and are available to you at no charge. If you would like to receive copies of these reports, please contact your Relationship Manager. Wilmington Trust receives an administration fee from the common trust funds equal to 0.10% annually of the market value of the common trust funds held in client accounts.

1602671 02 AT 0.744 **AUTO 9 1 4704 33496 000023999 0001N

SIMON L BERNSTEIN
7020 LIONS HEAD LANE
BOCA RATON FL 33496-5931

TS004807

2012-09-0600001123100000 MSB1602671 0001 0001130206 000023999 00001500 088949-000 H

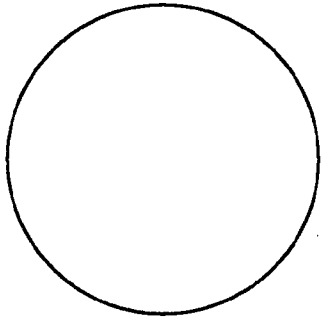
WILMINGTON TRUST

Market Value Summary

088949-000 TT/SIMON L BERNSTEIN IRREV TR

As of August 31, 2012

ASSET ALLOCATION
CURRENT RELATIONSHIP MARKET VALUE: $2,829,962



Equity	0%
Fixed Income	0%
Inflation Hedges	0%
Hedged Strategies	0%
Cash & Currency	
Other Assets	100%

	MARKET VALUE (M/V) As of 7/31/2012	NET CONTRIBUTIONS (WITHDRAWALS)	MARKET VALUE (M/V) CHANGE	MARKET VALUE (M/V) As of 8/31/2012
TOTAL PRINCIPAL	$2,842,462	$0	$0	$2,842,462
TOTAL INCOME	($12,500)	$0	$0	($12,500)
TOTAL	$2,829,962	$0	$0	$2,829,962

Net contribution/withdrawal figures include fees. Market value figures include accruals.

TS004808

2012-09-0600001123100000 MSB1602671 0001 0001130206 000023998 00001500 088949-000 H

APPENDIX 7

WILMINGTON TRUST

Relationship Summary

088949-000 TT/SIMON L BERNSTEIN IRREV TR

As of August 31, 2012

CONTACTS

Private Client Advisor:	*CARECE M. RUFE*	*302-651-8248*	*crufe@wilmingtontrust.com*

CORPORATE HEADQUARTERS

Rodney Square North
1100 North Market Street
Wilmington DE 19890-0001

877-836-9206 *www.wilmingtontrust.com*

IMPORTANT INFORMATION

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1602671 02 AT 0.744 **AUTO 9 1 4704 33496 000023999 0001N

SIMON L BERNSTEIN
7020 LIONS HEAD LANE
BOCA RATON FL 33496-5931

TS004807

2012-09-0600001123100000 MSB1602671 0001 0001130206 000023999 00001500 088949-000 H

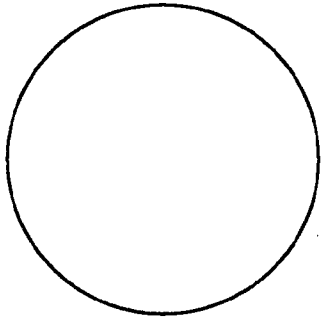
WILMINGTON TRUST

Market Value Summary

088949-000 TT/SIMON L BERNSTEIN IRREV TR

As of August 31, 2012

ASSET ALLOCATION
CURRENT RELATIONSHIP MARKET VALUE: $2,829,962



Equity	0%
Fixed Income	0%
Inflation Hedges	0%
Hedged Strategies	0%
Cash & Currency	
Other Assets	100%

	MARKET VALUE (M/V) As of 7/31/2012	NET CONTRIBUTIONS (WITHDRAWALS)	MARKET VALUE (M/V) CHANGE	MARKET VALUE (M/V) As of 8/31/2012
TOTAL PRINCIPAL	$2,842,462	$0	$0	$2,842,462
TOTAL INCOME	($12,500)	$0	$0	($12,500)
TOTAL	$2,829,962	$0	$0	$2,829,962

Net contribution/withdrawal figures include fees. Market value figures include accruals.

TS004808

2012-09-0600001123100000 MSB1602671 0001 0001130206 000023998 00001500 088949-000 H

APPENDIX 8

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF SIMON L. BERNSTEIN,

Deceased.

_____/

ELIOT IVAN BERNSTEIN, PRO SE

Petitioner

vs.

TESCHER & SPALLINA, P.A., (and all parties, associates and of counsel); ROBERT L. SPALLINA (both personally and professionally); DONALD R. TESCHER (both personally and professionally); THEODORE STUART BERNSTEIN (as alleged personal representative, trustee, successor trustee) (both personally and professionally); et. al.

Respondents.

_____/

PROBATE DIVISION

CASE NO. 502012CP004391XXXXSB

DIVISION: IY (COLIN)

ORDER ON PETITION FOR RESIGNATION AND DISCHARGE

This cause was heard by the Court on the co-Personal Representatives' Petition for Resignation and Discharge on February 18, 2014, and the Court, having heard arguments of counsel, and otherwise being fully advised in the premises, ORDERS AND ADJUDGES AS FOLLOWS:

1. The Petitioners' request to accept their resignation is ACCEPTED. The co-Personal Representatives' Letters of Administration are hereby revoked.

2. ~~Within [redacted] days from the later of the date of this order or the appointment of a successor fiduciary,~~ BY MARCH 4, 2014 the resigning co-Personal Representatives shall deliver to the successor fiduciary all property of the Estate, real, personal, tangible or intangible, all of the documents and records of the Estate and all records associated with any property of the Estate, regardless of whether such property has been previously distributed, transferred, abandoned or otherwise disposed of.

3. The Petitioners' request to reserve ruling on their discharge is ACCEPTED.

4. The resigning co-Personal Representatives shall file an accounting and a Renewed Petition for Discharge within sixty (60) days after the date hereof, which Renewed Petition for Discharge shall be verified and recite that the letters of administration have been revoked, the resigning co-Personal Representatives have surrendered all undistributed Estate assets, records, documents, papers and other property of or concerning the Estate to the successor fiduciary as set forth above, and the amount of compensation paid or to be paid by the resigning co-Personal Representatives pursuant to Probate Rule 5.430(g). Such accounting shall include cash and transactions from the commencement of administration of the Estate and ending as of the date the accounting is submitted.

5. The resigning co-Personal Representatives shall serve notice of filing and a copy of the accounting and Renewed Petition for Discharge on all interested parties and the notice shall state that the objection to the Renewed Petition for Discharge must be filed within thirty days after the later of service of the petition or service of the accounting on that interested person pursuant to Probate Rule 5.430(i).

6. The successor Personal Representative or Curator is authorized to pay a $_____ retainer to the accountant whom the Successor Personal Representative or Curator selects to provided the accounting which this Order requires. The accountant's hourly rate and compensation shall be subject to court approval.

DONE AND ORDERED in Delray Beach, Florida, this 18 day of Feb, 2014.

Circuit Judge

cc: Parties on attached service list

SERVICE LIST

Theodore Stuart Bernstein (e-mail)
Life Insurance Concepts
950 Peninsula Corporate Circle, Suite 3010
Boca Raton, Florida 33487

Eliot Bernstein (U.S. Mail)
2753 NW 34th Street
Boca Raton, Florida 33434

Lisa Sue Friedstein (U.S. Mail)
2142 Churchill Lane
Highland Park, Illinois 60035

Pamela Beth Simon (U.S. Mail)
950 North Michigan Avenue, Suite 2603
Chicago, Illinois 60611

Jill Iantoni (U.S. Mail)
2101 Magnolia Lane
Highland Park, Illinois 60035

Donald R. Tescher (E-mail)
4855 Technology Way, Suite 720
Boca Raton, Florida 33431

Mark R. Manceri, Esq. (E-mail)
Mark. R. Manceri, P.A.
2929 East Commercial Boulevard, Ste. 702
Fort Lauderdale, Florida 33308

Alan B. Rose, Esq. (E-mail)
Page Mrachek Fitzgerald Rose Konopka & Dow PA
505 S Flagler Dr Ste 600
West Palm Beach, Florida 33401

APPENDIX 9

Tescher & Spallina, P.A.

4855 Technology Way
Suite 720
Boca Raton, FL 33431
561-997-7008

EIN: 26-1543894

August 23, 2012 Invoice # 11187.001

Simon Bernstein
7020 Lions Head Lane
Boca Raton, FL 33496

In Reference To: Our File No.11187.001
Estate Planning

Professional services

	Amount
FOR LEGAL SERVICES RENDERED through July 31, 2012 in connection with estate planning, including meeting with client to finalize planning items; telephone calls and email correspondence with Diana regarding existing insurance matters and status of GC Trust transfers from Oppenheimer to JP Morgan; finalize EP documents and meet with client to execute same.	1,837.50
For professional services rendered	$1,837.50
Previous balance	$3,975.78
8/1/2012 Payment - Thank You, Check No. 207525930	($1,000.00)
Total payments and adjustments	($1,000.00)
Balance due	$4,813.28

Please make all checks payable to *"Tescher & Spallina, P.A."* and indicate your File Number on the check. Do not hesitate to contact us with any questions or difficulties. Thank you for the opportunity to be of service to you.

APPENDIX 10

APPENDIX 11

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION 12

SIMON L. BERNSTEIN, File No. 502012 CP00 4391 XXXX SB

Deceased.

2012 OCT -2 AM 8:58
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CTY 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 34th St. Boca Raton, FL 33434	son	adult
Jill Iantoni	2101 Magnolia Lane Highland Park, IL 60035	daughter	adult

Bar Form No. P-3 0100
© Florida Lawyers Support Services, Inc.
Reviewed October 1, 1998

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. Bernstein 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

Bar Form No. P-3 0100
© Florida Lawyers Support Services, Inc.
Reviewed October 1, 1998

APPENDIX 12

APPENDIX 13

VOLUME: I
PAGES: 1-165
EXHIBITS: 1-15, A

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

NO. 502012CP004391XXXXSB

CP - Probate

_____

IN RE:)

ESTATE OF SIMON L. BERNSTEIN)

_____)

TELEPHONIC DEPOSITION of DONALD R. TESCHER, called as a witness by and on behalf of Ted S. Bernstein, pursuant to the applicable provisions of the Florida Rules of Civil Procedure, before P. Jodi Ohnemus, RPR, RMR, CRR, CA-CSR #13192, NH-LCR #91, MA-CSR #123193, and Notary Public, within and for the Commonwealth of Massachusetts, at the Hampton Inn & Suites, 10 Plaza Way, Plymouth, Massachusetts, on Wednesday, 9 July, 2014, commencing at 2:38 p.m.

APPEARANCES:

(Via Telephone)
PETER M. FEAMAN, P.A.
BY: Peter M. Feaman, Esq.
3695 West Boynton Beach Blvd.
Boynton Beach, FL 33436
561 734-5552
Pfeaman@feamanlaw.com
For William Stansbury

(Via Telephone)
MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
BY: Alan B. Rose, Esq.
505 South Flagler Drive
Suite 600
West Palm Beach, FL 33401
561 655-2250
Arose@mrachek-law.com
For Ted S. Bernstein

APPEARANCES: (CONT'D)

(Via Telephone)
Irwin J. Block, Esq.
700 South Federal Highway
Suite 200
Boca Raton, FL 33432
561 910-3071
Ijb@ijblegal.com
For the Deponent

(Via Telephone)
John P. Morrissey, Esq.
330 Clematis Street
Suite 213
West Palm Beach, FL 33401
561 833-0766
John@jmorrisseylaw.com
For Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein

APPEARANCES: (CONT'D)

ALSO PRESENT:

(Via Telephone)
TESCHER & SPALLINA
BY: Robert Spallina, Esq.
Wells Fargo Plaza
925 South Federal Highway
Suite 500
Boca Raton, FL 33432
561 997-7008
Rspallina@tescherspallina.com

Eliot I. Bernstein, Pro Se
2753 N.W. 34th Street
Boca Raton, FL 33434
561 245-8588
Iviewit@iviewit.tv

Jill Iantoni
Mimi McAndrews
Eliot Bernstein
Lisa Friedstein

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MR. FEAMAN: Alan, you're taking this deposition for the purpose of using it at the hearings that are going to take place on Friday before Judge Colin; and I'd like to stipulate that by this deposition today, I am not waiving -- I assume none of the other parties are waiving their right to take the deposition of Mr. Tescher at some point in the future concerning any issues that are not before the court on Friday.

MR. BLOCK: What's before the court on Friday?

MR. FEAMAN: Before the court on Friday, according to an order entered by Judge Colin --

MR. BLOCK: What date is Friday?

MR. FEAMAN: Friday is the 11th.

MR. BLOCK: Okay. Good enough.

MR. FEAMAN: And the four things that this deposition -- I understand -- is being taken for is, No. 1, Elliot Bernstein's motion to disqualify Alan Rose and the Mrachek law firm and John Pankauski and the Pankauski law firm; No. 2, the various motions/petitions filed in connection with an appointment of a successor personal representative for the estate of Simon Bernstein; No. 3, the various motions and petitions filed in connection with the removal of Ted Bernstein as trustee of the Simon Bernstein Revocable Trust; and the determination of the applicability of the attorney/client privilege regarding an email sent by Ted Bernstein to Eliot Bernstein; and that, by our asking questions of Mr. Tescher today, we do not waive the right to take Mr. Tescher's deposition, if necessary, at some point in the future concerning any other issues that may or may not arise in connection with these matters.

MR. ROSE: I have no objection to your stipulation. In fact, I think it's very obvious that this deposition should be limited to four very narrow issues. One of them has nothing to do with Mr. Tescher -- which will be the privileged email.

I agree wholeheartedly.

I would actually express in advance some concern that your exhibits would seem to go far afield of those issues. But subject to that, I am fine with your stipulation. And I would like to -- I think the witness should be sworn in.

MR. MORRISSEY: This is John Morrissey. The only addition that I would have to the stipulation is Mr. Feaman made a couple of references to the use of this deposition only at the hearing on the 11th.

My understanding is we have a kind of a pour-over hearing on the 16th. So I would add to that stipulation that this deposition could be used on the 16th to the extent necessary as well.

MR. FEAMAN: Well, my stipulation doesn't involve use. It involves a waiver on the part of my client to -- if -- that somehow he would not be allowed or anybody else would be allowed to take Mr. Tescher's deposition again because it's already been taken. And the point is, there may be issues that arise in the future in which Mr. Tescher is involved -- either as a witness or in some other capacity -- and, therefore, today's deposition would not be a waiver of any parties' right to take

his deposition in the future for other matters.

MR. ROSE: Let me take over for a second. This is Alan Rose. Mr. Block, as counsel for Don Tescher, do you agree he can be deposed again in the future?

MR. BLOCK: Well --

MR. FEAMAN: Subject to the limitation and nobody would ask him the same questions we're going to ask him today.

MR. BLOCK: What I agreed to is the stipulation decided by Peter, with the additional of the date of the 16th by John Morrissey. That's what I agree to.

MR. ROSE: And for the record, the deposition is going to be used for whatever purposes a deposition can be used under the Florida Rules of Civil Procedure with no limitation.

You can swear in the witness.

DONALD R. TESCHER, having satisfactorily been identified by the production of a driver's license, and being first duly sworn by the Notary Public, was examined and testified as follows to interrogatories

BY MR. ROSE:

Q. Would you state your full name for the recovered?

A. Donald R. Tescher.

Q. And are you an attorney licensed to practice law in the State of Florida; currently a partner of the law firm Tescher & Spallina?

A. Yes; and yes.

Q. Where are you physically located today?

A. Right now I'm sitting in Plymouth, Massachusetts.

Q. Is your plan to spend the summer in Massachusetts?

A. Yes.

Q. Do you have plans to be in Palm Beach county or July 11th or July 16th of this year?

A. No.

Q. Is -- is your current location more than 100 miles from the courthouse?

A. Your courthouse; right -- or our courthouse, I should say, in Florida --

Q. Is your --

A. -- certainly it's about 1,500 miles.

Q. Is your location more than 100 miles from the Palm Beach County courthouses?

A. Yes, sir.

Q. Okay. You have in front of you something called "Affidavit of Donald Tescher"?

A. I don't. (Witness reviews documents.) I do.

MR. ROSE: I'd like to mark that as Exhibit 1 to your deposition.

(Discussion off the record.)

(Tescher A, Affidavit of Donald R. Tescher.)

Q. Are you familiar with Exhibit A, Mr. Tescher?

A. Yes, sir.

Q. Is this an affidavit you prepared some time ago?

A. Yes.

Q. And signed under oath on March 4th, 2014?

A. Yes.

Q. Have you reviewed the affidavit recently?

A. Yes.

Q. And had you reviewed the affidavit and had a role in editing it prior to the time that you signed it in March of 2014?

A. Yes, I did.

Q. If I asked you questions that would elicit the information that you put in your affidavit in

March, would you give me the same answers today as you wrote in your affidavit?

A. I believe so.

Q. Now, attached to the affidavit there are five documents that have been marked in the affidavit as A, B, C, D, and E.

A. Yes, sir.

Q. Do you have those in front of you?

A. Yes, I do.

Q. The first document -- which is Exhibit A to your affidavit -- is entitled "Will of Shirley Bernstein."

Are you familiar with the will of Shirley Bernstein?

A. This is the will that was executed on May 20, 2008.

Q. And the original of this will was held in your safe deposit box and ultimately was filed with the court?

A. That is correct.

Q. Exhibit B is the Shirley Bernstein Trust Agreement, also dated May 20, 2008.

Are you familiar with that document?

A. Yes, sir.

Q. Was your law firm responsible for drafting

the will and the trust for Shirley Bernstein?

A. Yes, it was.

Q. If you look at Exhibit C, there's a document called "First Amendment to Shirley Bernstein Trust Agreement."

Are you familiar with that document?

A. Yes, sir.

Q. Is Exhibit C a true and accurate copy of the first amendment to the Shirley Bernstein Trust Agreement?

A. The only thing that's unusual about the copy I'm looking at here is there's no date inserted on the top of the first page; and I believe that document, as I recall, was -- was dated. It's dated, obviously, on the page 2.

Q. As far as you know, is the document attached to the affidavit an accurate copy of what would have been signed by Shirley Bernstein on or about November 18, 2008?

A. Yes.

Q. Other than the three documents -- A, B, and C -- are you aware of any other operative documents that would have -- that would have been signed by Shirley Bernstein while she was alive?

A. No.

MR. FEAMAN: Objection to the form.

Q. I'll ask a different question: As far as you know, are Exhibits A, B, and C, the will, and the trust, and the amendment and -- the only amendment that you're aware of to the Shirley Bernstein Trust?

A. Yes.

Q. Now, Exhibit D is the will of Simon Bernstein.

Do you see that?

A. Yes, sir.

Q. And this is a -- not original document, but it appears to be dated on July 25, 2012.

A. It appears to be a conformed copy of a will that was executed, apparently, on that date.

Q. And this will would have been held in your safe deposit box in the original files with the court upon Mr. Bernstein's death?

A. Yes, sir.

Q. And as far as you know, is this the last will of Simon L. Bernstein?

A. Yes, sir.

Q. The last exhibit, Exhibit E, is the Simon L. Bernstein Amended and Restated Trust Agreement, which is dated July 25, 2012.

Are you familiar with this document?

A. Yes.

Q. As far as you know, is this the final version of a -- or the last version of any trust document that Simon Bernstein signed prior to his death?

A. Yes, sir.

Q. Are you familiar with the prior versions of Simon's will and trust from 2008?

A. Generally.

Q. In the 2012 document, were you and Robert Spallina designated as the successor cotrustees upon the death of Simon Bernstein?

A. Yes, we were.

Q. And do you recall who had been listed as a successor cotrustee in the 2008 version?

A. My -- my recollection -- and I don't specifically recall -- that it might have been Mr. Stansbury.

Q. And are you aware of a decision by Simon Bernstein to remove Mr. Stansbury as a successor trustee under his 2012 trust?

A. Yes, indirectly.

Q. Did you have any discussions with Simon about that decision?

A. I did not have discussions directly with Simon regarding that decision.

Q. Upon Mr. Spallina's resignation as trustee, at some point in time you were the sole remaining trustee of the Simon L. Bernstein Amended and Restated Trust Agreement; is that correct?

A. Yes, sir, for one day.

Q. And did the trust document give you any powers with regard to deciding who would be your successor?

A. The provision of the trust document provides first that if there is none named, that the last surviving trustee can designate the successor trustee.

Q. And did you make a decision in your position who should be the successor to you?

A. Yes, I did.

Q. And who did you select?

A. I selected Theodore.

Q. And could you tell the court why you selected Mr. Bernstein -- Mr. Ted Bernstein?

A. I concluded that he was the logical choice for a variety of reasons, including the fact that he -- among all of the children, probably had the most knowledge of his -- his mother and father's

matters. He was then serving as successor -- personal representative and successor trustee for Shirley after Simon had died. He had, you know, direct knowledge of the litigation that was ongoing with William Stansbury. He's not a beneficiary under any of those documents, other than dividing up tangible personal property; and I believe him to be a competent person and a competent businessman.

Q. Did you give any consideration to selecting Eliot Bernstein for that role?

A. Not at all.

Q. Do you think that Simon Bernstein would want Eliot Bernstein to have any fiduciary role in connection with his will or his trust?

A. I do not.

Q. And can you tell us why?

A. There has been --

MR. FEAMAN: Objection to the form.

Q. You can answer, sir.

A. Over -- over the years it was made apparent to us by members of the Bernstein family that Eliot -- Eliot suffers from certain impediments and impairments that would affect his judgment and ability to act in an impartial fashion and to handle the affairs that would be necessary

to be handled.

Eliot and his family -- particularly his siblings -- did not enjoy a -- a wonderful relationship. It's my understanding that he, at times, threatened -- I'm not sure if he actually sued -- but he certainly threatened to sue certain members of the family.

In fact, my recollection is that there is an agreement that Si Bernstein had Eliot and his wife execute regarding his ceasing that activity, in exchange for which -- I believe that there were payments to be made to Eliot Bernstein in connection with helping to support him.

Q. Now, do you recall Mr. Stansbury also being named as the successor personal representative under Simon's 2008 document?

A. I don't specifically recall, but I think that was the case.

Q. And in the documents that were signed July 25th, Mr. Stansbury is not named in any capacity; is that correct?

A. That is correct.

Q. Do you know what happened between or around July of 2012 that would have caused Simon Bernstein to want to remove William Stansbury from

having any role or say in his affairs?

MR. FEAMAN: Objection to the form.

A. Well, I -- I believe -- although I'm not a hundred percent certain -- that litigation had already commenced by Mr. Stansbury against Mr. Bernstein -- Simon Bernstein -- as well as the Life Insurance Concepts and other entities around that time.

Q. Did you have personal knowledge of Simon's reaction to being sued by William Stansbury?

A. Unfortunately, no, I do not.

Q. Okay. That's fine.

Now, in connection with the estate planning, did Simon take any extra precautions or special arraignments in dealing with assets that were being provided to or set aside for Eliot Bernstein?

A. Yeah. And, again, this was not -- this was not a matter that our firm was involved in creating or structuring.

Simon Bernstein had trusts created for Eliot Bernstein's three children. He had those trusts become the members -- sole members of a limited liability company. He provided the financing and the monies to acquire their current

residence, which is owned in that limited liability company; and, in essence, owned by those three trusts for Eliot Bernstein's children.

Q. And were those elaborate estate plans designed and created so that Eliot would not have any assets in his individual name or control?

A. I believe that that was part of the rationale.

Q. Prior to the time that you resigned, Ted was not playing any role in the Simon estate or the Simon trust; is that accurate?

A. I'm sorry? Who wasn't?

Q. Ted was not involved --

A. Ted?

Q. -- in a fiduciary capacity for the Simon estate or for the Simon trust prior to your resignation; is that accurate?

A. That is correct.

MR. FEAMAN: Objection to form.

MR. ROSE: What's the objection?

MR. FEAMAN: No predicate. Overly broad.

Q. Now, was Ted at that same time serving in a fiduciary capacity as the successor trustee of the Shirley Bernstein Trust and the successor PR of the Shirley Bernstein estate?

A. Yes, sir.

Q. And was your law firm representing him in his capacity as a fiduciary on the Shirley side?

A. Yes, we were.

Q. During the time that Ted was being represented by you, did there come -- from time to time -- situations where you would give advice of what -- what action should be taken in a given circumstance?

A. Our firm did; yes.

Q. Did Ted generally follow your advice?

A. Yes.

Q. Were there any times when Ted specifically refused to follow your advice?

A. No.

Q. Now, there was -- this is on the Shirley side --

A. Well, I take that --

Q. -- not especially relevant, but it relates to Ted's ability and capacity to serve as a fiduciary on the Simon side -- but was there a time when there was a sale of a large asset on the Shirley side?

A. Yes. One of the --

MR. FEAMAN: Objection.

A. -- one of the residences was sold.

Q. And were there discussions concerning whether to make an interim distribution at that time?

A. Yes, there were.

Q. And at the end of the -- at the end of the day, after whatever discussions occurred, did your firm ever advise Ted that it would be improper for him, as trustee, to make an interim distribution?

A. We never advised him that it was improper. We advised him to be cautious about making distributions, because at that time the Shirley trust was a named defendant in the Stansbury litigation.

Q. And with respect to that -- so long as there was sufficient funds left over to cover whatever claim there was, there would be no problem with an interim distribution; is that accurate?

A. Assumedly.

MR. FEAMAN: Objection to form.

Q. Now, Stansbury's claim has been against the estate of Shirley Bernstein or the Shirley Bernstein Trust have been dismissed with prejudice; are you aware of that?

A. Yes.

Q. Back at the time when an interim distribution was being considered, what were your thoughts as to the merits of the lawsuit by Mr. Stansbury against the Shirley Bernstein estate or the Shirley Bernstein Trust?

MR. FEAMAN: Objection to the form.

A. I thought it was ludicrous, frankly.

They continued to keep naming Mr. Spallina and myself as the trustees of that trust, which we never were in -- in all of the pleadings.

That trust had -- Shirley never owned any interest in the business. And I could see no reason why Mr. Stansbury was attempting to reach into that trust, other than the fact that it had some assets.

Q. Now, there is an issue -- there is an issue on the Shirley side about whether the distribution should have been made to all 10 grandchildren or to only six.

Were you aware at the time of the interim distribution that there was a question about distributions to six versus 10?

A. Not at that time; no.

Q. As far as you know, was Ted aware of the issue of six versus 10?

MR. FEAMAN: Objection to the form.

A. To the best of my knowledge, I don't think he was at that time.

Q. One second, please.

Do you recall when the Shirley Bernstein Trust sold the condominium that, among the contents of the condominium would be property that would have then been owned by the estate of Simon Bernstein?

A. Well, under -- under Shirley's documents, all the tangible personal property passed to Simon.

Q. I thought -- at the time that Shirley's condo was sold, whatever contents were in it would have been owned by Simon's estate.

A. Correct.

Q. At the time you were the personal representative or copersonal representative of Simon's estate; is that correct?

A. At the time that the sale occurred; yes.

Q. Did you and the other copersonal representative agree that the -- that the property should be sold with the condominium; and that if there was ever a time in the future when there needed to be some allocation, it could be handled in the future, rather than either interfering with

the sale of the condo, or requiring the furniture to be to be removed from the condo?

MR. FEAMAN: Objection to the form.

A. I don't recall if I was directly involved in that discussion.

Q. Does it make sense to you that if the beneficiaries of the Shirley trust are the same as the beneficiaries of the Simon estate should not undergo an expense to move furniture or undertake an allocation if the money is going to the same people?

A. Correct.

Q. And if at some later point in time it makes a difference, couldn't somebody then go back and allocate some portion of the purchase price from the Shirley condo and give the money to the Simon estate for the value of the -- of his personal property that was included in the sale?

A. Yes, it could true up.

Q. Does that make more sense to you, that an estate with limited resources -- to true it up at the end, if it matters, rather than undertake that expense at the time of the sale?

MR. FEAMAN: Form.

A. From a practical standpoint, given the

fact that these estates were not going to be subject to federal estate tax liabilities; yes.

Q. As you sit here today, do you have any reason you would advise Judge Colin or any hesitancy in suggesting that Ted would be a proper candidate and could -- and competent and capable of doing the job if the judge were to appoint Ted as the successor personal representative of his father's estate?

MR. FEAMAN: Objection to the form.

A. I would have no object -- I would have no problem in recommending Mr. Ted Bernstein to serve in the fiduciary capacity requested.

MR. ROSE: That's the end of my examination. I'd like mine ordered on an expedited basis. And I have no further questions; and turn him over to cross-examination by whomever wishes to do so.

MR. FEAMAN: Okay if I go next with everybody?

THE WITNESS: Is that Peter?

MR. FEAMAN: Yeah.

THE WITNESS: All right. Let me just get the other set of exhibits there.

MR. FEAMAN: Alan Rose, I'm going to

object to the admission of the affidavit. So I want to give you the opportunity to ask more questions concerning what's contained in the affidavit so you don't feel like I am sandbagging you in any way.

So if you have further questions concerning what's contained in the affidavit of this witness, I want to give you the opportunity to ask.

MR. ROSE: That's fine.

My -- and just for the record, I believe that once the affidavit is tendered by the witness during a deposition and is subject to cross-examination by all parties, that the affidavit is fully admissible, regardless of whether I asked him every question. But I will also go through -- while you're questioning him -- and decide if there are any other questions I wish to ask as a protective measure.

MR. FEAMAN: Okay. Very good.

MR. MORRISSEY: This is John Morrissey. Just for the record, by allowing Mr. Feaman to ask questions today, I'm certainly not agreeing and -- and don't waive any objection to -- to a standing argument.

That is to say, his standing to make argument at the upcoming hearings.

MR. ROSE: This is Alan Rose. I concur in that, but I also think we need to let him get moving.

MR. MORRISSEY: Sure. I just want to make that point or argument for the record.

EXAMINATION

BY MR. FEAMAN:

Q. All right. Mr. Tescher, this is Peter Feaman on behalf of William Stansbury.

A. Yes, sir.

Q. I'd first like to draw your attention to one of the exhibits to the affidavit; and I believe that it was Exhibit E that you discussed in direct examination for Mr. Rose, which is the Simon Bernstein Amended and Restated Trust Agreement?

A. Yes, sir.

Q. Can you --

A. I have that in front of me.

Q. -- have that in front of you. Okay.

I'd like to -- now, you said that you appointed or exercised the power of appointment of a successor trustee under this document; and you appointed Ted Bernstein.

Can you find that provision in the trust which allows you to do that?

A. Page 16, paragraph 3 -- subparagraph 2 -- no, subparagraph 3(a).

Q. Okay. And is it fair to say that under paragraph (b)(1) on page 15, the bottom of page 15, you and Mr. Spallina were the successor cotrustees --

A. That's correct.

Q. -- before you have exercised your power of appointment?

A. That's correct.

Q. And when did Mr. Spallina resign as successor cotrustee?

A. The day before me.

Q. Did he do that in the form of a letter --

A. He executed --

Q. -- or how did he do that?

A. He executed a resignation form, as I recall.

Q. All right. Do you know what day that -- what the date of that was?

A. I don't have any of those documents in front of me. I can't tell you.

Q. Okay. And do you have a copy of the

resignation form?

A. I believe it exists; and I believe it's included somewhere in all the discovery that, you know, you all have from our files.

Q. So then you do have it in your files at some point?

A. I believe that we do. I know it exists. I saw it.

Q. Did you excise -- or excuse me -- execute a resignation?

A. Yes, I did.

Q. Do you recall the date of your resignation?

A. No. I do not, other than to reference it the day after Mr. Spallina's resignation.

Q. All right. Now, in your exercise of what you term your "appointment of a successor trustee," what form did that exercise take?

Did you write a letter? Or what did you do?

A. It's a written form. It's "Resignation as Successor Trustee and Appointment of Successor," I believe.

Again, I don't have the benefit of having the document in front of me, sir, so I'm at a

little bit of a loss.

But it was a standard document that we would use in our office to have somebody resign and appoint a successor.

Q. Okay, 'cause I have not seen such a document that you describe.

MR. ROSE: I think they've been produced. If you want me to email you a copy, Peter, I'll be glad to do it.

MR. FEAMAN: Sure. That will be fine.

MR. ROSE: Okay.

Q. All right. Now, the -- I'd like to draw your attention to the paragraph that you brought me to, which is paragraph 3 on page 16.

A. Yes.

Q. It says that -- it's the last paragraph of page 16 -- "A trustee appointed under this paragraph shall not be a related or subordinate party of the trust."

Do you see that?

A. Yeah, but I --

Q. Okay.

A. Go ahead. I'm sorry.

Q. Is Mr. Bernstein -- Ted Bernstein -- a related or subordinate party of the trust?

A. Not for purposes of paragraph 3(b) -- not for purposes of paragraph 3(a).

For purposes of paragraph 3(b), he would be.

Q. And where does 3(a) start?

A. "The remaining trustees, if any."

Q. All right. And did you not tell me that you exercised your power of appointment pursuant to the sentence that is actually two lines above that?

A. Well, you probably didn't -- what I said to you was that, if the remaining trustee is the one who's making the appointment, the "flush" language dealing with "related or subordinate party" is not material.

It's only material if a beneficiary of the trust picks a related or subordinate person to serve as their trustee.

Q. Let me draw your attention, if I could, to the definitional section of this document, which is -- I believe begins at page 5, paragraph E.

A. Yes, sir.

Q. Would you go there, please?

A. Okay.

Q. And this is the definitional section of the trust; is that correct?

A. This is a definition provision.

Q. All right. And under paragraph E, let me call your attention to paragraph 7, which appears on page 7.

A. Correct.

Q. It says "A related or subordinate party to a trust describes --" could you read that into the record?

A. Yes, sir. 7: "Related or subordinate party: A related or subordinate party to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms 'related or subordinate party' are defined under code section 672(c)."

Q. And have you reviewed the code section referred to there as to how it's defined?

A. I'm generally familiar with 672(c), although I don't have in front of me.

Q. And does it define a related or subordinate party as a child or issue of a grantor?

A. I would not want to comment without having the code provision in front of me.

Q. Okay. So as you sit here today, you don't -- you don't know one way or the other whether a related party under that code section would include

a child of the grantor; is that correct?

A. They would be related to the grantor.

Q. Is the grantor in this case under this trust Simon Bernstein?

A. He was the grantor. He died.

Q. And is it your understanding that Ted Bernstein is an issue of the grantor --

A. He certainly is.

Q. -- as used in the code section referred to in your document 672?

A. Yes.

Q. I also want to direct your attention to -- under the definition section, (e)(1).

Do you see where it says "Children, Lineal Decedents"?

A. Yes, sir.

Q. Okay. Now, that definition paragraph bleeds over on the top of page 6.

Could you turn there?

A. Yes, sir.

Q. All right. Could you read the last sentence of paragraph (e)(1), beginning with "Notwithstanding."

A. "Notwithstanding the foregoing, for all purposes of this trust and the dispositions made

hereunder, my children, Ted S. Bernstein, Pamela B. Simon, Eliot Bernstein, Jill Iantoni, and Lisa S. Friedstein shall be deemed to have predeceased me, as I have adequately provided for them during my lifetime."

Q. All right. Does -- does that provision apply, in your opinion, to the appointment of a successor trustee?

A. No. "Dispositions hereunder," sir.

Q. Okay. Now, it says "Notwithstanding the foregoing," it says "for all purposes of this trust."

Are you limiting "for all purposes of this trust" to answer that question?

A. Am I limiting the "Notwithstanding the foregoing"?

Q. Yeah. What does "for all purposes of this trust" mean if it doesn't also include the children as eligible to be appointed as a successor trustee?

A. This definition is intended solely for purposes of determining whether they are beneficiaries under the trust.

Q. So when you said, "for all purposes of this trust," you didn't really mean all purposes of this trust; is that what you're saying?

A. I think you have to read it in context of the entire document.

Q. And "for all purposes of this trust," you wrote that the children of the grantor are predeceased. So for all purposes of this trust, if the children have predeceased, then wouldn't that mean that Ted Bernstein, as one of the children, would not then be eligible to be appointed by you as a successor trustee?

A. One could make that tortured argument, if you'd like.

Q. Okay. All right. Now, I wanted to ask you a question about your affidavit.

A. Yes, sir.

Q. I want to draw your attention to paragraph 5.

A. Yes.

Q. You state in the second sentence of paragraph 5, quote, "None of the five children were involved in the estate planning process, nor did any of them attend any meetings with myself as counsel."

Did I read that correctly?

A. You read it correctly.

Q. When you refer to "estate planning

process," are you talking about the 2008 estate planning process that you did for the Bernsteins or the 2012 estate planning process that you allegedly did for Simon Bernstein?

A. Well, I clearly was referring first to the 2008 process.

With regard to the subsequent process, I did not attend any meetings as counsel in connection with the 2012 planning.

Q. So you then have no personal knowledge as to --

A. Just my understanding; that's correct.

Q. -- the intent -- if I could finish my question -- you then have no personal knowledge as to the intent of Simon Bernstein when he allegedly changed his trust and will in 2012; is that correct?

A. I believe that I did not have direct knowledge -- hearing it from his lips; that would be correct.

Q. Now, I want to turn to some of the exhibits that I sent to the court reporter in advance.

A. Yes, sir.

MR. FEAMAN: Alan, I believe you have

these as well. I apologize to the others on this call, but due to the nature of this deposition, I wasn't able to provide copies for everybody.

Q. Can you please take a look at what's been premarked as Exhibit 2 --

A. Yes, sir.

Q. -- to this deposition.

A. Yes, sir.

Q. Does this appear to be a true and correct copy of the three pages of your website for Tescher & Spallina, PA?

A. To be honest with you, I haven't looked at that in so long, I'm not sure. But...

Q. All right. Well, let's see if we can verify some of the information contained on it.

A. Sure.

Q. It shows the address of Tescher & Spallina as 925 South Federal Highway, Suite 500; is that correct?

A. That is correct.

Q. How long has Tescher & Spallina been located at that address?

A. March 1, 2014.

Q. All right. So then this was at least updated within the last couple of months; is that

fair to say?

A. Yeah, obviously.

Q. Okay.

A. At least the address was updated, sir.

Q. All right. And you represent there in your website that your attorneys -- which I assume would include you -- have extensive expertise in certain areas, including "Wealth transfer planning for high-net-worth individuals and families"; is that correct?

A. That is correct.

Q. "Business succession planning"; is that correct?

A. That's correct.

Q. "Life insurance planning"; is that correct?

A. Yes.

Q. "Probate administration"; is that correct?

A. Yes, sir.

Q. Okay. Now, assisting you, it shows -- there's a picture of you on the second page, Mr. Spallina, and then, on the third page, Ms. Galvani --

A. Correct.

Q. -- is that correct?

A. Yes.

Q. Are you the managing partner of the firm?

A. I don't know if I still am.

I guess I am right now; yes.

Q. Okay. And for how long have you been managing partner of Tescher & Spallina?

A. Since its inception in -- would be a little over six years.

Q. So you began Tescher & Spallina in 2008; is that correct?

A. We began January 1, 2008; yes. January 1, 2008.

Q. Okay. And what firm were you with before that?

A. Tescher, Gutter, Chaves, Josepher, Rubin, Ruffin & Forman, PA.

Q. How long were you with that firm?

A. From its inception, going back to 1990. The name changed --

Q. By the way, I forgot to ask you a question concerning the Amended and Restated Trust Agreement. Could you go back to that document for a second?

A. Yes, sir. I've got it.

Q. Okay. It appears that the -- this was

dated July 25th, 2012; is that correct?

A. July 25, 2012 is the date I see on it.

Q. Okay. And if it was signed by Mr. Bernstein, it would have -- can it be assumed then that it was signed by him on that day?

A. One could assume that. I think there's a related will that was signed on the same day also.

Q. Okay. That would be July 25th, 2012?

A. I believe that's correct.

Q. It's witnessed by Mr. Spallina and Ms. Moran?

A. That's correct.

Q. You were not present when this was signed; is that correct?

A. I was not present when that was signed. I was ensconced on Cape Cod.

Q. Now, do you know when that lawsuit that you referred to in your direct examination was filed by Mr. Stansbury?

A. I said I wasn't sure whether it was before or after that date.

Q. So then, when you testified that you believe the litigation had been filed at the time that these new documents were executed, you don't really know if that's true or not; do you?

A. I'm not certain as to whether, in fact, litigation had commenced.

Q. Okay. Now, on your web page you show support staff of Kimberly Moran; correct?

A. Yes, sir.

Q. Okay. And what is her position at the firm -- or was her position at the firm?

A. She is a legal secretary.

Q. Does she still work there?

A. She still works there.

Q. Okay. And was she recently accused and pled guilty to a crime in connection with work she performed while at your firm involving the Bernstein estate?

A. Yes.

Q. And what was that crime?

A. She misused her notary seal in notarizing certain documents regarding the Shirley Bernstein estate.

Q. Do you know the statute that she was accused of violating and whether it was a felony or a misdemeanor?

A. I don't -- I don't know precisely how it ended. I know that she did not and has not served time in jail; that she is apparently currently on

probation. And that's all I know.

Q. Is she still a notary?

A. No.

Q. And what document was she accused of notarizing falsely?

A. In the Shirley Bernstein estate, when it came time to basically close the probate administration, she sent out to the five children -- and I think to -- to Simon at that time too -- waivers, consents, and joinders to the petition for distribution and discharge; and they all came back; everybody signed off -- including Eliot Bernstein; those documents were then filed in the court; and the clerk's office bounced those documents because Judge Colin's division requires that that particular document be signed and notarized; and they had not been notarized.

Q. Okay. And so did she subsequently notarize them?

A. She subsequently prepared new ones, and signed them, and notarized them.

Q. And when she prepared the new ones, that included a form signed by Simon Bernstein; correct?

A. I believe that's correct.

Q. And Simon --

MR. ROSE: Just for the record -- this is Alan Rose -- I could -- there's no issue for Friday with regard to the document.

MR. FEAMAN: Yeah, there is. Yeah, there is.

MR. ROSE: There's no issue.

MR. FEAMAN: I'm going to tie it in in a minute if you let me finish.

MR. ROSE: There's also no issue in the case that the document wasn't properly -- was not properly --

MR. FEAMAN: Wait a minute. Wait a minute. Wait a minute. Unless you object to my question, okay, this -- this statement on your part is improper in the middle of my examination.

MR. ROSE: Well, I'm not -- the witness answered the question. I'm putting on the record I think this is an irrelevant line of questioning and you are wasting our time on --

MR. FEAMAN: And you have no right to interrupt the spontaneity of my examination by making a statement like this at this time. And I would respectfully request that you not do that. And I'd like to finish this line of questioning. I'm almost done.

Q. My question, isn't it true that Ms. -- is it Morin or Moran?

A. Moran.

Q. -- that Ms. Moran notarized Simon Bernstein's signature at a time after he had, in fact, passed away; is that correct?

A. In connection with the Shirley Bernstein estate closing.

Q. Okay.

A. I believe I --

Q. And at that time the successor personal representative of the Shirley Bernstein estate was Ted Bernstein; is that correct?

A. I believe that's correct.

Q. Okay. And at that time the successor trustee to the Shirley Bernstein Trust was Ted Bernstein; is that correct?

A. That would be correct.

Q. All right. Now, Diane Dustin, what does she do at the firm? Is she still there?

A. She is still with me. She is a legal assistant.

Q. And then there's Sue Anne Tescher?

A. Yes.

Q. Is that a relative of yours?

A. Happens to be a very close relative of mine. She's my wife.

Q. All right. And what does she do at the firm?

A. She manages the firm accounts and books, pays the bills.

Q. Kind of like a -- in the bookkeeper side of the office?

A. In the bookkeeper side of the office. She has nothing to do with the legal side of the office.

Q. So she oversees the checks that come into the firm; is that correct?

A. That's correct.

Q. Okay. All right.

Now, how long, Mr. Tescher, have you known the Bernstein family -- either professionally or personally?

A. I think -- my recollection would be 2007. And when you say "The Bernstein family," that would have -- that would be Ted Bernstein, Simon Bernstein, and Shirley Bernstein.

I don't think that I had contact with the other Bernstein family members until subsequent to that.

Q. All right. Oh, I forgot.

Now, when it came to light that Ms. Moran had notarized a signature of a deceased person -- namely Simon Bernstein -- did you at that time resign as the copersonal representative of the Simon Bernstein estate?

A. Not at that time.

What we did was we filed -- because -- because the court proceedings were tainted in terms of the documents that had been -- in fact, the estate had been closed. And we -- we moved to have the estate reopened so that the record could be cleaned. And we petitioned the court to reopen the estate, allow us to obtain correct, untainted waivers from those who could give them, and attempted to expunge the -- what were tainted documents.

Q. And when were those documents -- was it just one document that was criminally notarized, or were there others?

A. There was one -- to the best of my recollection, there was one document -- one form document -- the waiver -- I think the waiver, consent, and joinder, if I'm not mistaken; and I think that only related to the five children and no

one else. I don't think that -- I mean, Si was the personal -- you know, had been the personal representative of the estate.

Q. And how did this come to light?

A. My recollection is that Eliot Bernstein apparently found the discrepancy -- or what he thought appeared to be a discrepancy in the court documents when he reviewed the court files -- again, this is supposition on my part; I don't know, you know, for a fact that that was the case.

He filed a complaint with the governor's office which administers notary publics in the State of Florida. And apparently they filed -- they sent Ms. Moran a -- an inquiry letter asking for, you know, an explanation, etcetera, of what had occurred.

Q. And do you know when -- about -- that was?

A. I don't recall exact dates.

Q. Was that in the year 2013?

A. I believe that it was in the year 2013.

Q. Okay. Was it in the summer of 2013?

A. It might have been -- 'cause in the summer -- if it was the summer, I was not in town. I would have been up here on Cape Cod.

Q. Certainly you didn't bring it to light,

nor did Mr. Spallina bring it to the attention of anybody; is that --

A. We couldn't, because we weren't aware of it.

Q. Okay. And when you became aware of it in 2013, did you think it appropriate at that time to resign as copersonal representative from the estate of Simon Bernstein?

A. No.

Q. Now, did there come a time, however, when you did resign -- you and Mr. Spallina -- as copersonal representatives of the Simon Bernstein estate; correct?

A. That is correct.

Q. Do you recall when that was?

A. January of 2014.

Q. And what was the incident at that time that then caused you to resign as copersonal representatives of the estate of Simon Bernstein?

A. It came to light -- it was brought to my attention that the -- there was an amendment -- there was an altered document altering the amendment to Shirley Bernstein's revocable trust, which document had been forwarded to Christine Yates, who was then serving as counsel to Eliot

Bernstein's children; and that document added a provision.

Q. All right. And how did that document come to light -- the altered document?

A. It was brought to my attention by someone in my office.

Q. Okay. Now, the -- you identified the altered document as what again -- the Shirley Bernstein Trust?

A. The Amendment to Shirley Bernstein's Revocable Trust Agreement.

Q. Okay. And who in your office brought that to your attention?

A. Our associate.

Q. And who is that?

A. Lauren Galvani.

Q. And when did that take place?

A. January 2013.

Q. Okay. And there is a document that's attached to your affidavit, which is the -- I believe an amendment to the Shirley Bernstein Trust; is that correct?

A. Hold on one moment. Let me get to that.

Q. Is that Exhibit C?

A. I believe that's C, if I'm not mistaken.

Hold on one moment.

(Witness reviews document.) Yeah. That's Exhibit C.

Q. Okay. All right.

Now, Exhibit C, is that the altered document or the unaltered document?

A. That is the unaltered document.

Q. And what did the altered first amendment to the Shirley Bernstein trust say?

A. I don't have it in front of me, but essentially what it did was there was a -- you see how it's numbered now 1 and 3? There were -- you know, somebody had messed up when it had been originally prepared, and it got numbered -- paragraph No. 1, paragraph No. 3.

A paragraph No. 2 was inserted between 1 and 3.

Q. And when did that take place?

A. I don't know.

Q. Was it -- did it take place sometime in 2012?

A. I don't know.

Q. Did it take -- well, how did your associate suddenly come across it in January of 2014?

A. You'll have to ask her.

Q. Did you ever ask her how she came across it that then subsequently caused you to resign as copersonal representative?

A. She noticed that the amendment that had been included in the letter to Christine Yates was different than Exhibit -- the exhibit that's here attached to my affidavit.

Q. And in that letter to Christine Yates, what was the date of that letter?

A. I think it was January of 2013 -- I think.

Q. Okay. And so that was after the death of Simon Bernstein; correct?

A. Yes, it was.

Q. So then that altered document contained in a document dated January 11, 2013 could very well have been prepared while Ted Bernstein was the successor personal representative and successor trustee to the Shirley Bernstein estate and trust; correct?

A. No. Probably -- well...

Probably -- I'm not sure, to be honest, Peter. I'm not a hundred percent certain on the timing.

Q. Okay. And how did a year go by between

the time of the January 11th, 2013 letter in which the altered document was produced to the attorneys for Eliot Bernstein and then the discovery that it was, in fact, an altered document? What happened in that 12-month time that caused you, or your associate, or your office to discover that, in fact, what had been supplied to counsel for Eliot Bernstein was, in fact, a forged document or altered document?

A. I can't answer that question, actually -- 'cause I don't know.

Q. All right. And -- and who in your firm would be in the best position to know that -- if it's not the general manager -- the managing partner of the firm?

A. Mr. Spallina or Ms. Galvani.

Q. You were the managing partner at that time still; correct?

A. I was the president.

Q. Okay. And what did the altered document say in paragraph 2?

A. I told you that I don't have that in front of me.

Q. And the one attached to your affidavit?

A. I told you that I don't have that in front

of me.

Q. I apologize if I'm being repetitive on that score.

A. Yeah, I don't have --

Q. Your best recollection.

A. Yeah. Peter, I don't have it here.

It dealt with the definition of children and lineals.

MR. ROSE: Peter, I don't want to ruin your momentum that you're building up, but I need to take a bathroom break. Could we take -- we've been going at it for a little more than an hour. Can we take like a five-minute break?

MR. FEAMAN: Sure. I'm moving on to the next item anyway.

MR. ROSE: No more than five -- maybe as little as two minutes. I'll be right back.

MR. FEAMAN: No problem.

(Recess was taken.)

Q. Mr. Tescher, I'd like you to take a look at what's been premarked as Exhibit 3.

MR. FEAMAN: Madam Court Reporter, would you hand that to the witness.

COURT REPORTER: Okay.

MR. FEAMAN: Thank you.

Q. Now, just to have closure on the subject we were talking about about the altered Shirley Bernstein Trust, Exhibit 3 appears to be a true and correct -- is it a true and correct copy of the letter you wrote on January 14th, 2014 to Ted Bernstein, Eliot Bernstein, Lisa Friedstein, Jill Iantoni, and Pam Simon announcing your resignation as personal representative of the estate of Simon Bernstein?

A. Announcing our intent to resign; yes, sir.

Q. Your intent to resign.

And at that point had -- well, let me back up and lay a predicate.

You hired Mr. Manceri as an attorney to represent the Simon Bernstein estate; correct?

A. Mr. Manceri was hired -- was brought in by Ted Bernstein -- no, we hired him -- we hired him to assist with regard to the litigation with Stansbury as it related to the estate of Simon Bernstein.

Q. All right. And now, as -- do you recall as of January 14th, 2014, whether Mr. Manceri had withdrawn as attorney for the estate in that litigation at this point?

A. I do not recall when he specifically

withdrew.

Q. I guess we'd have to refer to the court records for that; is that correct?

A. Yes, sir.

MR. ROSE: Peter, we're here trying to get to the truth. Why don't we just agree it was probably Friday, January the 11th, 2014 when Mr. Manceri filed papers -- that you and I both received -- withdrawing from the case; and ask your next question.

MR. FEAMAN: Okay. Good. Thank you for that.

Q. I assume that representation is correct?

A. I have no knowledge.

MR. ROSE: To the best of my knowledge, that's correct.

MR. FEAMAN: Okay. Very well.

MR. ROSE: Because shortly after that, I got a phone call that -- that Mr. Tescher had spoken with Ted Bernstein. So that's my frame of reference.

MR. FEAMAN: Okay.

Q. And up until now, had you recommended Ted Bernstein to be successor personal representative?

A. I don't recall when I recommended anything

to anybody --

Q. Okay.

A. -- after -- after January 14th.

Q. All right. Now, the -- the documents -- subsequent to your resignation, you turned over documents to Mr. Brown, the administrator ad litem -- or I should say the curator appointed by the court; is that correct?

A. Yes, sir.

Q. And Mr. Brown received about -- what -- 700 pages of documents -- or thousands?

A. I have no idea how many pages he received. I know that we completely copied onto disks all of our files.

Q. All right. Did you keep copies of what you produced to Mr. Brown?

A. Yes, sir.

Q. Okay. Do you have originals of any documents in your possession?

A. I'm not sure if we have originals of any wills and trusts, for example. Those would have been all turned over or filed in the court.

Q. 'Cause I have a copy of the Simon Bernstein last will and testament that appoints Mr. Stansbury as a copersonal representative after

Shirley or successor personal representative after Shirley, but I don't have a copy of the original or the original -- nor have I seen one -- I only have a conformed copy.

Do you have the original of that document?

A. The original will is sitting in the court.

Q. No, 2008.

A. Oh. I'm sorry. I thought you were referring to the current document.

Q. I'm sorry if I was not clear.

A. Yeah. I don't know that we had it. If it was there, it got copied.

Q. Right. But do you have the original of the 2008 will and trust of Mr. Simon Bernstein?

A. If it was there -- I -- I don't know.

Q. Okay.

A. I don't have my --

Q. Do you keep those in a safe deposit box or a vault?

A. Not if they're old documents that have been superseded.

Q. Okay. And one more question on this, and then I'm going to move on: When Mr. Bernstein allegedly executed his 2012 documents, was that in your office; if you know?

A. No, sir; it was not.

Q. Where did that execution take place?

A. In Simon Bernstein's office.

Q. Okay. And have you been told -- since you obviously weren't there -- who was present when those documents were executed?

A. Well, the only -- the only thing that I know who was present -- and there may have been others present -- is by the executions on the will and trust that were signed that day. And present --

Q. Right. But you don't know anything more than I might know by looking at the documents; is that correct?

A. That is correct.

Q. Okay. Now, you said that you first met some members of the Bernstein family in 2007.

Who did you meet first, Ted or Si?

A. I think I met Ted before 2007; and we had -- we've had dealings over the years with mutual clients. I think that our first dealings with Ted Bernstein also involved his sister's company up in Chicago. They were doing a -- a life insurance arbitrage program that was kind of interesting; and we -- we had some mutual clients there.

Q. So you had a professional relationship with Mr. Ted Bernstein before you did with Mr. Simon Bernstein; is that correct?

A. I think so.

Q. Okay. Did you also have a business relationship with Mr. Ted Bernstein?

A. In what sense?

Q. In any sense.

A. Well, tell me what businesses. I mean, we had -- we had mutual clients.

There were clients who I brought to Ted Bernstein for life insurance needs. There were clients that Ted Bernstein referred to us.

Q. Okay. Were there any businesses in which you and Ted were both owners?

A. No.

Q. All right. I'd like to draw your attention to Exhibit 6, if I could.

A. Okay. Hold on a moment. (Witness reviews documents.)

Okay.

Q. Now, Exhibit 6 is a copy of a printout we got from the Florida Department of State, Division of Corporations. This makes reference to a "Bernstein Family Realty, LLC."

Do you see that?

A. Yes, sir.

Q. Now, it shows the registered agent as "T & S Registered Agents."

Are you familiar with that company?

A. Yes.

Q. What is that company?

A. That is a shell company that we typically use to serve as registered agent for entities that we form for clients.

Q. Okay. And the address of T & S Registered Agents, is that 925 South Federal Highway, Suite 500?

A. It is now. It was the address that's on the Exhibit 6 up until March.

Q. Right. That's your law firm?

A. Yes, sir.

Q. Was your law firm at 4855 Technology Way, Suite 720?

A. 7 -- yes, it was.

Q. Okay. Now, it shows that the mailing address of the Bernstein Family Realty, LLC was changed -- it looks like -- in 2013 to the Oppenheimer Trust Company.

Do you see that on Exhibit 6?

A. (Witness reviews document.) I see Oppenheimer listed there; yeah.

Q. And what was your involvement in the change?

A. I didn't have any involvement in the change.

Q. Okay. And did you organize the Bernstein Family Realty, LLC, as the attorney?

A. I didn't -- as the attorney.

Q. You did or you did not?

A. I might have filed the articles of organization. I don't recall. I think I was originally named as the registered agent. This was done back in February of '08. At that time it -- when I -- when I first withdrew from my prior firm, Peter, we actually shared office space for a year with my former partners -- just, you know, we just continued using our office. It was a friendly -- friendly division.

And when this company was formed, it was formed February of '08, which would have been roughly a month after -- a little over a month after Robert Spallina and I had set up Tescher & Spallina. We probably didn't even have a new registered agent entity set up yet.

Q. All right. And the documents on Exhibit 6 shows that the previous mailing address in 2012 was 950 Peninsula Corporate Circle, Suite 3010.

What address is that?

A. I think that was LIC's office.

Q. All right. And LIC was the business owned by Simon Bernstein and Ted Bernstein by majority?

A. Correct.

Q. All right. And if you look at the third page --

A. Yes.

Q. -- it shows that the managing member was Simon Bernstein.

A. Correct.

Q. As of January 2012; correct?

A. Correct.

Q. Now, you are knowledgeable in trust and estates and succession planning, like you said and shown on your website.

Once Mr. Bernstein passes away, does the estate then become the managing member?

A. No, the estate does not become the managing member.

Q. Okay. Well, who then would have been responsible for changing the mailing address of the

Bernstein Family Realty, LLC from the offices of LIC -- LIC to Oppenheimer, if it wasn't somebody acting on behalf of the estate?

A. I can't answer that question.

Q. All right. And is Bernstein Family Realty listed as an asset of the Simon Bernstein estate?

A. No. He didn't own any equity interest in it, other than a mortgage -- a note and mortgage.

Q. Okay. And so normally, as an expert in this field, if a person is the only member of an LLC, and that person passes away, what is your standard operating procedure as to how the operations of that LLC are carried out after the passing of the only manager?

A. Mr. Feaman --

MR. ROSE: Objection to form.

A. Mr. Feaman, I'm assuming you meant to say, "manager" and not "member"?

Do you want to restate your question?

Q. No, because the electronic signature of page 3 of Exhibit 6 is signed by Simon Bernstein, as the managing member manager?

A. No, "manager," not "managing member."

"Manager," sir.

Q. Okay. Do you know -- as the registered

agent, do you know where the books and records of the Bernstein Family Realty, LLC are maintained?

A. I personally don't know.

Q. Has your office ever maintained them?

A. I don't think so. Remember that the members -- the members of this entity, sir, are three trusts, of which Oppenheimer until recently -- or maybe still is; I don't know -- was the trustee.

Q. And what -- what are those three trusts?

A. They are trusts -- irrevocable trusts created in 2006 by Simon Bernstein for the benefit of Eliot Bernstein's three children.

Q. Okay. Did you create those trusts?

A. No, we did not.

Q. Who did?

A. I don't -- I don't know.

Q. All right.

A. Their prior counsel obviously, not us.

Q. And as copersonal representative of the estate of Simon Bernstein, would you have any fiduciary responsibility to carry out the intent of Mr. Simon Bernstein with regard to the management of Bernstein Family Realty?

A. I don't believe so.

Q. Who were the trustees of those three trusts that you mentioned that owned it?

A. Oppenheimer.

Q. And who were the trustees before Oppenheimer?

A. Stanford.

Q. Stanford?

A. Yes.

Q. Okay. And where are those trusts -- copies of those trusts located?

A. I don't know.

Q. Do you have possession of the original?

A. Why would I?

Q. I don't know.

MR. ROSE: And I object to this line of questioning as completely irrelevant and immaterial, since the estate has no interest in this, other than the mortgage, which has been unpaid and for which Mr. Eliot Bernstein has been living in the residence without paying any rent, or mortgage, or interest for two years.

But other than that, I think this whole line of questioning is wholly irrelevant; and you're wasting valuable time.

Q. Let me ask a follow-up question: What

conversations have you had with Ted Bernstein concerning the Bernstein Family Realty, LLC, since the passing of Simon Bernstein?

MR. BLOCK: Well, I ask a question as to whether or not there's a privilege. I have no idea of what you're talking, but just want to throw that out.

THE WITNESS: Well, I'm mulling that in my head, Irwin, as to whether it is a privilege issue.

Q. Okay. Let me --

MR. ROSE: The question is, have you had a discussion? And if the -- the answer is either yes or no; and then we can deal with the privilege issue.

MR. FEAMAN: Yeah. Right.

A. Yeah. I think tangentially there has been -- there had been discussion regarding Bernstein Family Realty.

Q. Between you and Mr. Ted Bernstein; is that correct?

A. That's correct.

Q. Okay. And has there been email traffic between you and Mr. Ted Bernstein concerning Bernstein Family Realty, LLC?

A. Not me, I don't believe.

Q. I mean, to your knowledge, on paper Mr. Ted Bernstein has no involvement with Bernstein Family Realty, LLC; correct?

A. Well, he has no direct involvement in Bernstein Family Realty, LLC. He does have -- or potentially has involvement vis-a-vis -- no, he does not have involvement; that's correct.

Q. Okay. And so --

A. That I'm aware of.

Q. Therefore, what would the nature of any -- why would you be having any correspondence or conversation with Mr. Ted Bernstein concerning Bernstein Family Realty if he has no apparent involvement in that entity?

A. Well, Bernstein Family Realty -- if I'm not mistaken -- was also named as a defendant in the Stansbury litigation.

Q. Okay.

A. And certainly in that regard there was discussion.

Q. Okay. Is Bernstein Family Realty still a defendant in the Stansbury litigation?

A. Is it still? I don't know. I -- those are issues that I'm not necessarily privy to.

Q. All right. Let me draw your attention to

premarked Exhibit 7 --

A. Yes, sir.

Q. -- for the deposition --

A. Yes, sir.

Q. -- which is a --

MR. ROSE: Is it still a defendant in the lawsuit, Peter, since it's your lawsuit?

MR. FEAMAN: Yes, it is.

Q. Marked as Exhibit 7 is a copy of Articles of Incorporation for Bernstein Holdings, LLC.

Do you see that?

A. Yes, sir.

Q. You are shown as the registered agent of Bernstein Holdings, LLC; is that correct?

A. That's correct.

Q. All right. And the manager is shown as Simon Bernstein under article 5 on page 2; correct?

A. That is correct.

Q. Now, the -- this looks like a different address altogether than the ones we identified before under article 4. It shows an address for you of 2101 Corporate Boulevard, Suite 107.

Do you know what was located at that address at that time?

A. Yes. That was in the first year of our --

of our firm. Starting January 1 of '08, that was our office address.

Q. Okay. Very good.

And it shows a manager as Simon Bernstein; is that correct?

A. That's correct.

Q. There's also a signature of a member, Robert Spallina.

Do you know what his involvement in the corporation was or is?

A. He didn't sign as a member. He signed as an authorized representative of a member.

MR. ROSE: Object to form.

Q. All right. Well, let me draw your attention to page 3 of Exhibit 7, document dated by the Secretary of State April 12th, 2013. It shows the manager as Robert Spallina.

That would be your law partner; correct?

A. That is -- yes, he is my law partner.

Q. Okay. And how did your law partner, Mr. Spallina, come to be the manager of Bernstein Holdings, LLC?

A. The manager died.

Q. Okay.

A. The interest in this entity was owned by,

I believe, the Shirley Bernstein Trust and the Simon Bernstein Trust. They owned a majority interest -- those two trusts -- in Bernstein Holdings, LLC, which was the general partner of a limited partnership.

Q. All right. So the manager died. And somehow Robert Spallina became manager.

But you told me with regard to Bernstein Family Realty, Exhibit 6, we identified Simon Bernstein as the manager. But then you said nobody became the manager after that as far as you knew.

How did Mr. Spallina become the manager of Bernstein Holdings, LLC?

A. I don't recall.

Q. Who are the members -- did you say -- of Bernstein Holdings, LLC?

A. I don't have those documents in front of me, Peter. But I believe that it would have been the Simon Bernstein Trust and the Shirley Bernstein Trust; and there may have been some minor interest held for other family members. I'm not certain.

Q. Which trusts would you be referring to -- 'cause we've identified a number of trusts here today?

A. The 2012 -- July 25, 2012 Simon Bernstein

Amended and Restated Trust Agreement and --

Q. Okay. And that's -- go ahead.

A. -- and assumedly the family trust under -- that was established for the benefit of Simon after Shirley's death under the Shirley Bernstein Trust Agreement from '08.

Q. Okay. And the members designated you, as the managing member --

A. They didn't designate me, Peter.

Q. I mean -- sorry -- designated Mr. Spallina as the managing member. And the members were acting through Ted Bernstein as the successor trustee; is that right?

MR. ROSE: Object to the form.

A. I --

Q. Do you remember --

A. I have no personal knowledge.

Q. Okay. Who would know?

A. Mr. Spallina --

Q. Okay.

A. -- or perhaps Mr. Bernstein. I don't know.

Q. Let's take a look at Exhibit 8, if we could.

A. Okay. Yes, sir.

Q. Exhibit 8 is a copy of a Certificate of Limited Partnership for the Bernstein Family Investments, LLLP.

Do you see that?

A. Yes, sir.

Q. Now, you're shown as the registered agent for that entity; is that correct?

A. Yes. Again, February of 2008; that's correct.

Q. Okay. And the general partner is shown as Bernstein Holdings, LLC.

Is that the entity we just identified --

A. Yes, sir.

Q. -- that Mr. Spallina is now the managing partner of?

A. Yes, sir.

Q. Okay. And your shell company that you created is now the registered agent for that company rather than you individually; is that correct?

A. Yes, sir. Yes, sir.

Q. Okay. And 950 Peninsula Corporate Circle, Suite 3010, what's located at that address?

A. I presume that to be what was Simon Bernstein's office.

Q. And now I guess Ted Bernstein's office; right?

A. I guess; yes.

Q. Okay. All right.

Let's take a look at Exhibit 9, if we could.

A. Yes, sir.

Q. Now, this is a copy of Articles of Incorporation for the Shirley Bernstein Family Foundation, Inc.?

A. Yes.

Q. Do you see that?

A. Yes, sir.

Q. Okay. You're shown as, again, the registered agent. Did you -- are you the one that created this entity?

A. Yes, sir.

Q. And what is the purpose or the business of the Shirley Bernstein Family Foundation, Inc.?

A. It has no purpose today. It's an inactive entity, as far as I know.

It was formed back in 2008 at a time when Shirley had -- Bernstein had expressed an interest in setting up a foundation to carry on some of her charitable desires.

Q. All right. Let me draw your attention to Exhibit 10.

A. Yes, sir.

Q. Exhibit 10 is a printout from the Florida Department of State Division of Corporation for an entity known as "Two Oaks --"

MR. FEAMAN: That's O-a-k-s, Madam Court Reporter, T-w-o, Oaks -- oh, you have it there in front of you --

Q. "-- Consulting, LLC."

Do you see that?

A. Yes, sir.

Q. Okay. It shows it's currently inactive, but it was apparently active from 2006 through 2011.

What is your understanding of what Two Oaks Consulting, LLC is?

A. Geeze. I'm trying to remember now.

I set this up for -- principally for my wife and I to use for purposes of trying to develop some additional consulting business on our own.

Q. What kind of consulting?

A. All types of business consulting.

She is a pretty good bookkeeper. You know, we could provide -- looking to provide, like,

bookkeeping services and office administration services.

Q. All right. And 2600 Whispering Oaks Lane, is that your home address?

A. Yes, it is, sir.

Q. All right. And your wife Sue Anne, that's -- she's shown -- is she the only -- was she the only manager?

A. She was the manager.

Q. Okay. And did Two Oaks Consulting do any business for any entities owned or controlled by the Bernsteins?

A. I believe that it might have. I don't recall. I'm looking at your Exhibit 11-A for the first time. So obviously there were some payments that were made to Two Oaks.

Q. Okay. Let's take a look at Exhibit 11-A. It's a copy of a reconciliation detail report for Arbitrage International Management, LLC.

First, what is your understanding of what Arbitrage International Management, LLC is?

A. I'm not 100 percent certain. It was one -- it was part of the overall insurance business of the Bernsteins.

Q. So is it fair to say, though, you do

understand that this company is -- was or is owned and controlled by majority by Simon and Ted Bernstein?

A. I believe I do understand that.

Q. Okay. Now, Simon's ownership interest in Arbitrage International Management, LLC, did that exist at the time of Mr. Bernstein's death in 2012?

A. I don't recall.

Q. Do you know if his ownership interest in this company is shown on the inventory of the estate?

A. I don't recall it being listed on the inventory of the estate, because if it were owned still, it might have been owned through his trust and not through his -- him individually.

Q. Okay. I guess we have to do further discovery on that. But you would agree that both Ted and Simon Bernstein controlled that entity; correct?

A. My knowledge -- to the best of my knowledge.

Q. Yeah. That's all I can ask is to the best of your knowledge. Yeah. Yeah.

Okay. Let me draw your attention to page 1 of Exhibit 11-A, to about two-thirds of the way

down the page.

There's a check that's listed there dated 11/1/2006, No. 2047.

Do you see that, sir?

A. Yes, sir.

Q. And it's a check payable to Two Oaks Consulting for $55,000.

Do you see that?

A. Yes, sir.

Q. Okay. And what work was performed by Two Oaks Consulting that caused a delivery of that payment from Arbitrage International Management to Two Oaks for $55,000 at or around October or November of 2006?

A. This is seven-and-a-half years ago. To be honest with you, I don't know, without going back and trying to find out.

I don't have any immediate knowledge.

Q. All right. Then just below that is an entry for 11/1/2006 --

A. Yes, sir.

Q. -- check No. 2046 for Tescher Gutter.

That's your firm before Tescher & Spallina; correct?

A. That is correct, sir.

Q. That's the Chaves firm I guess you referred to.

Now, there's a check for $45,000 on the same day, which totaled a payment of $100,000 on November 1st, 2006.

Do you recall what that was for?

A. Again, no, I'm not a hundred percent certain. But, obviously, if it's paid -- the payment -- I'm -- no, I do not know without checking.

Q. All right. Well, let me draw your attention to the next page --

A. Yes, sir.

Q. -- which is a reconciliation detail.

And about a quarter of the way down -- also on 11/1/2006 -- this is marked as Exhibit 11-B, by the way --

A. Yes, sir.

Q. There's a check by -- a different check number, 2045, payable to Two Oaks Consulting for the same amount, $55,000.

Do you know what that was for?

A. No. This looks like a duplication of 11-A, frankly. I mean, I --

Q. Yeah. That's what I thought too, except

that it's a different check number.

A. Yeah, I can't explain it. Obviously, it's not my reconciliation. But it certainly looks like the same things here.

Q. Yeah. Okay. And then, finally, on page 11-C --

A. Yes, sir.

Q. -- there's a check in 2007 -- January 22nd, 2007 -- payable to your wife's company from Arbitrage International Management for $30,000 -- check No. 2247.

Do you know what that was for?

A. No, sir, not without, you know, trying to go back and see if I can find it -- find out what it was.

Q. As you sit here today, any idea whatsoever?

A. No.

Q. All right, sir.

Now, the -- when you do estate planning documents for clients, I assume that you also ask them about life insurance?

A. Generally, we would ask them about --

Q. As part of your due diligence; is that correct?

A. Yes, we would generally ask them about life insurance. Yes, sir.

Q. Okay. And when you did your estate planning for Simon Bernstein and Shirley Bernstein in 2008, I assume then you asked them about life insurance; is that correct?

A. I would presume that we did.

Q. Okay. And are you aware that there's presently pending in Chicago litigation concerning a life insurance trust?

A. Yes, sir.

Q. And are you aware that the litigation makes reference to a lost life insurance trust instrument?

A. Yes. Yes, sir.

Q. Okay. Have you ever seen it -- or a copy of it?

A. No, sir.

Q. Ever?

A. No, sir.

Q. All right. Do you know if Shirley Bernstein was ever a trustee of that document that you've never seen?

A. It's my understanding but -- at some point that she was, but I -- I could not tell you for

sure.

Q. All right. And do you know who would be the alleged trustee of the alleged trust is today?

A. I believe that -- that it is Ted Bernstein.

Q. Okay. And --

A. Now, you --

Q. And what's the basis of your belief that Ted Bernstein is the trustee of the trust that you have never seen?

A. Just, you know, information related to us, either from Pam Simon, or her husband, or Ted Bernstein, or the insurance companies.

Q. So --

A. And you understand -- you understand that the policy itself was owned by Simon Bernstein.

Q. Yes.

A. The alleged trust was only the alleged beneficiary.

Q. Okay. Now, I'm not an expert in this area, but if Simon Bernstein was the owner of the trust --

A. Owner of the policy, sir.

Q. I mean -- of the policy -- would that make that a potential asset of the estate if the

beneficiary can't be located?

A. You're -- you're mixing -- you're mixing ownership and beneficiary.

Q. Right.

A. The fact that he was an owner only means that, at least for federal estate tax purposes, the life insurance proceeds would be includable as part of his federal gross estate.

Q. Okay. Now, other than what Pam might have told you or Pam's husband, do you have any other reason why you say you believe that Mr. Ted Bernstein is currently the successor trustee?

A. My recollection -- and, again, this is without the benefit of looking at documents -- at one point in time the -- Simon and Shirley Bernstein were being represented by the Proskauer firm in Boca. And Al Gortz, in that firm -- G-o-r-t-z -- was doing some legal work for them; and I believe he prepared -- it may be a 2000 trust; I don't remember precisely.

He had prepared a new life -- irrevocable life insurance trust, I believe. And I think -- I think my understanding is -- and I could be wrong -- was that he was -- he had prepared that to have Simon transfer the ownership of the policy into

this trust so as to keep it out of his estate for estate tax purposes.

I don't know that to be 100 percent. You know, that's just what my understandings are. And I don't have specific knowledge. But that would -- would make some sense and --

Q. To your knowledge, that was never done; correct?

A. That was never done as far as I know. And we --

Q. Now, did your law partner, Mr. Spallina, represent that, in fact, he was the cotrustee -- I mean, successor trustee of that trust at one point?

A. I -- I find that -- I can't -- I saw some document somewhere in all of the minutia of paperwork that has occurred in the last six months here where supposedly he signed something as a trustee.

I don't think he ever represented himself to anybody really as being a trustee of a trust that was to receive the proceeds of that $1.6 million policy.

Q. Well, take a look at Exhibit 14, if you would.

A. Yeah. No. I said there is a document

floating around; and I didn't know what -- what documents you -- I hadn't seen these in advance, so I wasn't sure.

Q. Okay.

A. Okay. I'm looking at 14 now.

Q. Yeah. It's a composite exhibit?

A. Right.

Q. And it's a letter dated under your letterhead of Tescher & Spallina dated December 6, 2012.

Do you see that?

A. Yes.

Q. And it's directed to the claims department of Heritage Union Life Insurance Company; is that correct?

A. Yes, it is.

Q. He states that he wants -- under the fifth bullet point -- the proceeds from the policy released so that, quote, "We can make distributions amongst the five Bernstein children," unquote.

Do you see that?

A. Yes, sir.

Q. Okay. Have you ever seen the Heritage policy itself?

A. I'm not a hundred percent certain that I

have.

Q. Do you know if it exists?

A. I have no direct knowledge. I presume it exists. Somebody paid 1.6 million into the registry of the court. So there's some life insurance policy that existed.

Q. Well, maybe they should have paid 2.6 million.

A. Well...

Q. Has a request ever been made, to your knowledge -- either on behalf of the state or otherwise -- to get a copy of the policy?

A. I'm not aware.

Q. Did you and Mr. Spallina have discussions at or about the time that this letter dated December 6, 2012, marked as Exhibit 14 was written about under what authority Mr. Spallina made the demands that the proceeds should be paid to the five Bernstein children?

A. It doesn't really read like a demand. But, you know, if you want to characterize it that way...

I'm seeing this letter for the first time.

Q. Did you have discussions with Mr. Spallina concerning the request made by him that he would

like the distributions amongst the five Bernstein children?

A. Well, my conversations with Robert Spallina included relating conversations he had had with Simon Bernstein regarding the policy and the overall plan that Simon Bernstein wished to have occur upon his demise.

Q. Are there emails between Mr. Bernstein -- Simon -- and your office concerning any expressions of intent about the distribution of insurance proceeds upon his demise?

A. I'm not certain. Again, we provided all of that documentation to everybody. There may have been notes. There may have been file notes.

MR. ROSE: For the record, Peter, before you ask your next question -- and I hate to break your momentum -- but it's 4:30 p.m.

There are a number of other people that might have questions. And you are, in my view, taking discovery in a case that you're not involved in that Mr. Stansbury has counsel, and is representing, as administrator ad litem, the interests of the estate in unrelated litigation; and I think this is far afield of the issues we have Friday. And I think you're being a little

unfair to the other participants.

MR. ELIOT BERNSTEIN: Perfectly fine. This is Eliot Bernstein; and it's relevant to the matters at hand as to the qualifications of Ted and the qualifications of Mr. Tescher.

Q. Did Mr. Spallina, to your knowledge, have the consent of Mr. Eliot Bernstein to request that the distributions of the life insurance policy be made to him instead of the estate?

A. I don't know.

Q. Okay. Do you recall that there were two other life insurance policies that were, in fact, paid to the Simon Bernstein estate?

A. Yes, I believe so. I don't recall. They were relatively modest policies, if I'm not mistaken.

Q. Would you agree with me that, if the lost trust instrument cannot be established, that the proceeds of the insurance policy would be then payable to the estate of Simon Bernstein?

MR. ROSE: Objection. Calls for a legal conclusion. Beyond the witness's knowledge, scope, information. Irrelevant. Immaterial. And improper question for the purposes of this deposition.

MR. ELIOT BERNSTEIN: Are you representing Don Tescher?

MR. ROSE: No. He's representing Ted Bernstein.

MR. ELIOT BERNSTEIN: Are you putting that objection on for Ted or...

MR. FEAMAN: Don Tescher is represented by --

THE WITNESS: Irwin Block.

MR. FEAMAN: -- Mr. Irwin Block, a very well-respected attorney here in Palm Beach County.

MR. ELIOT BERNSTEIN: Okay. Is he making the objections for Mr. Tescher?

MR. ROSE: No. He's making the objections on behalf of Mr. Ted Bernstein, which he has the right to do.

Q. Okay. So you can answer.

A. Could you repeat the question, please? I'm sorry.

MR. FEAMAN: Sure. I would ask the court reporter to read it back.

THE WITNESS: Sure.

(Question read: Question: "Would you agree with me that, if the lost trust instrument cannot be established, that the

proceeds of the insurance policy would be then payable to the estate of Simon Bernstein?")

A. I think it may depend upon the terms and conditions contained in the insurance policy. So I can't say absolutely that that would be the case.

Q. Okay. But it seems nobody can find the insurance policy. So in a default provision, wouldn't it, in fact, then go to the estate --

A. I --

Q. -- the -- Bernstein as the owner of the policy?

A. I -- I --

MR. ROSE: Objection to the form. Calls for a legal conclusion. Beyond the scope of the witness's knowledge.

A. I don't have an answer.

Q. All right. Well, as the copersonal representative, what effort did you take to ascertain whether the proceeds of this policy should, in fact, be payable to the estate?

A. Well, the first -- what we attempted to first do was to go into court in Palm Beach County and have a declaratory action to establish a lost trust and appoint a successor trustee, which is a

-- you know, not an uncommon proceeding.

We, in fact, had drafted a pleading, which is your Exhibit 12.

The family, for whatever reasons -- and I'm not certain what all the reasons were -- decided that they wanted to remove the action to Federal District Court in Illinois. So the matter was removed to federal district court in Illinois.

Q. And --

A. We are not a party any longer in that proceeding and have not been involved in that for quite some time.

Q. Well as a PR, did you think you had any fiduciary obligations to creditors -- interested persons of the estate to marshall the assets of the estate for the benefit of not only the beneficiaries but the creditors too?

A. The best information that was given to us that we acted upon was to attempt to see if the '95 trust could either be located or reestablished through -- through appropriate testimony.

Q. All right. Let's get back, if we could, to Exhibit 14, and then we'll get to my Exhibit 12.

A. Okay. I've got 14. Okay.

Q. So you can identify the letter written by

Mr. Spallina; is that correct?

A. It is a letter that appears to have been written by Mr. Spallina.

Q. Now, let me draw your attention to the claimant's statement that is on page 2 of Exhibit 14 --

A. Yes, sir.

Q. -- do you see that?

Do you know who filled that out?

A. It looks to me like it is Mr. Spallina's signature for sure.

Q. Pardon me?

A. It looks to me like it is Mr. Spallina's signature for sure; that would be his signature.

Q. Okay.

A. And apparently he wrote "Personal rep and trustee."

Q. Did you and Mr. Spallina have discussion about this document at any time?

A. No, sir.

Q. Is it your understanding that he's representing himself to be the trustee of the lost insurance trust?

A. No. It's my understanding that he was representing himself to be the trustee of Simon's

trust and also personal representative of Simon's estate.

Q. Well, let's go to the next page, which is Bates stamped No. JCK 001273.

A. Yeah, I see it.

Q. Do you see that where it says "Name of Trust: Simon Bernstein Irrevocable Insurance Trust," dated 6/1/95. And it looks like "Printed name of trustee: Robert Spallina."

Do you see that?

A. I see that.

Q. Did you have any discussions with Mr. Spallina concerning his authority to represent himself to the insurance company as the trustee of the 1995 revocable trust?

A. No, sir. I'm seeing this document probably for the first time.

Q. Okay.

MR. ROSE: Object to the form of the last one.

Q. And then you mentioned the action that was then filed --

A. I didn't say it was filed. I said it was contemplated to be filed.

Q. No, in Illinois?

A. Oh. I'm sorry. Go ahead.

Q. Okay. Now, there -- are you aware that the trustee of the lost trust -- that Mr. Ted Bernstein represents himself as the successor trustee?

Are you aware of that?

A. Yes, sir.

Q. Okay. Do you know by what authority Mr. Bernstein represented himself as successor trustee?

A. No.

Q. Are you aware that there were discussions and email traffic between your office and counsel in Chicago concerning whether an action should be filed in Palm Beach County -- as you mentioned -- or in Illinois?

A. I believe there was correspondence back and forth; and there were also telephone discussions.

Q. Are you aware that in that correspondence Mr. Spallina represented to counsel in Chicago that the life insurance proceeds were, in fact, an asset of the Simon Bernstein estate; therefore, it should be litigated in Palm Beach County?

MR. ROSE: Object to the form.

A. I don't recall.

Q. All right. And now, take a look at Exhibit 12.

A. Yes, sir.

Q. That's a draft of a complaint; correct?

A. Yes.

Q. Was that prepared in your office?

A. Yes, sir.

Q. Okay. And who prepared it?

A. I believe that I did.

Q. And this is a draft of a complaint prepared by you entitled "Declaratory Action to Establish a Lost Trust and Appoint a Successor Trustee"; correct?

A. Yes, sir.

Q. You prepared that on behalf of Ted Bernstein; is that correct?

A. "Comes now Ted Bernstein, son of Simon Bernstein"; that's correct.

Q. Okay. So -- now, then you said earlier in your testimony that the family -- quote, "the family," close quote -- decided that it should be -- this action should be filed in Chicago?

Was Eliot Bernstein a member of the family that you referred to?

A. Eliot Bernstein is a member of the family.

As to whether Eliot Bernstein's opinion was elicited, I would seriously doubt.

Q. Okay. And, in fact, Eliot Bernstein is mentioned in paragraph 5 as one of the five surviving children of Simon Bernstein.

A. That is -- that is correct.

Q. Okay. And how did the decision come about that the action instead was filed in Chicago -- in Illinois state court, rather than in the county where the decedent resided, in Palm Beach County; if you know?

A. I don't know.

Q. And who would be most knowledgeable about that?

MR. ROSE: Objection. Relevance. Materiality. It's 4:42. You're trying the wrong case. The judge has already determined that Mr. Stansbury, at his own expense, can pursue the litigation in Illinois. And you're not supposed to use this deposition for discovery in that case. And, otherwise, everything you're asking is irrelevant and wasting the time of everyone, including the people that haven't yet had a chance to ask questions.

MR. ELIOT BERNSTEIN: Okay. This is Eliot

Bernstein. I'll put back on the record that it's very relevant to the qualifications of Mr. Tescher to act in any capacity on this.

THE WITNESS: I'm not being asked to act in any capacity, Mr. Bernstein.

MR. ELIOT BERNSTEIN: Are you objecting on behalf of Ted or on behalf of --

Q. I mean, I'm laying a predicate here, because my next question is, in recommending Ted Bernstein as successor personal representative to the estate of Simon Bernstein, what are you recommending what action Ted Bernstein takes -- if he's appointed by the court as successor personal representative -- to protect the estate in trying to obtain the assets -- excuse me -- the proceeds of this insurance policy?

A. I'm not your lawyer anymore.

Q. Well, you were never my lawyer.

A. Well, I'm no longer Ted Bernstein's lawyer either.

Q. And would you expect him to take action to protect the estate?

MR. ROSE: Objection to the form in light of Judge Colin's prior ruling.

I think you understand it's an improper

question, Peter, which is why you keep asking it.

MR. ELIOT BERNSTEIN: I don't think it's improper at all.

A. I am --

Q. You are recommending, sir, Mr. Ted Bernstein, the PR, you're the previous PR. And since you're in the business of recommending, would you recommend to Ted Bernstein as successor personal representative to take assets -- to take steps necessary to try to get these insurance proceeds into the estate of Simon Bernstein, since the PR has a fiduciary obligation to all interested persons of an estate?

A. I think that Mr. Bernstein -- Ted Bernstein -- should do what he should do based upon his standing as a fiduciary; and if that means not taking a position -- if that means taking a position on behalf of the estate, if that means standing silent and letting the chips fall where they may, those are decisions that he will have to make.

Q. And what decision did you make as personal representative with regard to those estate assets?

A. We felt that they belonged to the '95 trust; that there was enough evidence around that

the trust, in fact, existed; and that it ought to be reestablished if it could be.

That was our determination. The family --

Q. Were you aware of the 2000 trust?

A. Yes, we were.

Q. Okay. And is that trust -- can that trust be found?

A. I think so, if I'm not mistaken.

I'm not 100 percent certain about that, Peter.

Q. And is that also a life insurance trust?

A. I believe it is, in the sense that it was going to be the owner and beneficiary of the policy, I believe.

Q. And the --

A. The reason why -- let me just tell you.

The reason why Si never wanted to put the ownership out of his control was for the very reason that he wanted to be able to control where that policy was ultimately going.

Q. And the two other policies that were paid to the --

A. Yes, sir.

Q. -- estate --

A. Yes, sir.

Q. -- were they in a trust or owned by him personally?

A. Well, they were paid --

Q. Were they placed into a trust?

A. No. They were owned by him personally, and they were payable to the estate.

Q. Okay. Did Eliot Bernstein ever express to you his disagreement of -- regarding the estate -- of Simon Bernstein's noninvolvement in the Illinois action?

A. He might have. I don't recall.

Q. You don't recall? And if he might have --

A. He --

Q. -- do you recall what you might have said?

MR. BLOCK: I object to the form of that question.

A. I don't know how to respond to that question.

Q. Did your office have disagreements with Chicago counsel in emails about the filing of the action in Illinois?

A. We -- we did not necessarily totally agree with what they wanted to do.

Q. And were the -- some of the children of Mr. Simon Bernstein fearful that the claim of Mr.

Stansbury would consume the insurance proceeds and, therefore, wanted to keep those insurance proceeds that are the subject of the litigation in Illinois out of the estate at all costs?

MR. BLOCK: Peter, what does that have to do with the issue before the court? This is Block. You know, I'm trying to be quiet, but I think you're really going far afield here.

MR. FEAMAN: Okay. Fair -- fair comment.

Q. Let me ask one or two more questions: Did Ted Bernstein express to you -- either email or orally while you were personal representative -- his desire to keep the insurance proceeds out of the estate of Simon Bernstein so that it would not be subject to the claim of Mr. Stansbury as a creditor?

A. I don't recall. I mean, obviously we all knew that, if the proceeds were payable to the estate --

MR. BLOCK: Don, did you hear my objection on privilege?

THE WITNESS: Yes, sir.

MR. BLOCK: If you want to answer it, that's up to you.

MR. FEAMAN: Yeah. I'm asking that

question, Irwin, in his capacity as personal representative.

MR. BLOCK: Does that mean he wasn't a lawyer?

MR. FEAMAN: Well, when you're a personal representative --

MR. BLOCK: Go ahead, Peter.

A. I will answer it this way: We were all obviously aware -- everybody was aware that if the proceeds came into the estate they would be exposed to a successful prosecution of Mr. Stansbury's lawsuit if he got a judgment.

Q. Did you talk to Mr. Stansbury at any time about his claim -- or your attorney, Mr. Manceri?

A. I don't recall ever talking to Mr. Stansbury about it.

MR. FEAMAN: Okay. All right. I think that's all I have at this point.

THE WITNESS: Thank you, Peter.

MR. ROSE: Does anybody else wish to ask questions of Mr. Tescher?

MR. MORRISSEY: John Morrissey. I have no questions.

MR. ROSE: Anybody else?

MR. ELIOT BERNSTEIN: This is Eliot

A

$1.6 87:21
$100,000 82:4
$30,000 83:10
$45,000 82:3
$55,000 81:7,13 82:21
ability 20:24 24:20
able 41:3 102:19
absolutely 93:6
accounts 49:5
accurate 16:8,17 23:11,17 25:18
accused 45:11,21 46:4
acquire 22:25
act 20:24 100:3,4
acted 94:19
acting 67:3 75:12
action 7:5 9:1 24:8 93:24 94:6 96:21 97:13 98:11,22 99:8 100:12,21 103:10 103:21
active 78:14
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA.

CASE NO. 502012CP004391XXXXSB
CP - Probate

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

_____/

AFFIDAVIT OF DONALD R. TESCHER

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, personally appeared Donald R. Tescher, upon being duly sworn, deposes and says:

1. I am over the age of eighteen years, sui juris, and have personal knowledge of the facts set forth herein.

2. Tescher & Spallina, P.A. ("Firm") were counsel to Shirley Bernstein and Simon L. Bernstein while they were alive. They had five children borne of their long-time marriage, Ted Bernstein, Pamela Simon, Eliot Bernstein, Lisa Friedstein and Jill Iantoni. Simon was the natural father and Shirley was the natural mother of each of these children. Simon and Shirley also had ten living grandchildren, each of whom was a direct and natural descendant of one of the children. Thus, Simon and Shirley had fifteen lineal descendants.

3. After consultations with Robert L. Spallina and myself or soley with Robert L. Spallina, a Will and Trust was created for each of Simon and Shirley, as amended. I am aware of the final estate plan of each, as expressed in their final testamentary documents, specifically:

a. Will of Shirley Bernstein dated May 20, 2008 (Exhibit A);

b. Shirley Bernstein Trust Agreement dated May 20, 2008 (Exhibit B), as Amended on November 18, 2008 (Exhibit C);

c. Will of Simon L. Bernstein dated July 25, 2012 (Exhibit D); and

d. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2013 (Exhibit E).

4. The attached five documents are the final documents signed by each of Shirley and Simon, respectively, during their lives. The originals of the Wills were retained in our Firm's safe deposit box (or "vault") until the times of their deaths.

5. It is my understanding and belief that, during their lifetimes, neither Shirley nor Simon shared copies of their testamentary documents with their children. None of the five children were involved in the estate planning process, nor did any of them attend any meetings with myself as counsel.

6. When Shirley died on December 8, 2010, her testamentary documents provided that Simon be given any tangible personal property in her name, other then anything disposed of in a separate written memorandum. The residue of her estate was devised to the Shirley Trust. After her death, the beneficiary of the Shirley Trust was Simon during his life, with the assets disposed of after his death through a limited power of appointment, empowering Simon to transfer the assets to or for the benefit of one of more of their lineal descendants and their spouses.[1]

7. Our Firm prepared the July 2012 Amended and Restated Trust Agreement and the Will for Simon Bernstein. Those are the final documents that our Firm prepared and the final documents I am aware of Simon having signed prior to his death in September, 2013. Our Firm

[1] There is an alternate disposition of the assets upon the death of Simon if he did not exercise his power of appointment, but in my view that is irrelevant.

retained the originals of those documents in our safe deposit box until Simon's death. There are no later executed testamentary documents for Simon L. Bernstein.

8. Simon exercised his limited power of appointment in Article II of the July 2012 Will, which specifically references Shirley's Trust and the power given to him under subparagraph E.1 of Article II of Shirley's Trust. Pursuant to that power of appointment, Simon directed Shirley's Trustee to divide the remaining trust assets into equal shares for his then living grandchildren to be added to trusts established for the ten grandchildren under Simon's Trust. Because Simon exercised his power of appointment, the assets in the Shirley Trust were distributed according to Simon's direction, and did not pass under the Shirley Trust to Shirley's default beneficiaries.

9. Under these testamentary documents, neither Ted, Pam, Eliot, Lisa or Jill is a beneficiary of any of their Trusts and Estates. With the sole exception of possibly some specific items of tangible personal property not relevant to the estate and trust administration, Shirley and Simon effectively disinherited all five of their children, and none of them take anything from either of their Trusts or Wills.

10. While he was alive, Simon was the Personal Representative of the Estate of Shirley Bernstein and was the Trustee of the Shirley Bernstein Trust. After Simon's death, under the terms of the Will and Trust, Ted S. Bernstein became the Successor Personal Representative and Successor Trustee. Prior to that time, Ted had not been involved in the administration of Shirley's Estate or Trust. As far as I am aware, Ted was not aware that he would be the successor to Simon until after Simon's death.

11. Upon Ted assuming his fiduciary role as Successor Personal Representative and Successor Trustee, Ted retained our Firm to represent him as a fiduciary. From that point in time until our withdrawal from representing Ted, which was approved by the Court in February 2014, Ted was a responsive client who listened to and followed my advice. At no time did Ted take any action which I advised him would be improper or a breach of his fiduciary duty. In my view, at all times Ted acted as a fiduciary based upon the facts and circumstances and information available to him at that time.

12. At some point after Simon died, a significant asset of Shirley's Trust (a condominium) was sold, and the decision was made to make a partial interim distribution to all of the beneficiaries of the Shirley Trust. In connection with the decision to make an interim distribution, I participated in consulting with Ted and his siblings (other than Eliot) as his counsel. I engaged in a call with various members of the family (other than Eliot). Among those children who participated in the phone call, there was a general consensus that it was appropriate to make an interim partial distribution. I assisted in the mechanics of making these distributions, including providing tax identification numbers and instructions to open a bank account for each of the grandchildren's trusts.

13. At no time did I advise Ted that it would be a violation of his fiduciary duty to make the interim distribution to the trusts for the ten living grandchildren of Simon. I did not advise Ted at any time that there was any question concerning the proper beneficiaries of the Trust, nor was Ted aware of any issue concerning the effectiveness of the exercise of the power of appointment until I advised him and others of that fact in mid-January, 2014.

14. In my view, during the time I was counsel for Ted as fiduciary, it is my opinion that he fulfilled his fiduciary duties and acted in a reasonable and appropriate manner. I am aware of

no facts that would give a court cause to be concerned about whether Ted could continue to fulfill his fiduciary duty in those capacities, or serve as Personal Representative of Simon's Estate.

15. Upon my resignation as Trustee of the Simon Trust, I concluded that the appointment of Ted as Successor Trustee would be consistent with Simon's wishes and would be in the best interest of the family. Under the terms of Simon's Trust, he gave the power to appoint a successor trustee to the last resigning trustee. In this case, for a variety of reasons I concluded that Ted was the logical choice for Successor Trustee, including the following: Ted's knowledge of the facts and of these estate matters; his current service in similar capacities in Shirley's Trust and Estate; his knowledge of the pending litigation with a creditor, William Stansbury; the fact that he is not a beneficiary of or seeking monies from any of the Trusts or Estates; and the fact that I believe him to be a reasonable and competent business person capable of fulfilling his fiduciary duties. Accordingly, after Robert Spallina resigned, I exercised the power given to me by Simon to appoint Ted S. Bernstein as Successor Trustee of the Simon Bernstein Trust.

16. The last person Simon would want to serve in any fiduciary capacity is Eliot. Simon did not want Eliot to have any role in any of these matters.

FURTHER AFFIANT SAYETH NAUGHT.

DONALD R. TESCHER

Sworn to and subscribed before me this 4 day of March, 2014,by Donald R. Tescher, who is personally known to me and who did take an oath.

(SEAL)

Diane Dustin
Notary Public
My commission expires:

EXHIBIT

"A"

WILL OF

SHIRLEY BERNSTEIN

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

CONFORMED COPY

WILL OF

SHIRLEY BERNSTEIN

The original of this Will is being held in the safe deposit box of the ~~law firm of Tescher & Spallina~~, P.A.

I, SHIRLEY BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. My spouse is SIMON L. BERNSTEIN ("***SIMON***"). My children are TED S. BERNSTEIN ("***TED***"), PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to SIMON, if SIMON survives me, my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if SIMON does not survive me, I give this property to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical, and if neither SIMON nor any child of mine survives me, this property shall pass with the residue of my estate.

ARTICLE II. RESIDENCES

I give to SIMON, if SIMON survives me, my entire interest in any real property used by us as a permanent or seasonal residence, subject to any mortgage or other lien. If SIMON does not survive me, such interest shall pass with the residue of my estate.

ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate to the Trustee then serving under my revocable Trust Agreement dated today, as may be amended and restated from time to time (the "***Existing Trust***"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

ARTICLE IV. PERSONAL REPRESENTATIVES

1. **Appointment and Bond.** I appoint SIMON and TED, one at a time and successively in that order, as my Personal Representative (the "***fiduciary***"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. **Powers of Personal Representatives.** My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "***estate***"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. Distributions or Divisions. To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. Management. To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. Borrowing. To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "***Business Entities***"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right

to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorised and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without

cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. **Survivorship.** A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. **Death Costs.** My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Articles I and II of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs.

5. **Reimbursement for Debts and Expenses.** My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. **Expenses of Handling Tangible Personal Property.** All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. **Dealing with Estate.** Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. **Spouse**. The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. **Other Beneficiary Designations**. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

[remainder of page intentionally left blank]

I have published and signed this instrument as my Will at Boca Raton, Florida, on the 20 day of May, 2008.

/s/ Shirley Bernstein
SHIRLEY BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testatrix to be the Testatrix's Will in our presence, and at the Testatrix's request and in the Testatrix's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this _____ day of _____, 2008.

/s/ Robert L. Spallina residing at 7387 Wisteria Ave
[Witness Signature] [Witness Address]

Parkland, FL 33076
[Witness Address]

/s/ Diana Banks residing at 23415 Boca Trace Dr.
[Witness Signature] [Witness Address]

Boca Raton, FL 33433
[Witness Address]

State Of Florida

SS.

County Of Palm Beach

I, SHIRLEY BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

/s/ Shirley Bernstein
SHIRLEY BERNSTEIN, Testatrix

We, Robert L. Spallina and Diana Banks, have been sworn by the officer signing below, and declare to that officer on our oaths that the Testatrix declared the instrument to be the Testatrix's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testatrix and of each other.

/s/ Robert L. Spallina
Witness

/s/ Diana Banks
Witness

Acknowledged and subscribed before me, by the Testatrix, SHIRLEY BERNSTEIN, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and Diana Banks, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and subscribed by me in the presence of SHIRLEY BERNSTEIN and the subscribing witnesses, all on this 20 day of May, 2008.

Kimberly Moran
Commission # DD766470
Expires: APR. 28, 2012

/s/ Kimberly Moran
Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

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EXHIBIT

"B"

SHIRLEY BERNSTEIN

TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

SHIRLEY BERNSTEIN

TRUST AGREEMENT

This Trust Agreement is dated this 20 day of MAY, 2008, and is between SHIRLEY BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SHIRLEY BERNSTEIN, of Palm Beach County, and SHIRLEY BERNSTEIN's successors, as trustee (referred to as the "***Trustee***," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee). Said Trustee acknowledges receipt of the property described in the Attachment to this Agreement, and agrees to hold said property and all additions, in trust, as provided in this Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

B. **Payments During My Life.** If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare, and also may in its discretion pay to my spouse such amounts of said net income and principal as is proper for his Welfare. Any income not so paid shall be added to principal.

C. **Gifts.** If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my spouse and my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars ($5,000), or five percent

(5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

D. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Specific Cash Devise. The Trustee shall set aside in a separate trust the sum of Two Hundred Thousand ($200,000.00) Dollars for MATTHEW LOGAN, and said separate trust shall be administered as provided in Subparagraph II.F below. If MATTHEW LOGAN does not survive me this devise shall lapse.

C. Marital Deduction Gift. If my spouse survives me:

1. Family Trust. The Trustee shall hold as a separate "***Family Trust***" (i) all property of the trust estate as to which a federal estate tax marital deduction would not be allowed if it were distributed outright to my spouse, and (ii) after giving effect to (i), the largest pecuniary amount which will not result in or increase any federal or state death tax otherwise payable by reason of my death. In determining the pecuniary amount the Trustee shall assume that none of this Family Trust qualifies for a federal estate tax deduction, and shall assume that all of the Marital Trust hereinafter established (including any part thereof disclaimed by my spouse) qualifies for the federal estate tax marital deduction. I recognize that the pecuniary amount may be reduced by certain state death taxes and administration expenses which are not deducted for federal estate tax purposes.

2. Marital Trust. The balance of the trust remaining after the establishment of the Family Trust shall be held as a separate "***Marital Trust.***"

3. Disclaimer. Any part of the Marital Trust my spouse disclaims shall be added to the Family Trust. My spouse shall not be deemed to have predeceased me for purposes of such addition. I suggest that my spouse or my spouse's fiduciaries consider an appropriate partial disclaimer to minimize the death taxes due upon both of our deaths.

If my spouse does not survive me, the entire trust shall be held as the Family Trust without regard to the provisions of Subparagraph II.B.1 describing or limiting which assets shall be held thereunder.

D. During Spouse's Life. Commencing with the date of my death the Trustee shall,

1. Marital Trust. Pay to my spouse from the Marital Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare; and

2. Family Trust. Pay to my spouse from the Family Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare. I request (but do not require) that no principal be paid to my spouse from the Family Trust for my spouse's Welfare unless the Marital Trust has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

E. Disposition of Trusts Upon Death of Survivor of My Spouse and Me. Upon the death of the survivor of my spouse and me,

1. Limited Power. My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or for the benefit of one or more of my lineal descendants and their spouses;

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and held in separate Trusts for my lineal descendants then living, *per stirpes*. Any assets allocated under this Subparagraph II.D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by my spouse as grantor on even date herewith (the "***Family Trusts***" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts for such lineal descendants and administered as provided in Subparagraph II.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "***beneficiary***," with their separate trusts to be administered as provided in Subparagraph II.E. below.

SB

F. **Trusts for Beneficiaries.** The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or

2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

G. **Termination of Small Trust.** If at any time after the death of the survivor of my spouse and me in the opinion of the Trustee a separate trust holds assets of a value of less than $50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

H. **Contingent Gift.** If at any time property of a trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if my spouse and I had each then owned one-half of such property and had each then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

I. **Protective Provision.** No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be

liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

J. **Maximum Duration**. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years as provided in F.S. § 689.225(2)(a)(2), nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

K. **Florida Homestead Possessory Rights**. Notwithstanding anything herein to the contrary, if any portion of any Florida improved residential real estate (excluding commercial multi-unit rental property) is an asset of the Marital Trust, my spouse shall have the exclusive and continuous present right to full use, occupancy and possession of such real estate for life. It is my intention that my spouse's interest in such property shall constitute a "beneficial interest for life" and "equitable title to real estate" as contemplated by Section 196.041(2) of Florida Statutes, as amended from time to time or any corresponding provision of law.

ARTICLE III. GENERAL

A. **Disability**. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary (other than my spouse as beneficiary of the Marital Trust) is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. **Timing of Income Distributions**. The Trustee shall make required payments of income at least quarterly.

C. **Substance Abuse**.

1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended (excluding, however, mandatory income rights under the Marital Trust). In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate

takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "***child,***" "***children***" and "***lineal descendant***" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("***TED***") and PAMELA B. SIMON ("***PAM***"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.

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2. Code. "***Code***" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "***Disabled***" or being under "***Disability***" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "***education***" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. My Spouse. "***My spouse***" is SIMON L. BERNSTEIN ("***SIMON***").

6. Needs and Welfare Distributions. Payments to be made for a person's ***"Needs"*** means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's ***"Welfare"*** means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

7. Per Stirpes. In a division "***per stirpes***" each generation shall be represented and counted whether or not it has a living member.

8. Related or Subordinate Party. A "***Related or Subordinate Party***" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

9. Spouse. A person's "***spouse***" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

10. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. **Presumption of Survivorship.** If my spouse and I die under circumstances which make it difficult or impracticable to determine which one of us survived the other, I direct that my spouse shall be deemed to have survived me for purposes of this Agreement (except in regard to any property passing hereunder that became part of this trust solely by reason of passage to my probate estate or this trust from the probate estate of or a revocable trust established by my spouse in which case the opposite presumption shall apply), notwithstanding any provisions of law which provide for a contrary presumption. If any person other than my spouse shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. **Governing Law.** This Agreement is governed by the law of the State of Florida.

J. **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. **Mandatory Notice Required by Florida Law.** The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

L. **Release of Medical Information.**

1. Disability of Beneficiary. Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or

at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. **Powers of the Trustee**. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "***estate***"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investmentsas forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and

personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "***Business Entities***"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorised and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to

exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under

a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Selection of Assets for Marital Trust. The Trustee shall have sole discretion to determine which assets shall be allocated to the Marital Trust; provided, if possible no assets or the proceeds of any assets which do not qualify for the federal estate tax marital deduction shall be allocated to the Marital Trust. To the extent that other assets qualifying for the marital deduction are available, the Trustee shall not allocate to the Marital Trust any assets with respect to which a credit for foreign taxes paid is allowable under the Code, nor any policy of insurance on the life of my spouse. Any allocation of assets among the Family Trust and the Marital Trust shall, with respect to each such trust, be comprised of assets having an aggregate market value at the time of such allocation fairly representative of the net appreciation or depreciation in the value of the property available for such

allocation between the date of valuation for federal estate tax purposes and the date or dates of said allocation and selection.

26. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

27. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

28. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate or my spouse's estate.

29. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

30. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, SIMON and TED, one at a time and successively in that order, shall serve as successor Trustee. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances:

a. Trustee of the Marital Trust. SIMON and TED, one at a time and successively in that order, shall serve as Trustee of the Marital Trust. While serving as Trustee, my spouse may designate a co-Trustee to serve with my spouse and my spouse may remove and/or replace such co-Trustee from time to time.

b. Trustee of the Family Trust. SIMON and TED, one at a time and successively in that order, shall serve as Trustee of the Family Trust. While serving as Trustee, my spouse may designate a co-Trustee that is not a Related or Subordinate Party to serve with my spouse and my spouse may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

c. Trustee of Separate Trusts for My Children. Each child of mine shall serve as sole Trustee of his or her separate trust. While serving alone as Trustee, a child of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such child and such child may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

d. Trustee of Separate Trusts for My Lineal Descendants Other Than My Children. In regard to a separate trust held for a lineal descendant of mine other than a child of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon reaching age twenty-five (25) years.

e. Trustee of Separate Trust for MATTHEW LOGAN. In regard to a separate trust held MATTHEW LOGAN, his mother, DEBORAH BERNSTEIN ("***DEBORAH***"), shall serve as Trustee until MATTHEW attains age 25 years, at which time he shall serve as a co-Trustee with DEBORAH of such separate trust.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

a. The remaining Trustees, if any; otherwise,

b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 25 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. **Compensation, Bond**. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. **Maintenance of Records**. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. **Interested Trustee**. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. **Third Parties**. No one dealing with the Trustee need inquire into its authority or its application of property.

L. **Merger of Trusts**. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. **Multiple Trustees**. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. **GST Trusts.**

1. **Family Trust.** I direct (a) that the Trustee shall divide any trust other than the Marital Trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions of this Trust Agreement relating to the trust that is being divided) so that the generation-skipping tax inclusion ratio of one such trust is zero.

2. **Marital Trust.** I direct that, if possible, (a) the Trustee shall divide the Marital Trust into two separate Marital Trusts (each subject to the provisions hereof concerning the Marital Trust) so that through allocation of my GST exemption remaining unallocated at my death and not otherwise allocated to transfers occurring at or by reason of my death (including allocations to the Family Trust), if any, the generation-skipping tax inclusion ratio of one such Marital Trust is zero (the GST Marital Trust), (b) my Personal Representative to exercise the election provided by Code Section 2652(a)(3) as to the GST Marital Trust, and (c) that upon the death of my spouse the total amount recoverable by my spouse's estate from the property of the Marital Trusts under Code Section 2207A shall first be recoverable in full from the non-GST Marital Trust to the extent thereof.

3. **Misc.** I direct that (a) upon the death of the survivor of me and my spouse, any property then directed to be paid or distributed which constitutes a direct skip shall be paid first from property then exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) to the extent thereof, (b) property exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) and not directed to be paid or distributed in a manner which constitutes a direct skip shall be divided and distributed as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and lineal descendants, in such estates, interests, and proportions as such beneficiary may, by a will specifically referring to this general power appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

Notwithstanding any other provision of this Trust Agreement, for purposes of funding any pecuniary payment or trust division to which there is allocated any GST exemption, such payment or trust division allocation shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution or allocation could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. In regard to the division or severance of a trust hereunder, including the Marital Trust, such division or severance shall be made in a manner that all resulting trusts are recognized for purposes of Chapter 13 of the Code, including without limitation complying with the requirements of Treas.Regs. §26.2654-1(b). Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this Article which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. **Individual Retirement Accounts**. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to

a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. **Gift Transfers Made From Trust During My Lifetime**. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. **Death Costs**. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,

2. my funeral expenses without regard to legal limitations,

3. the expenses of administering my estate,

4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and

5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the property disposed of pursuant to the prior paragraphs captioned "Disposition of Tangible Personal Property", "Specific Cash Devise" nor from the Marital Trust.

E. **Marital Trust**. I intend the maximum obtainable reduction of federal estate tax due by reason of my death by use of the federal estate tax marital deduction, and qualification of all property of the Marital Trust for the marital deduction. This Agreement shall be construed and all powers shall be exercised consistent with such intent. For example, the Trustee shall not allocate any receipt to principal or any disbursement to income if such allocation understates the net income of the Marital Trust under Florida law; and upon the written demand of my spouse, the Trustee shall convert unproductive or underproductive property of said trust into productive property within a reasonable time notwithstanding any other provision hereunder. The foregoing not withstanding, if my spouse survives me but dies within six months after my death, the Marital Trust provided in Subparagraph II.B will be reduced to that amount, if any, required to obtain for my estate an estate tax marital deduction resulting in the lowest combined estate taxes in my estate and my spouse's estate, on the assumption that my spouse died after me on the date of my death, that my spouse's estate is valued on the same date and in the same manner as my estate is valued for federal estate tax purposes, and that elections in my spouse's estate were made that would be consistent with minimizing taxes. The purpose of this provision is to equalize, insofar as possible, our estates for federal estate tax purposes, based on the above assumptions.

F. **Subchapter S Stock**. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise

manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. **Residence as Homestead**. Regardless of anything herein to the contrary, while any residential real property located in Florida is owned by a trust, I, or my spouse if I am not then living and such trust is the Marital Trust, shall have the right to use, possess and occupy such residence as a personal residence so that such right shall constitute a possessory right in such real property within the meaning of Florida Statute Section 196.041.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

SHIRLEY BERNSTEIN

This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 20 day of May, 2008:

Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

Print Name: TRACI KRATISH
Address: 16068 GLENCREST AVENUE
DELRAY BEACH, FL 33446

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SHIRLEY BERNSTEIN.

NOTARY PUBLIC-STATE OF FLORIDA
Kimberly Moran
Commission #DD766470
Expires: APR. 28, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

[Seal with Commission Expiration Date]

Kimberly Moran
Signature - Notary Public-State of Florida

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification _____
Type of Identification Produced _____

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ATTACHMENT

The following property has been delivered in trust under this Agreement:

One Dollar ($1.00) Cash

During my life, the Trustee has no duty to maintain, invest, review, insure, account for, or any other responsibility with respect to trust property other than income producing property, or any duty to pay premiums on life insurance payable to the trust, and shall receive no fee for its services as Trustee based on any trust property other than income producing property.

SHIRLEY BERNSTEIN, Settlor and Trustee

EXHIBIT

"C"

F

FIRST AMENDMENT TO SHIRLEY BERNSTEIN TRUST AGREEMENT

This First Amendment is dated this _____ day of _____, 2008, and is between SHIRLEY BERNSTEIN of Palm Beach County, Florida referred to in the first person, as settlor, and SHIRLEY BERNSTEIN of Palm Beach County, Florida as trustee (referred to as the "***Trustee***," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SHIRLEY BERNSTEIN TRUST AGREEMENT (the "***Trust Agreement,***" which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke the said Trust Agreement, in whole or in part.

NOW THEREFORE, by executing this instrument, I hereby amend the Trust Agreement as follows:

1. I hereby delete Paragraph B. of Article II. in its entirety.

3. I hereby ratify and reaffirm the Trust Agreement as amended by this First Amendment.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first above written.

SETTLOR and TRUSTEE:

SHIRLEY BERNSTEIN

This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 18 day of Nov, 2008:

Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

Print Name: Rachel Walker
Address: 100 Plaza Real South
Apt 308
Boca Raton, FL 33432

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 18 day of November, 2008, by SHIRLEY BERNSTEIN.

NOTARY PUBLIC-STATE OF FLORIDA
Kimberly Moran
Commission #DD766470
Expires: APR. 28, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

[Seal with Commission Expiration Date]

Kimberly Moran
Signature - Notary Public-State of Florida

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification _____
Type of Identification Produced _____

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EXHIBIT

"D"

WILL OF

SIMON L. BERNSTEIN

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

CONFORMED COPY

WILL OF

SIMON L. BERNSTEIN

The original of this Will is being held in the safe deposit box of the law firm of Tescher & Spallina, P.A.

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. I am a widower, but in the event that I marry subsequent to the execution of this Will, I specifically make no provision for my spouse. My children are TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if no child of mine survives me, this property shall pass with the residue of my estate.

ARTICLE II. EXERCISE OF POWER OF APPOINTMENT

Under Subparagraph E.1. of Article II. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "*Shirley Trust*"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and the Family Trust established under the Shirley Trust. Pursuant to the power granted to me under the Shirley Trust, upon my death, I hereby direct the then serving Trustees of the Marital Trust and the Family Trust to divide the remaining trust assets into equal shares for my then living grandchildren and distribute said shares to the then serving Trustees of their respective trusts established under Subparagraph II.B. of my Existing Trust, as referenced below, and administered pursuant to Subparagraph II.C. thereunder.

ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate, including my homestead, to the Trustee then serving under my revocable Trust Agreement dated May 20, 2008, as amended and restated from time to time and on even date herewith (the "*Existing Trust*"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in Article II., above, and in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under

the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

ARTICLE IV. PERSONAL REPRESENTATIVES

1. Appointment and Bond. I appoint ROBERT L. SPALLINA and DONALD R. TESCHER to serve together as my co-Personal Representatives, or either of them alone as Personal Representative if either of them is unable to serve (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. Powers of Personal Representatives. My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. Distributions or Divisions. To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. Management. To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. Borrowing. To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the

estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "***Business Entities***"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the

operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorised and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. Survivorship. A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. Death Costs. My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Article I of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs. If the amount of the above-described taxes, and interest and penalties arising by reason of my death (without regard to where payable from under the terms of this paragraph or applicable law) is increased because of the power of appointment granted to me under Subparagraph II.E.1. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, I hereby appoint to my probate estate from the property subject to such power (to the extent allowable under such power) the amount of such increase (calculating such increase at the highest applicable marginal rates) and exercise such power to this extent only, and notwithstanding the other provisions of this paragraph further direct my fiduciary to make payment of such increase in taxes,

interest and penalties to the appropriate taxing authorities from the appointed property or the proceeds thereof. Any trustee holding such appointive property may pay to my fiduciary the amount which my fiduciary certifies as due under this paragraph and is not responsible for the correctness or application of amounts so paid.

5. Reimbursement for Debts and Expenses. My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. Expenses of Handling Tangible Personal Property. All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. Dealing with Estate. Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. Spouse. The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

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I have published and signed this instrument as my Will at Boca Raton, Florida, on the 25 day of July, 2012.

/s/ Simon L. Bernstein
SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this 25 day of July, 2012. .

/s/ Robert L. Spallina residing at Robert L. Spallina
[Witness Signature] 7387 Wisteria Avenue [Witness Address]
Parkland, FL 33076
[Witness Address]

/s/ Kimberly Moran residing at Kimberly Moran
[Witness Signature] 6362 Las Flores Drive [Witness Address]
Boca Raton, FL 33433
[Witness Address]

State Of Florida

SS.

County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

/s/ Simon L. Bernstein
SIMON L. BERNSTEIN, Testator

We, Robert L. Spallina and Kimberly Moran, have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

/s/ Robert L. Spallina
Witness

/s/ Kimberly Moran
Witness

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and Kimberly Moran, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this 25 day of July, 2012.

Commission No. EE092282
Expires May 10, 2015
[Seal with Commission Expiration Date]

/s/ Lindsay Baxley
Signature - Notary Public-State of Florida

Lindsay Baxley
Print, type or stamp name of Notary Public

EXHIBIT

"E"

SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is dated this 20 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "***Trustee***," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "***Trust Agreement,***" which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. **Rights Reserved**. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. **Payments During My Life**. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "*beneficiary*" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. Trusts for Beneficiaries. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or

2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

D. **Termination of Small Trust.** If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than $50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

E. **Contingent Gift.** If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

F. **Protective Provision.** No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

G. **Maximum Duration.** Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

ARTICLE III. GENERAL

A. **Disability**. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. **Timing of Income Distributions**. The Trustee shall make required payments of income at least quarterly.

C. **Substance Abuse**.

1. In General. If the Trustee reasonably believes that a beneficiary (other than myself)of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an

in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "***child,***" "***children,***" "***grandchild,***" "***grandchildren***" and "***lineal descendant***" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is

raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "***Code***" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "***Disabled***" or being under "***Disability***" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "***education***" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's ***"Needs"*** means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's ***"Welfare"*** means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to

such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "***per stirpes***" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "***Related or Subordinate Party***" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "***spouse***" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such

Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. **Presumption of Survivorship**. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. **Governing Law**. This Agreement is governed by the law of the State of Florida.

J. **Other Beneficiary Designations**. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. **Release of Medical Information.**

1. Disability of Beneficiary. Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested

beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph I.A hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "***estate***"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any

decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investmentsas forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole

proprietorship, or other form (all of which business entities and enterprises are referred to herein as "***Business Entities***"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorised and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this

paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. **Resignation**. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. **Appointment of Successor Trustee**.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust

hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

a. The remaining Trustees, if any; otherwise,

b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or

entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. **Method of Appointment of Trustee**. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. **Limitations on Removal and Replacement Power**. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. **Successor Fiduciaries**. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. **Liability and Indemnification of Trustee**.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual

and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. **Compensation, Bond.** Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. **Maintenance of Records.** The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. **Interested Trustee.** The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the

Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. **Third Parties**. No one dealing with the Trustee need inquire into its authority or its application of property.

L. **Merger of Trusts**. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. **Multiple Trustees**. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. **GST Trusts**. I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons

designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. **Individual Retirement Accounts**. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. **Gift Transfers Made From Trust During My Lifetime**. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars ($5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,

2. my funeral expenses without regard to legal limitations,

3. the expenses of administering my estate,

4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and

5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

F. **Subchapter S Stock.** Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. **Residence as Homestead.** I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 25 day of July, 2012:

Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

Print Name: Kimberly Moran
Address: Kimberly Moran
6362 Las Flores Drive
Boca Raton, FL 33433

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.

Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]
NOTARY PUBLIC-STATE OF FLORIDA
Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

Lindsay Baxley
Print, type or stamp name of Notary Public

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

Stansbury's
Exh. 1
to Tescher depo

SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is dated this 25 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "***Trustee***," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "***Trust Agreement,***" which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. **Rights Reserved**. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. **Payments During My Life**. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

C. **Upon My Death**. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. **Disposition of Tangible Personal Property**. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. **Disposition of Trust Upon My Death**. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "***beneficiary***" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. **Trusts for Beneficiaries**. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or

2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

D. **Termination of Small Trust**. If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than $50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

E. **Contingent Gift**. If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

F. **Protective Provision**. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

G. **Maximum Duration**. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

ARTICLE III. GENERAL

A. **Disability**. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. **Timing of Income Distributions**. The Trustee shall make required payments of income at least quarterly.

C. **Substance Abuse**.

1. In General. If the Trustee reasonably believes that a beneficiary (other than myself)of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an

in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "***child,***" "***children,***" "***grandchild,***" "***grandchildren***" and "***lineal descendant***" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is

raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "***Code***" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "***Disabled***" or being under "***Disability***" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "***education***" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's ***"Needs"*** means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's ***"Welfare"*** means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to

such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "***per stirpes***" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "***Related or Subordinate Party***" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "***spouse***" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such

Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. **Presumption of Survivorship**. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. **Governing Law**. This Agreement is governed by the law of the State of Florida.

J. **Other Beneficiary Designations**. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. **Release of Medical Information.**

1. Disability of Beneficiary. Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested

beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph I.A hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. **Powers of the Trustee**. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any

decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investmentsas forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole

proprietorship, or other form (all of which business entities and enterprises are referred to herein as "***Business Entities***"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorised and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this

paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. **Resignation**. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. **Appointment of Successor Trustee.**

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust

hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement , the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

a. The remaining Trustees, if any; otherwise,

b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or

entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual

and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. **Compensation, Bond**. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. **Maintenance of Records**. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. **Interested Trustee**. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the

Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. **Third Parties**. No one dealing with the Trustee need inquire into its authority or its application of property.

L. **Merger of Trusts**. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. **Multiple Trustees**. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. **GST Trusts**. I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons

designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. **Individual Retirement Accounts**. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. **Gift Transfers Made From Trust During My Lifetime**. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. **Gifts**. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars ($5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,

2. my funeral expenses without regard to legal limitations,

3. the expenses of administering my estate,

4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and

5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

F. **Subchapter S Stock**. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. **Residence as Homestead**. I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 25 day of July, 2012:

Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

Print Name: Kimberly Moran
Address: Kimberly Moran
6362 Las Flores Drive
Boca Raton, FL 33433

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.

Signature - Notary Public-State of Florida

Lindsay Baxley

Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]

NOTARY PUBLIC-STATE OF FLORIDA
Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

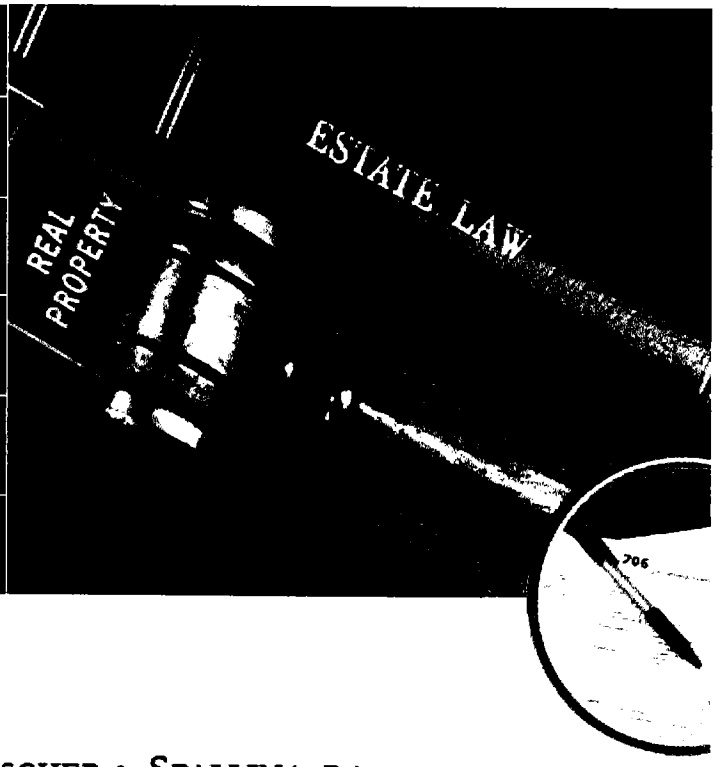
Personally Known _____ or Produced Identification _____

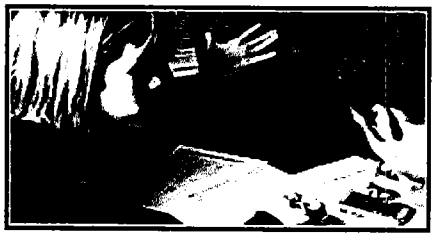
Type of Identification Produced _____

Stansbury's
Exh. 2
to Fischer Depo

TESCHER & SPALLINA, P.A.

ATTORNEYS-AT-LAW





Mailing & Street Address:

TESCHER & SPALLINA, P.A.
Wells Fargo Plaza
925 South Federal Hwy
Suite 500
Boca Raton, Florida 33432

Telephone & Fax:
Phone: (561) 997-7008
Fax: (561) 997-7308
Toll Free: (888) 997-7008

Websites:
www.tescherspallina.com

Welcome to TESCHER & SPALLINA, P.A.

The law office of **TESCHER & SPALLINA, P.A.** in Boca Raton, Florida is a boutique tax practice focused on wealth transfer planning for high net-worth individuals and families, including gift and estate tax planning, business succession planning, charitable planning, corporate, limited partnership and asset protection planning, life insurance planning, post-mortem planning, probate administration and other tax related matters.

Our practice approach is team based, allowing us to provide the highest quality, cost efficient legal service for our clients. The selection of an attorney to plan your estate is a decision that can last for generations. An effective, tax efficient estate plan coordinates what will happen with the various aspects of your financial and personal life - home, investments, business, life insurance, retirement assets, and other issues in the event you become disabled or if you die. Most importantly, an overall estate plan protects the members of your family long after you are not able to care for them. Whenever possible, we like to work with families on multi-generational planning matters.

Our attorneys have extensive expertise in these areas, take pride in their practice and reputation, and have been recognized in national publications and through membership in prestigious peer organizations. The firm's managing partner has been prominently featured in numerous ranking guides including The Best Layers in America, Robb Report and Worth Magazine's Top 100 Attorneys, Florida Legal Elites, Florida Super Lawyers and Chambers USA. All of our attorneys hold graduate law degrees in tax or estate planning and are admitted to practice before the Florida Bar.

Members of our firm believe in giving back to their local community and their profession. Our attorneys participate in numerous bar activities and community organizations in Palm Beach, Broward and Miami-Dade counties. We welcome you to contact us to learn more about our firm.

DISCLAIMER
The hiring of a lawyer or law firm is an important decision and should not be based solely upon advertisements, this communication or the information provided herein. Before you decide whether to retain a lawyer or law firm, and before you decide which lawyer or law firm to retain, please call us and ask us to send you free written information about our qualifications and experience.

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EXHIBIT
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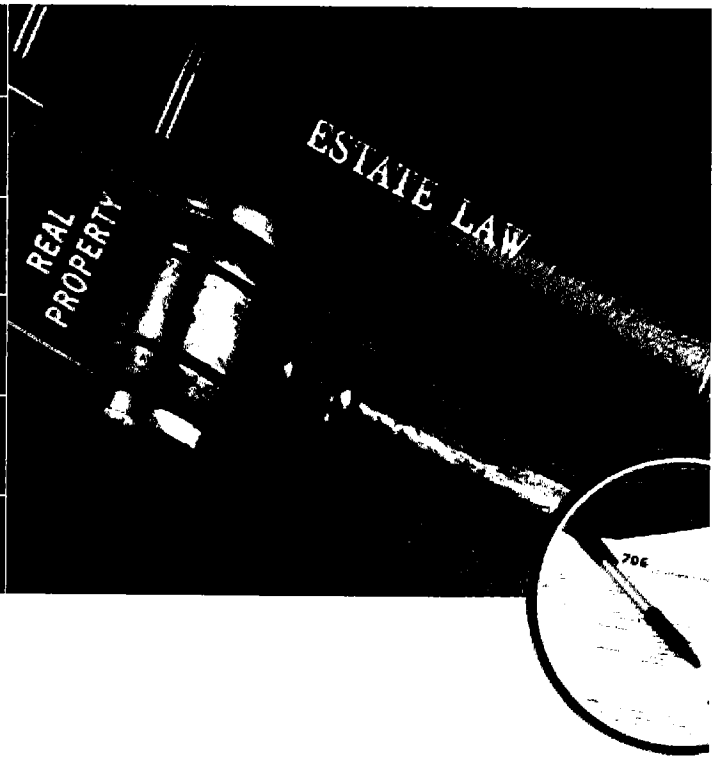
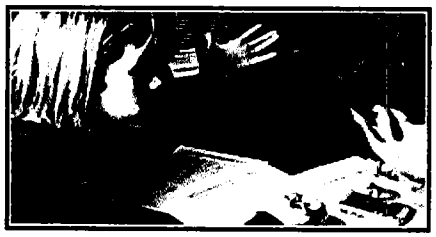
ATTORNEYS-AT-LAW





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Fax: (561) 997-7308
Toll Free: (888) 997-7008

Websites:
www.tescherspallina.com

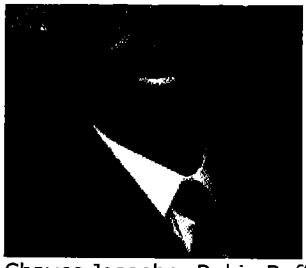
Our People

Our Attorneys

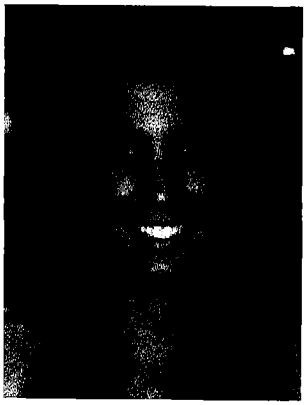
DONALD R. TESCHER holds two degrees from the University of Florida, with a bachelor of science in business administration (accounting) from the University of Florida School of Business and a juris doctor from the University of Florida College of Law. Mr. Tescher also holds a master of laws degree in taxation from New York University. Mr. Tescher is a past Chairman of the Tax Section of The Florida Bar and recipient of the Gerald T. Hart Outstanding Florida Tax Lawyer Award. Mr. Tescher has been recognized by The Best Lawyers in America, the Robb Report Worth Magazine, Chambers and Partners USA, Florida Trend Magazine - South Florida Legal Guide, and Florida Super Lawyers. Mr. Tescher is a Fellow of the American College of Trust and Estate Counsel (ACTEC) and a member of its Business Planning and Estate and Gift Tax committees. He has served as adjunct professor at the University of Miami School of Law Graduate Tax and Estate Planning programs. He is a member of the Directors' Committee of The Florida Bar Tax Section, the Executive Council and Trust Law Committee of The Florida Bar Real Property, Probate and Trust Law Section, and member of various Committees of the Tax and Real Property Sections of the American Bar Association. Click here for a complete list of Mr. Tescher's articles, publications, recognitions and extra-curricular activities. You can contact Mr. Tescher by email at dtescher@tescherspallina.com

More»

ROBERT L. SPALLINA holds a bachelor of science degree in accounting with honors from the University of Florida Fisher School of Accounting, a juris doctor from Loyola Law School in Los Angeles, and a master of laws degree in estate planning from the University of Miami School of Law. Mr. Spallina is a former Certified Public Accountant (CPA) and Certified Financial Planner (CFP), and began his professional career with KPMG Peat Marwick in Los Angeles. After working as a CPA with KPMG, Mr. Spallina worked for several years as a controller



Spallina worked for several years as a controller and Vice President of Finance for Sony Pictures Entertainment and Mandalay Pictures prior to pursuing his law degrees. Mr. Spallina began his legal career as a Trusts and Estates attorney with Tescher Gutter Chaves Josepher Rubin Ruffin & Forman, P.A. in 2002, and focuses his practice on wealth transfer planning, post-mortem planning, probate and related matters for high net worth individuals and families. Mr. Spallina is an active member of the Tax and Real Property, Probate and Trust Law sections of the Florida Bar, and co-authored an article for the June 2010 Florida Bar Journal titled Section 2053 Regulations: Continued Uncertainty. Mr. Spallina has been a guest lecturer for the Tax Practitioners Annual Update Course for the Tax Law Section of the Florida Bar and is the current President of the Boca Raton Tax Institute. Mr. Spallina is also a member of the Greater Boca Raton Estate Planning Council and South Palm Beach County Bar Association.You can contact Mr. Spallina by email at rspallina@tescherspallina.com



LAUREN A. GALVANI graduated from Boston College in 2006 with a triple major, receiving her bachelor of arts degree in English, History, and Political Science. Ms. Galvani was also a dual degree candidate at the University of Miami School of Law, and simultaneously received her juris doctor and master of laws in taxation in 2009. While at the University of Miami, Ms. Galvani practiced international estate planning as a summer associate at Aballi Milne Kalil, P.A. in Miami, Florida. Ms. Galvani joined Tescher & Spallina, P.A. in October of 2009 and focuses her practice on wills, trusts and estates for high net worth individuals. Ms. Galvani is licensed to practice in Florida and Massachusetts, and is actively involved in the Tax and Real Property, Probate and Trust Law sections of the Florida Bar and the American Bar Association. Ms. Galvani co-authored an article that appeared in the June 2010 Florida Bar Journal Section 2053 Final Regulations: Continued Uncertainty? and is co-authoring another article that will appear in the June 2011 Florida Bar Journal. Ms. Galvani is also a member of the Boca Raton Tax Institute and South Palm Beach County Bar Association. You can contact Ms. Galvani by email at lgalvani@tescherspallina.com

Our Support Staff:

Kimberly Moran - kmoran@tescherspallina.com

Diane Dustin - ddustin@tescherspallina.com

SuAnn Tescher - stescher@tescherspallina.com

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Stansbury's

Exh. 3

to Tescher's Depo

LAW OFFICES
TESCHER & SPALLINA, P.A.

BOCA VILLAGE CORPORATE CENTER I
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FLORIDA 33431

TEL: 561-997-7008
FAX: 561-997-7308
TOLL FREE: 888-997-7008
WWW.TESCHERSPALLINA.COM

ATTORNEYS
DONALD R. TESCHER
ROBERT L. SPALLINA
LAUREN A. GALVANI

SUPPORT STAFF
DIANE DUSTIN
KIMBERLY MORAN
SUANN TESCHER

January 14, 2014

VIA U.S. MAIL AND EMAIL

Ted S. Bernstein
880 Berkeley Street
Boca Raton, FL 33487

Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Lisa S. Friedstein
2142 Churchill Lane
Highland Park, IL 60035

Pamela B. Simon
950 North Michigan Ave.
Suite 2603
Chicago, IL 60606

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035

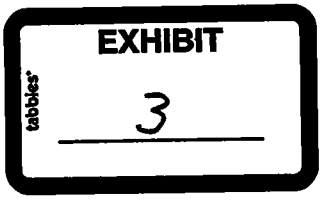
Re: Estates and Trusts of Shirley Bernstein and Simon Bernstein

Dear Ladies and Gentlemen:

It has been brought to my attention that a document was prepared in our office that altered the disposition of the Shirley Bernstein Trust subsequent to Simon Bernstein's death. Information provided to me appears to indicate that there were two versions of the First Amendment to the Shirley Bernstein Trust Agreement, both executed on November 18, 2008. Under one version the children of Pam Simon and Ted Bernstein would not be permissible appointees of Simon Bernstein's exercise of the power of appointment while under the second version that restriction was removed. As you all know, Simon Bernstein's dispositive plan, expressed to all of you during his lifetime on a conference call, was to distribute the Estate to all ten of his grandchildren. That was the basis upon which the administration was moving forward.

Under the Shirley Bernstein Trust, there is a definition of children and lineal descendants. That definition excluded Pam Simon, Ted Bernstein and their respective children from inheriting. The document also contained a special Power of Appointment for Simon wherein he could appoint the assets of the Trust for Shirley's lineal descendants. Based upon the definition of children and lineal descendants, the Power of Appointment could not be exercised in favor of Pam Simon, Ted Bernstein or their respective children, although we believe it was Simon Bernstein's wish to provide equally for all of his grandchildren.

On November 18, 2008, it does appear from the information that I have reviewed that Shirley Bernstein executed a First Amendment to her trust agreement. The document as executed appears to make only one relatively minor modification to her trust disposition by eliminating a specific gift to Ted



Bernstein's stepson. In January of 2013 a First Amendment to the Shirley Bernstein Trust Agreement was provided to Christine Yates, Esq. who, at that time, was representing Eliot Bernstein. The document provided contained a paragraph number 2 which modified the definitional language in Shirley's document so as to permit, by deleting the words "and their respective lineal descendants" from the definition, an exercise of the power of appointment by Simon Bernstein over the Shirley Bernstein Trust to pass equally to all ten grandchildren rather than only six of the grandchildren.

By virtue of The Florida Bar Rules of Professional Conduct, I am duty bound to provide this information to you. Obviously, as a result of the issues and ramifications raised by the allegations, my firm must resign from further representation in all matters relating to the Estates and Trusts of Simon Bernstein and Shirley Bernstein. Furthermore, it is my intent, and I assume also the intent of Robert Spallina, to tender our resignations as personal representatives of the Simon Bernstein Estate and as trustees of the Simon Bernstein Trust. If the majority of the Bernstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity. With regard to the Simon Bernstein Estate, the appointment of the successor would require a court proceeding.

I am obviously upset and distraught over this chain of events and will do all that I reasonably can to correct and minimize any damages to the Bernstein family. As I believe you know, to date there has only been a modest funding of some, but not all, of the continuing trusts for the grandchildren emanating from Shirley's Trust assets.

Very truly yours,

DONALD R. TESCHER

DRT/km
cc: Alan Rose, Esq.

Stansbury's

Exh. 4 (composite emails)

to Tescher depo

Robert Spallina

From: Christine Yates [cty@TrippScott.com]
Sent: Wednesday, January 30, 2013 6:17 AM
To: Robert Spallina
Cc: 'Eliot Ivan Bernstein'
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Heritage Policy

Robert, after discussions with my client, he is not in agreement with the plan proposed below. A more formal letter will follow.

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Tuesday, January 29, 2013 11:43 AM
To: Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Heritage Policy

I am following up on our telephone conference from last week. Ted has contacted me about circulating a draft of the settlement agreement that would be presented to the court. Again, prior to preparing an agreement, I want to make sure that you are ALL in agreement that the proceeds do not come to the estate. I can tell you that your father planned his estate intending and believing that the five children would split the proceeds equally. We would like to see his wishes carried out and not have the proceeds paid to the estate where they could be subject to creditor claims prior to being split in equal shares among the grandchildren. Please advise if you are in agreement to move forward to petition the court for an order that would split the proceeds equally among the five of you.

Robert L. Spallina, Esq.
TESCHER & SPALLINA, P.A.
4855 Technology Way, Suite 720
Boca Raton, Florida 33431
Telephone: 561-997-7008
Facsimile: 561-997-7308
E-mail: rspallina@tescherspallina.com

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at www.tescherspallina.com

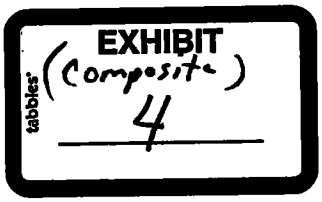
The information contained in this message is legally privileged and confidential information intended only for the use of the individual or entity named above. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. If you have received this communication in error, please immediately notify us by e-mail or telephone. Thank you.

From: Robert Spallina
Sent: Wednesday, January 23, 2013 1:14 PM
To: Ted Bernstein
Cc: Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates; Kimberly Moran
Subject: Re: Heritage Policy

Kim will send.

Sent from my iPhone

On Jan 23, 2013, at 1:11 PM, "Ted Bernstein" <tbernstein@lifeinsuranceconcepts.com> wrote:



From: Jill Iantoni [jilliantoni@gmail.com]
Sent: Tuesday, January 29, 2013 3:39 PM
To: Robert Spallina
Subject: Re: Heritage Policy

Thanks

Jill Iantoni
Iantoni_jill@ne.bah.com
Recruiting Services
Booz | Allen | Hamilton

On Jan 29, 2013, at 2:03 PM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:

> The claim could be open for a long time but if it is cleared up then the money would be free from creditor claims. I do not know if there is a time frame for a pay out but if the proceeds are paid to the estate then your father's intent is not carried out.
>
> **From:** Jill Iantoni [mailto:jilliantoni@gmail.com]
> **Sent:** Tuesday, January 29, 2013 12:45 PM
> **To:** Robert Spallina
> **Cc:** Jill Iantoni
> **Subject:** Re: Heritage Policy
>
> Hi Robert,
>
> If the money stays at the insurance company until the Bill S. claim is cleared up, can we then decide if ALL five are in agreement and if not, wouldn't that money be free from creditors at that point? Is there a time fram that the money has to leave the insurance company and be paid out?
>
> Thanks.
> Jill
>
> On Tue, Jan 29, 2013 at 10:42 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:
>
> I am following up on our telephone conference from last week. Ted has contacted me about circulating a draft of the settlement agreement that would be presented to the court. Again, prior to preparing an agreement, I want to make sure that you are ALL in agreement that the proceeds do not come to the estate. I can tell you that your father planned his estate intending and believing that the five children would split the proceeds equally. We would like to see his wishes carried out and not have the proceeds paid to the estate where they could be subject to creditor claims prior to being split in equal shares among the grandchildren. Please advise if you are in agreement to move forward to petition the court for an order that would split the proceeds equally among the five of you.

From: Jill Iantoni [mailto:jil" ni@gmail.com]
Sent: Thursday, January 24, 2013 3:12 PM
To: Robert Spallina
Cc: Jill Iantoni
Subject: Bernstein Estate 1/24/2013

Hi Robert,

thanks for todays call. Three questions.

One, if the 5 kids do NOT all agree that we should split the insurance proceeds amongst the 5 of us, what happens to the insurance proceeds? Can 4 out of 5 (or whatever the number is) over rule and move forward with the court hearing requesting that the insurance proceeds get paid out to the 5 children? If that is a NO, do the proceeds go directly to the estate? If the answer is the 10 grandchildren, will that be subject to creditors or would that money get paid out quickly (just as it would to the 5 of us) and avoid any potential law suit/creditors?

Two, if any of the 5 children have personal counsel representing them, are they allowed to have their bills sent to you/Estate for payment? If yes, is there a provision that the others can put in place that regulates the amount/or a provision that states it come out of their child(ren) portion of the estate?

Can you also clarify, that based on the conversation today, there is a chance that Bill S. case will be null and void and even if it is not, it is not towards Si Bernstein or his estate? Did I understand that correctly?

Thanks so much,

Jill

Robert Spallina

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]
Sent: Tuesday, January 22, 2013 1:34 PM
To: Robert Spallina; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: RE: Heritage Policy

Robert,

We are in the midst of arranging a phone call between myself, Pam, Eliot, Christine Yates, Jill and Lisa. We were hoping to have that call today but Christine cannot make it until Thursday. I think it is imperative for this call to occur prior to anything else being done, including your call with their legal department. This way, we can establish whether there is going to be an agreement among the 5 of us, or not.

I completely agree with your assessment below of the options available here.

Please feel free to call me to discuss.

Ted

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Tuesday, January 22, 2013 12:16 PM
To: Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: Heritage Policy

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

BT000069

Stansbury's

Exh. 5

to Tescher Depo

502012CP004391XXXXSB

IZ

WILL OF

SIMON L. BERNSTEIN

2012 OCT -2 AM 9:32

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CTY BRANCH-FILED

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

LAW OFFICES

TESCHER & SPALLINA, P.A.

EXHIBIT

tabbies

5

CFN 20120398293, OR BK 25507 PG 1559,RECORDED 10/05/2012 10:40:46

WILL OF

SIMON L. BERNSTEIN

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. I am a widower, but in the event that I marry subsequent to the execution of this Will, I specifically make no provision for my spouse. My children are TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if no child of mine survives me, this property shall pass with the residue of my estate.

ARTICLE II. EXERCISE OF POWER OF APPOINTMENT

Under Subparagraph E.1. of Article II. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "***Shirley Trust***"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and the Family Trust established under the Shirley Trust. Pursuant to the power granted to me under the Shirley Trust, upon my death, I hereby direct the then serving Trustees of the Marital Trust and the Family Trust to divide the remaining trust assets into equal shares for my then living grandchildren and distribute said shares to the then serving Trustees of their respective trusts established under Subparagraph II.B. of my Existing Trust, as referenced below, and administered pursuant to Subparagraph II.C. thereunder.

ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate, including my homestead, to the Trustee then serving under my revocable Trust Agreement dated May 20, 2008, as amended and restated from time to time and on even date herewith (the "***Existing Trust***"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in Article II., above, and in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust and shall be held under

the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

ARTICLE IV. PERSONAL REPRESENTATIVES

1. **Appointment and Bond.** I appoint ROBERT L. SPALLINA and DONALD R. TESCHER to serve together as my co-Personal Representatives, or either of them alone as Personal Representative if either of them is unable to serve (the "***fiduciary***"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. **Powers of Personal Representatives.** My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "***estate***"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. Distributions or Divisions. To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. Management. To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. Borrowing. To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the

estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "***Business Entities***"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the

operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorised and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. **Survivorship.** A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. **Death Costs.** My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Article I of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs. If the amount of the above-described taxes, and interest and penalties arising by reason of my death (without regard to where payable from under the terms of this paragraph or applicable law) is increased because of the power of appointment granted to me under Subparagraph II.E.1. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, I hereby appoint to my probate estate from the property subject to such power (to the extent allowable under such power) the amount of such increase (calculating such increase at the highest applicable marginal rates) and exercise such power to this extent only, and notwithstanding the other provisions of this paragraph further direct my fiduciary to make payment of such increase in taxes,

interest and penalties to the appropriate taxing authorities from the appointed property or the proceeds thereof. Any trustee holding such appointive property may pay to my fiduciary the amount which my fiduciary certifies as due under this paragraph and is not responsible for the correctness or application of amounts so paid.

5. **Reimbursement for Debts and Expenses**. My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. **Expenses of Handling Tangible Personal Property**. All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. **Dealing with Estate**. Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. **Spouse**. The term "***spouse***" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. **Other Beneficiary Designations**. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

[remainder of page intentionally left blank]

I have published and signed this instrument as my Will at Boca Raton, Florida, on the 24 day of July, 2012.

SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this 24 day of July, 2012.

[Witness Signature] residing at ROBERT L. SPALLINA
7387 WISTERIA AVENUE
PARKLAND, FL 33076
[Witness Address]

[Witness Address]

Kimberly Moran residing at Kimberly Moran
6362 Las Flores Drive
Boca Raton, FL 33433
[Witness Address]

[Witness Address]

State Of Florida

SS.

County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

SIMON L. BERNSTEIN, Testator

We, Robert L. Spallina and Kimberly Moran, have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

Witness

Kimberly Moran

Witness

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and Kimberly Moran, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this 25 day of July, 2012.

Signature - Notary Public-State of Florida

Lindsay Baxley

Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]

NOTARY PUBLIC-STATE OF FLORIDA
Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO, INC.

Stansbury's

Exh. 6

to Teschner depo

Detail by Entity Name

Florida Limited Liability Company

BERNSTEIN FAMILY REALTY LLC

Filing Information

Document Number	L08000054043
FEI/EIN Number	26-2735064
Date Filed	06/02/2008
State	FL
Status	ACTIVE
Last Event	REINSTATEMENT
Event Date Filed	09/29/2010
Event Effective Date	NONE

Principal Address

2753 NW 34th Street
BOCA RATON, FL 33434

Changed: 04/12/2013

Mailing Address

Oppenheimer Trust Company of DE
405 Silverside Road
Suite 250
Wilmington, DE 19809

Changed: 03/19/2014

Registered Agent Name & Address

T & S REGISTERED AGENTS, LLC
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL 33431

Name Changed: 04/20/2009

Address Changed: 04/20/2009

Authorized Person(s) Detail

Name & Address

Title MGR

EXHIBIT
tabbies
6

Oppenheimer Trust Company
Oppenheimer Trust Company of DE
405 Silverside Road
Suite 250
Wilmington, DE 19809

Annual Reports

Report Year	Filed Date
2012	01/05/2012
2013	04/12/2013
2014	03/19/2014

Document Images

03/19/2014 -- ANNUAL REPORT	View image in PDF format
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04/14/2011 -- ANNUAL REPORT	View image in PDF format
09/29/2010 -- REINSTATEMENT	View image in PDF format
04/20/2009 -- ANNUAL REPORT	View image in PDF format
06/02/2008 -- Florida Limited Liability	View image in PDF format

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State of Florida, Department of State

2012 LIMITED LIABILITY COMPANY ANNUAL REPORT

FILED
Jan 05, 2012
Secretary of State

DOCUMENT# L08000054043

Entity Name: BERNSTEIN FAMILY REALTY LLC

Current Principal Place of Business:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487

New Principal Place of Business:

Current Mailing Address:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487

New Mailing Address:

FEI Number: **FEI Number Applied For ( )** **FEI Number Not Applicable (X)** **Certificate of Status Desired ( )**

Name and Address of Current Registered Agent:

T & S REGISTERED AGENTS, LLC
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL 33431 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent — Date

MANAGING MEMBERS/MANAGERS:

Title: MGR
Name: BERNSTEIN, SIMON
Address: 950 PENINSULA CORPORATE CIRCLE STE 3010
City-St-Zip: BOCA RATON, FL 33431 US

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statues.

SIGNATURE: SIMON BERNSTEIN MR 01/05/2012

Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

2013 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L08000054043

Entity Name: BERNSTEIN FAMILY REALTY LLC

Current Principal Place of Business:

2753 NW 34TH STREET
BOCA RATON, FL 33434

Current Mailing Address:

OPPENHEIMER TRUST COMPANY
18 COLUMBIA TURNPIKE, 3RD FLOOR
FLORHAM PARK, NJ 07932 US

FEI Number: 26-2735064

FILED
Apr 12, 2013
Secretary of State
CC1945368356

Certificate of Status Desired: Yes

Name and Address of Current Registered Agent:

T & S REGISTERED AGENTS, LLC
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL 33431 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent — Date

Authorized Person(s) Detail :

Title	MGR
Name	OPPENHEIMER TRUST COMPANY
Address	OPPENHEIMER TRUST COMPANY 18 COLUMBIA TURNPIKE, 3RD FLOOR
City-State-Zip:	FLORHAM PARK NJ 07932

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: OPPENHEIMER TRUST COMPANY BY: JANET CRAIG SENIOR VICE PRESIDENT 04/12/2013

Electronic Signature of Signing Authorized Person(s) Detail — Date

Stansbury's

Exh. 7

to Tescher Depo

Electronic Articles of Organization For Florida Limited Liability Company

L08000013540
FILED 8:00 AM
February 06, 2008
Sec. Of State
gharvey

Article I

The name of the Limited Liability Company is:

BERNSTEIN HOLDINGS, LLC

Article II

The street address of the principal office of the Limited Liability Company is:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL. US 33487

The mailing address of the Limited Liability Company is:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL. US 33487

Article III

The purpose for which this Limited Liability Company is organized is:

ANY AND ALL LAWFUL BUSINESS.

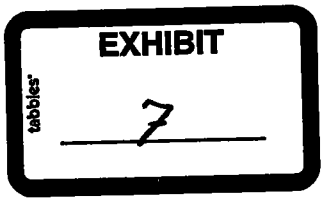
Article IV

The name and Florida street address of the registered agent is:

DONALD R TESCHER
2101 CORPORATE BOULEVARD
SUITE 107
BOCA RATON, FL. 33431

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: DONALD R. TESCHER



Article V

L08000013540
FILED 8:00 AM
February 06, 2008
Sec. Of State
gharvey

The name and address of managing members/managers are:

Title: MGR
SIMON BERNSTEIN
950 PENINSULA CORPORATE CIRCLE, SUITE 3010
BOCA RATON, FL. 33487 US

Signature of member or an authorized representative of a member

Signature: ROBERT L. SPALLINA

2013 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L08000013540

Entity Name: BERNSTEIN HOLDINGS, LLC

Current Principal Place of Business:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487

Current Mailing Address:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487 US

FEI Number: NOT APPLICABLE

FILED
Apr 12, 2013
Secretary of State
CC4926529278

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

T & S REGISTERED AGENTS, LLC
4855 TECHNOLOGY WAY, SUITE720
BOCA RATON
BOCA RATON, FL 33431 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent — Date

Authorized Person(s) Detail :

Title	MGR
Name	SPALLINA, ROBERT L
Address	4855 TECHNOLOGY WAY SUITE 720
City-State-Zip:	BOCA RATON FL 33431

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: ROBERT L. SPALLINA MGR 04/12/2013

Electronic Signature of Signing Authorized Person(s) Detail — Date

2012 LIMITED LIABILITY COMPANY ANNUAL REPORT

FILED
Jan 05, 2012
Secretary of State

DOCUMENT# L08000013540

Entity Name: BERNSTEIN HOLDINGS, LLC

Current Principal Place of Business:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487 US

New Principal Place of Business:

Current Mailing Address:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487 US

New Mailing Address:

FEI Number: **FEI Number Applied For ( )** **FEI Number Not Applicable (X)** **Certificate of Status Desired ( )**

Name and Address of Current Registered Agent:

T & S REGISTERED AGENTS, LLC
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON
BOCA RATON, FL 33431 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent — Date

MANAGING MEMBERS/MANAGERS:

Title: MGR
Name: BERNSTEIN, SIMON
Address: 950 PENINSULA CORPORATE CIRCLE, SUITE 3010
City-St-Zip: BOCA RATON, FL 33487 US

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statues.

SIGNATURE: SIMON BERNSTEIN MR 01/05/2012

Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

Electronic Articles of Organization For Florida Limited Liability Company

L08000013540
FILED 8:00 AM
February 06, 2008
Sec. Of State
gharvey

Article I

The name of the Limited Liability Company is:

BERNSTEIN HOLDINGS, LLC

Article II

The street address of the principal office of the Limited Liability Company is:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL. US 33487

The mailing address of the Limited Liability Company is:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL. US 33487

Article III

The purpose for which this Limited Liability Company is organized is:

ANY AND ALL LAWFUL BUSINESS.

Article IV

The name and Florida street address of the registered agent is:

DONALD R TESCHER
2101 CORPORATE BOULEVARD
SUITE 107
BOCA RATON, FL. 33431

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: DONALD R. TESCHER

LAW OFFICES
TESCHER & SPALLINA, P.A.

BOCA VILLAGE CORPORATE CENTER I
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FLORIDA 33431

TEL: 561-997-7008
FAX: 561-997-7308
TOLL FREE: 888-997-7008
WWW.TESCHERSPALLINA.COM

ATTORNEYS
DONALD R. TESCHER
ROBERT L. SPALLINA
LAUREN A. GALVANI

SUPPORT STAFF
DIANE DUSTIN
KIMBERLY MORAN
SUANN TESCHER

October 11, 2012

VIA EMAIL
Gavin McNally, Associate Banker
J.P. Morgan Private Bank
205 Royal Palm Way
Palm Beach, FL 33480

Re: Bernstein Holdings, LLC

Dear Gavin:

This letter serves to state that due to the passing of Simon L. Bernstein, there is a change in management and signers of Bernstein Holdings, LLC. The members of the LLC have designated me as manager of the partnership until such time as there is a distribution of the Bernstein Estate.

If you have any questions, please do not hesitate to contact me.

Sincerely,

ROBERT L. SPALLINA

RLS/km

Stansbury's

Exh. 8

to Fischer depo

Certificate of Limited Partnership

A08000000154
FILED
February 15, 2008
Sec. Of State
gharvey

Name of Limited Partnership:

BERNSTEIN FAMILY INVESTMENTS, LLLP

Street Address of Limited Partnership:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL. US 33487

Mailing Address of Limited Partnership:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL. US 33487

The name and Florida street address of the registered agent is:

DONALD R TESCHER
2101 CORPORATE BLVD.
SUITE 107
BOCA RATON, FL. 33431

I certify that I am familiar with and accept the responsibilities of registered agent.

Registered Agent Signature: DONALD R. TESCHER

The name and address of all general partners are:

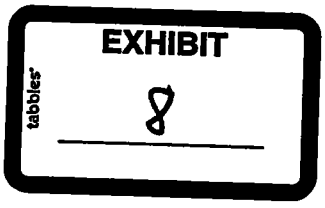
Title: G
BERNSTEIN HOLDINGS, LLC
950 PENINSULA CORPORATE CIRCLE SUITE 3010
BOCA RATON, FL. 33487 US

This Limited Partnership is a Limited Liability Limited Partnership.

Signed this Fifteenth day of February, 2008

I (we) declare the I (we) have read the foregoing and know the contents thereof and that the facts stated herein are true and correct.

General Partner Signature: ROBERT L. SPALLINA



Detail by Entity Name

Florida Limited Partnership

BERNSTEIN FAMILY INVESTMENTS, LLLP

Filing Information

Document Number	A08000000154
FEI/EIN Number	262124343
Date Filed	02/15/2008
State	FL
Status	INACTIVE
Last Event	REVOKED FOR ANNUAL REPORT
Event Date Filed	09/27/2013
Event Effective Date	NONE

Principal Address

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487

Mailing Address

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487

Registered Agent Name & Address

T & S REGISTERED AGENTS, LLC
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL 33431

Name Changed: 04/17/2009

Address Changed: 04/17/2009

General Partner Detail

Name & Address

Document Number L08000013540

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State of Florida, Department of State

BERNSTEIN HOLDINGS, LLC
950 PENINSULA CORPORATE CIRCLE SUITE 3010
BOCA RATON, FL 33487

Annual Reports

Report Year	Filed Date
2010	09/30/2010
2011	04/18/2011
2012	01/03/2012

Document Images

01/03/2012 -- ANNUAL REPORT	View image in PDF format
04/18/2011 -- ANNUAL REPORT	View image in PDF format
09/30/2010 -- REINSTATEMENT	View image in PDF format
04/17/2009 -- ANNUAL REPORT	View image in PDF format
02/15/2008 -- Domestic LP	View image in PDF format

2012 LIMITED PARTNERSHIP ANNUAL REPORT

DOCUMENT# A08000000154

FILED
Jan 03, 2012
Secretary of State

Entity Name: BERNSTEIN FAMILY INVESTMENTS, LLLP

Current Principal Place of Business:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487 US

New Principal Place of Business:

Current Mailing Address:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487 US

New Mailing Address:

FEI Number: 26-2124343 **FEI Number Applied For ( )** **FEI Number Not Applicable ( )** **Certificate of Status Desired ( )**

Name and Address of Current Registered Agent:

T & S REGISTERED AGENTS, LLC
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL 33431 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent — Date

GENERAL PARTNER INFORMATION:

Document #: L08000013540
Name: BERNSTEIN HOLDINGS, LLC
Address: 950 PENINSULA CORPORATE CIRCLE SUITE 3010
City-St-Zip: BOCA RATON, FL 33487 US

ADDRESS CHANGES ONLY:

Address:
City-St-Zip:

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a General Partner of the limited partnership or the receiver or trustee empowered to execute this report as required by Chapter 620, Florida Statutes.

SIGNATURE: SIMON BERNSTEIN MR 01/03/2012

Electronic Signature of Signing General Partner — Date

J.P. Morgan Account Suitability Supplement

J.P.Morgan

A. Account Information (required for JPMS Brokerage and Investment Management accounts)

Title of Account: BERNSTEIN FAMILY INVESTMENT LLLP

Personal Accounts

☐ Individual ☐ Joint (JTWROS/JAWROS for TX residents) ☐ Tenants in Common ☐ Tenants by the Entirety
☐ Community Property ☐ Transfer on Death (TOD) ☐ UTMA/UGMA ☐ IRA

Primary Account Owner:
Number of Dependents _____ Name of Employer _____ Occupation/ Position _____

Owner Annual Income ($)_____ Liquid Net Worth ($)_____ Total Net Worth excl. primary residence ($)_____

Joint Account Owner:
Annual Income ($)_____

Entity Accounts

☐ Corporation ☐ Partnership ☐ PIC/PHC *(applicable to international entities only)* ☐ Sole Priprietorship
☐ Foundation ☐ Endowment ☐ Limited Liability Company ☒ Limited Liability Partnership ☐ Other Non Profit

Annual Income ($) 500K Liquid Net Worth ($) 5.0MM Total Net Worth ($) 12.0MM

Trust/Estate Accounts

☐ Trust ☐ Estate ☐ Endowment ☐ Foundation ☐ ERISA Plan ☐ Other Charitable Trust ☐ Other _____

Trust/Estate Liquid Net Worth ($)_____ Trust/Estate Total Net Worth ($)_____

B. Affiliations (required for JPMS Brokerage and Investment Management accounts)

Applicable to account owners or authorized signers or trustees and executors.

I, my spouse, or immediate family member who receives material support from me or gives material support to me is, or has been, a director, corporate officer, control person, affiliate or an owner of 10% of a public corporation's stock: ☐ Yes ☒ No

If yes, name of person_____ Name of corporation_____

If yes, is the corporation traded publicly on a U.S. Stock exchange? ☐ Yes ☐ No

I, my spouse, immediate family member who receives material support from me or gives material support to me, or an individual controlling the account is employed by or associated with a Broker-Dealer: ☐ Yes ☒ No

If yes*, name of Broker-Dealer_____ Name of employee/assoc._____

Accountholder or immediate family member or another household member is an employee of a financial institution or insurance company: ☐ Yes ☒ No

If yes*, name of institution_____ Name of employee/assoc._____

*If Yes, Broker-Dealer and FINRA member financial institutions must provide written permission on corporate letterhead to open a Brokerage, Margin, or Investment Management account.

C. Brokerage Account Information (required for JPMS Brokerage accounts only)

Investment Profile

My objective for this account (check one): ☒ Capital Preservation ☐ Income Generation ☐ Capital Appreciation

Speculative or aggressive investments that may generate higher returns but may be riskier than other investments because I may lose all or part of my investment (check one): ☒ Are permitted in this account ☐ Are not permitted in this account

Primary source of income: ☐ Investments ☐ Compensation ☐ Pension ☐ Other_____

Please indicate the number of years of personal trading experience for the authorized party(s) on this account:

Stocks 30 Bonds 30 FX 10 Structured Products 0 Options 20 Emerging Markets 10 Hedge Funds /Private Placements 10 Futures/ Commodities 10 Mutual Funds 0

I currently have brokerage accounts with the following firms:_____

Approximate value of investable assets held away from the firm? $_____

Those assets are invested in the following Asset Classes: ☐ Equities ☐ Fixed Income & Cash ☐ Alternative Investments ☐ Other

Most of those assets are invested in: ☐ Equities ☐ Fixed Income & Cash ☐ Alternative Investments ☐ Other

Check only one selection for Investment Time Horizon, Primary Liquidity Needs, and Secondary Liquidity Needs

Investment Time Horizon:	☐ Less than 1 year	☐ 1-5 years	☐ 6-10 years	☐ Greater than 10 years
Primary Liquidity Needs:	☐ Short Term	☐ Medium Term	☐ Long Term	☐ None
Secondary Liquidity Needs:	☐ Short Term	☐ Medium Term	☐ Long Term	☐ None

Stansbury's
Exh. 9
to Tescher Depo

Electronic Articles of Incorporation For

SHIRLEY BERNSTEIN FAMILY FOUNDATION, INC.

N08000000944
FILED
January 30, 2008
Sec. Of State
epeterson

The undersigned incorporator, for the purpose of forming a Florida not-for-profit corporation, hereby adopts the following Articles of Incorporation:

Article I

The name of the corporation is:

SHIRLEY BERNSTEIN FAMILY FOUNDATION, INC.

Article II

The principal place of business address:

7020 LIONS HEAD LANE
BOCA RATON, FL. US 33496

The mailing address of the corporation is:

7020 LIONS HEAD LANE
BOCA RATON, FL. US 33496

Article III

The specific purpose for which this corporation is organized is:

IT IS A CHARITABLE PRIVATE FOUNDATION TO SUPPORT PUBLIC CHARITIES.

Article IV

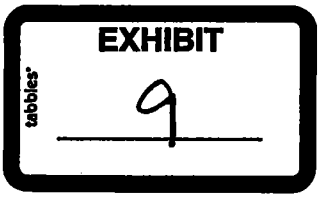
The manner in which directors are elected or appointed is:

AS PROVIDED FOR IN THE BYLAWS.

Article V

The name and Florida street address of the registered agent is:

DONALD R TESCHER
2101 CORPORATE BOULEVARD
SUITE 107
BOCA RATON, FL. 33431



I certify that I am familiar with and accept the responsibilities of registered agent.

N08000000944
FILED
January 30, 2008
Sec. Of State
epeterson

Registered Agent Signature: DONALD R. TESCHER

Article VI

The name and address of the incorporator is:

DONALD R. TESCHER
2101 CORPORATE BOULEVARD
SUITE 107
BOCA RATON, FL 33431

Incorporator Signature: DONALD R. TESCHER

Article VII

The initial officer(s) and/or director(s) of the corporation is/are:

Title: P
SIMON BERNSTEIN
7020 LIONS HEAD LANE
BOCA RATON, FL. 33496 US

Title: T
SHIRLEY BERNSTEIN
7020 LIONS HEAD LANE
BOCA RATON, FL. 33496 US

Title: S
TRACI KRATISH
950 PENINSULA CORPORATE CIRCLE, SUITE 3010
BOCA RATON, FL. 33487 US

Stansbury's

Exh. 10

to Teacher's depo

FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS

Detail by Entity Name

Florida Limited Liability Company

TWO OAKS CONSULTING, LLC

Filing Information

Document Number	L06000106492
FEI/EIN Number	205792177
Date Filed	11/01/2006
State	FL
Status	INACTIVE
Effective Date	10/30/2006
Last Event	ADMIN DISSOLUTION FOR ANNUAL REPORT
Event Date Filed	09/28/2012
Event Effective Date	NONE

Principal Address

2600 WHISPERING OAKS LANE
DELRAY BEACH, FL 33445

Mailing Address

2600 WHISPERING OAKS LANE
DELRAY BEACH, FL 33445

Registered Agent Name & Address

TESCHER, SUANN L
2600 WHISPERING OAKS LANE
DELRAY BEACH, FL 33445

Authorized Person(s) Detail

Name & Address

Title MGR

TESCHER, SUANN L
2600 WHISPERING OAKS LANE
DELRAY BEACH, FL 33445

Annual Reports

Report Year	**Filed Date**

EXHIBIT
tabbies
10

2009	02/11/2009
2010	04/05/2010
2011	03/04/2011

Document Images

03/04/2011 -- ANNUAL REPORT	View image in PDF format
04/05/2010 -- ANNUAL REPORT	View image in PDF format
02/11/2009 -- ANNUAL REPORT	View image in PDF format
02/29/2008 -- ANNUAL REPORT	View image in PDF format
02/23/2007 -- ANNUAL REPORT	View image in PDF format
11/01/2006 -- Florida Limited Liability	View image in PDF format

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State of Florida, Department of State

Stansbury's

Exh. 11-A, 11-B, 11-C
to Tescher's depo

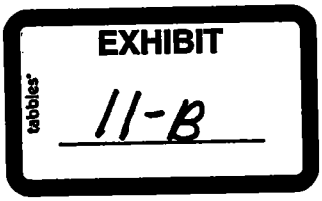
Arbitrage International Management LLC
Reconciliation Detail
Cash - Wachovia, Period Ending 09/29/2006

Type	Date	Num	Name	Clr	Amount	Balance
Check	10/17/2006		Larry Bishins		-25,000.00	-473,970.06
Check	10/17/2006	2010	Sarita Roche		-2,000.00	-475,970.06
Check	10/17/2006	2009	ADT		-1,150.00	-477,120.06
Check	10/17/2006	2011	Ideal Tile		-500.64	-477,620.70
Check	10/17/2006	2007	Traci Kratish		-371.25	-477,991.95
Check	10/17/2006	2012	Sal Gorge		-365.75	-478,357.70
Check	10/18/2006	2013	Ransom Jones		-9,841.87	-488,199.57
Check	10/18/2006	2014	HPA Solida Floorin...		-625.00	-488,824.57
Check	10/19/2006	2017	Today's Business In...		-2,907.50	-491,732.07
Check	10/19/2006	2015	P&M Treasure Coa...		-1,700.00	-493,432.07
Check	10/19/2006	2016	Kinkos		-63.77	-493,495.84
Check	10/23/2006	EFT	Ted Bernstein		-17,000.00	-510,495.84
Check	10/23/2006	2023	21st Holdings, LLC		-1,820.00	-512,315.84
Check	10/23/2006	2020	William Alvarez		-1,000.00	-513,315.84
Check	10/23/2006	2022	Bill Stansbury		-741.42	-514,057.26
Check	10/23/2006	2018	Ron Galli		-425.47	-514,482.73
Check	10/23/2006	2019	Lisa Bruder		-356.50	-514,839.23
Check	10/23/2006	2021	Bill Stansbury		-100.00	-514,939.23
Check	10/24/2006	2024	Al Prince		-120,249.00	-635,188.23
Check	10/24/2006	2025	Telenet Systems, Inc		-9,825.00	-645,013.23
Check	10/24/2006		National Service As...		-8,800.00	-653,813.23
Check	10/24/2006	EFT	George J Karr DDS,...		-1,150.00	-654,963.23
Check	10/25/2006	2026	American Express		-4,559.60	-659,522.83
Check	10/25/2006	2028	Blue Box Design		-260.00	-659,782.83
Check	10/26/2006	2029	Glenn Dattile		-525.00	-660,307.83
Check	10/26/2006	ATM	Cash		-202.00	-660,509.83
Check	10/26/2006	2030	Juliana Goldman		-27.67	-660,537.50
Check	10/26/2006	ATM	Cash		-9.02	-660,546.52
Check	10/27/2006	VISA	Summit Van Lines, ...		-1,724.00	-662,270.52
Check	10/27/2006	2073	Ted Bernstein		-194.63	-662,465.15
Check	10/27/2006	VISA	Target		-129.75	-662,594.90
Check	10/27/2006	VISA	Dunkin Donuts		-14.18	-662,609.08
Check	10/28/2006	ATM	Cash		-500.00	-663,109.08
Check	10/28/2006	VISA	Dunkin Donuts		-13.75	-663,122.83
Check	10/29/2006	ATM	Cash		-202.00	-663,324.83
Check	10/30/2006	2035	Carls Furniture		-4,289.59	-667,614.42
Check	10/30/2006	2032	Petty Cash		-1,200.00	-668,814.42
Check	10/30/2006	2074	Ted Bernstein		-399.37	-669,213.79
Check	10/30/2006	2033	Juliana Goldman		-88.56	-669,302.35
Check	10/30/2006	2034	Diana Banks		-86.49	-669,388.84
Check	10/31/2006	2036	Signal US Commun...		-2,955.00	-672,343.84
Check	10/31/2006	2037	Signal US Commun...		-1,240.00	-673,583.84
Check	11/1/2006	2047	Two Oaks Consultin...		-55,000.00	-728,583.84
Check	11/1/2006	2046	Tescher Gutter Cha...		-45,000.00	-773,583.84
Check	11/1/2006	2075	Ransom Jones		-10,272.97	-783,856.81
Check	11/1/2006	2045	Banner Technologie...		-8,136.60	-791,993.41
Check	11/1/2006	2076	Ransom Jones		-333.67	-792,327.08
Check	11/1/2006	2048	Fred Braun		-150.00	-792,477.08
Check	11/1/2006	2038	Woodbridge Florist		-53.25	-792,530.33
Check	11/2/2006	2077	Cash		-35,000.00	-827,530.33
Bill Pmt -Check	11/2/2006	2078	Boz Admin Group		-2,125.00	-829,655.33
Bill Pmt -Check	11/3/2006	2088	Greenberg Traurig		-25,000.00	-854,655.33
Bill Pmt -Check	11/3/2006	2098	FedEx		-1,042.12	-855,697.45
Bill Pmt -Check	11/3/2006	2091	BellSouth		-524.35	-856,221.80
Bill Pmt -Check	11/3/2006	2095	Cingular Wireless		-483.14	-856,704.94
Bill Pmt -Check	11/3/2006	2097	Cingular Wireless		-377.74	-857,082.68
Bill Pmt -Check	11/3/2006	2089	UPS		-326.61	-857,409.29
Bill Pmt -Check	11/3/2006	2094	BellSouth		-99.12	-857,508.41
Bill Pmt -Check	11/3/2006	2093	FPL		-90.00	-857,598.41
Bill Pmt -Check	11/3/2006	2092	Cingular Wireless		-71.44	-857,669.85
Bill Pmt -Check	11/3/2006	2090	FPL		-70.00	-857,739.85
Check	11/3/2006	2100	Maroone Volvo		-42.46	-857,782.31
Check	11/3/2006	ATM	Cingular Wireless		-31.94	-857,814.25
Bill Pmt -Check	11/3/2006	2096	BellSouth		-31.76	-857,846.01
Check	11/3/2006	ATM	Starbucks		-9.53	-857,855.54

EXHIBIT
tabbies
11-A

Arbitrage International Management LLC
Reconciliation Detail
Cash - Wachovia, Period Ending 11/30/2006

Type	Date	Num	Name	Clr	Amount	Balance
Beginning Balance						1,960,376.72
Cleared Transactions						
Checks and Payments - 127 items						
Bill Pmt -Check	10/7/2006	2079	Aetna	X	-2,688.00	-2,688.00
Bill Pmt -Check	10/7/2006	2085	Office Depot	X	-1,435.74	-4,123.74
Bill Pmt -Check	10/7/2006	2087	Tax Collector, Palm...	X	-857.90	-4,981.64
Bill Pmt -Check	10/7/2006	2083	FPL	X	-220.33	-5,201.97
Bill Pmt -Check	10/7/2006	2086	PitneyBowes	X	-206.99	-5,408.96
Bill Pmt -Check	10/7/2006	2080	Avaya, Inc.	X	-95.10	-5,504.06
Bill Pmt -Check	10/7/2006	2084	InterCall	X	-40.08	-5,544.14
Bill Pmt -Check	10/7/2006	2081	Dell	X	-16.03	-5,560.17
Check	10/17/2006	2007	ADT	X	-1,150.00	-6,710.17
Check	10/17/2006	2012	Sal Gorge	X	-365.75	-7,075.92
Check	10/23/2006	2023	21st Holdings, LLC	X	-1,820.00	-8,895.92
Check	10/23/2006	2020	Bill Stansbury	X	-100.00	-8,995.92
Check	10/25/2006	2028	Blue Box Design	X	-260.00	-9,255.92
Check	10/30/2006	2034	Juliana Goldman	X	-88.56	-9,344.48
Check	10/31/2006	2036	Signal US Commun...	X	-2,955.00	-12,299.48
Check	10/31/2006	2037	Signal US Commun...	X	-1,240.00	-13,539.48
Check	10/31/2006	VISA	Uncle Tal's	X	-167.62	-13,707.10
Check	11/1/2006	2045	Two Oaks Consultin...	X	-55,000.00	-68,707.10
Check	11/1/2006	2046	Tescher Gutter Cha...	X	-45,000.00	-113,707.10
Check	11/1/2006	2075	Ransom Jones	X	-10,272.97	-123,980.07
Check	11/1/2006	2047	Banner Technologie...	X	-8,136.60	-132,116.67
Check	11/1/2006	2076	Ransom Jones	X	-333.67	-132,450.34
Check	11/1/2006	2048	Fred Braun	X	-150.00	-132,600.34
Check	11/1/2006	2038	Woodbridge Florist	X	-53.25	-132,653.59
Check	11/2/2006	2077	Cash	X	-35,000.00	-167,653.59
Bill Pmt -Check	11/2/2006	2078	Boz Admin Group	X	-2,125.00	-169,778.59
Check	11/2/2006	VISA	Home Decorators Co	X	-711.71	-170,490.30
Check	11/2/2006	VISA	NextStore	X	-57.63	-170,547.93
Bill Pmt -Check	11/3/2006	2088	Greenberg Traurig	X	-25,000.00	-195,547.93
Bill Pmt -Check	11/3/2006	2098	FedEx	X	-1,042.12	-196,590.05
Bill Pmt -Check	11/3/2006	2091	BellSouth	X	-524.35	-197,114.40
Bill Pmt -Check	11/3/2006	2095	Cingular Wireless	X	-483.14	-197,597.54
Bill Pmt -Check	11/3/2006	2097	Cingular Wireless	X	-377.74	-197,975.28
Bill Pmt -Check	11/3/2006	2089	UPS	X	-326.61	-198,301.89
Check	11/3/2006	ATM	Cash	X	-302.00	-198,603.89
Check	11/3/2006	VISA	Abe & Louie's	X	-99.60	-198,703.49
Bill Pmt -Check	11/3/2006	2094	BellSouth	X	-99.12	-198,802.61
Bill Pmt -Check	11/3/2006	2093	FPL	X	-90.00	-198,892.61
Bill Pmt -Check	11/3/2006	2082	DIRECTV	X	-83.33	-198,975.94
Bill Pmt -Check	11/3/2006	2092	Cingular Wireless	X	-71.44	-199,047.38
Bill Pmt -Check	11/3/2006	2090	FPL	X	-70.00	-199,117.38
Check	11/3/2006	2100	Maroone Volvo	X	-42.46	-199,159.84
Check	11/3/2006	ATM	Cingular Wireless	X	-31.94	-199,191.78
Bill Pmt -Check	11/3/2006	2096	BellSouth	X	-31.76	-199,223.54
Check	11/3/2006	ATM	Starbucks	X	-9.53	-199,233.07
Check	11/7/2006	2052	Simon Bernstein	X	-100,000.00	-299,233.07
Check	11/7/2006	VISA	Mike's Cigars Distri...	X	-295.40	-299,528.47
Check	11/8/2006	2051	Donald C. Sider & ...	X	-50,000.00	-349,528.47
Check	11/8/2006	EFT	Transfer	X	-35,000.00	-384,528.47
Check	11/8/2006	EFT	CFC of Delaware LLC	X	-25,000.00	-409,528.47
Check	11/8/2006	2102	Traci Kratish	X	-294.00	-409,822.47
Check	11/8/2006	VISA	Delta Airlines	X	-159.30	-409,981.77
Check	11/8/2006	VISA	Southwest Airlines	X	-137.10	-410,118.87
Check	11/8/2006	VISA	NextStore	X	-41.23	-410,160.10
Check	11/8/2006	VISA	Agent Fee	X	-30.00	-410,190.10
Check	11/9/2006	2053	Simon Bernstein	X	-100,000.00	-510,190.10
Check	11/9/2006	EFT	Paychex	X	-70,000.00	-580,190.10
Check	11/9/2006	EFT	Paychex	X	-39,917.94	-620,108.04
Check	11/9/2006	EFT	CFC of Delaware LLC	X	-28,330.06	-648,438.10
Bill Pmt -Check	11/9/2006	2054	Telenet Systems, Inc	X	-780.00	-649,218.10
Check	11/9/2006	VISA	Henry's	X	-152.49	-649,370.59
Check	11/9/2006	FEE	Wachovia Bank	X	-60.50	-649,431.09
Check	11/9/2006	VISA	NextStore	X	-26.29	-649,457.38
Check	11/10/2006	EFT	CFC of Delaware LLC	X	-50,565.00	-700,022.38
Check	11/10/2006	EFT	Paychex	X	-41,886.52	-741,908.90



Arbitrage International Management LLC
Reconciliation Detail
Cash - Wachovia, Period Ending 01/31/2007

Type	Date	Num	Name	Clr	Amount	Balance
Check	1/16/2007	VISA	Credit One Bank	X	-666.77	-280,443.94
Check	1/16/2007	2249	Traci Kratish	X	-650.11	-281,094.05
Check	1/17/2007	EFT	CFC of Delaware LLC	X	-55,114.00	-336,208.05
Check	1/17/2007	VISA	Wynn Hotel	X	-3,119.84	-339,327.89
Check	1/17/2007	VISA	Hudson News	X	-17.75	-339,345.64
Check	1/18/2007	VISA	NextStore	X	-35.50	-339,381.14
General Journal	1/19/2007	EFT	Paychex Taxpay	X	-8,290.31	-347,671.45
General Journal	1/19/2007	EFT	Paychex DirDep/RCX	X	-5,914.21	-353,585.66
Check	1/19/2007	2245	Case Professional ...	X	-2,000.00	-355,585.66
Check	1/19/2007	2244	Petty Cash	X	-1,000.00	-356,585.66
General Journal	1/19/2007	EFT	Paychex DirDep/RCX	X	-475.90	-357,061.56
General Journal	1/19/2007	EFT	Paychex Taxpay	X	-165.37	-357,226.93
Check	1/19/2007	2242	Petty Cash	X	-125.00	-357,351.93
Check	1/19/2007	VISA	NextStore	X	-6.04	-357,357.97
Check	1/22/2007	2247	Two Oaks Consultin...	X	-30,000.00	-387,357.97
Check	1/22/2007	VISA	Kee Grill	X	-186.02	-387,543.99
Check	1/22/2007	2246	T-Mobile	X	-107.10	-387,651.09
Check	1/22/2007	VISA	Brio	X	-73.13	-387,724.22
General Journal	1/23/2007	EFT	Paychex DirDep/RCX	X	-25,000.00	-412,724.22
General Journal	1/23/2007	EFT	Paychex Taxpay	X	-19,489.07	-432,213.29
Check	1/23/2007	EFT	Cingular Wireless	X	-1,674.58	-433,887.87
Bill Pmt -Check	1/23/2007	2252	William Alvarez	X	-1,330.00	-435,217.87
Check	1/23/2007	EFT	Cingular Wireless	X	-286.64	-435,504.51
Bill Pmt -Check	1/23/2007	2254	AVS Underwriting, ...	X	-225.00	-435,729.51
Bill Pmt -Check	1/23/2007	2257	FedEx	X	-202.75	-435,932.26
Bill Pmt -Check	1/23/2007	2251	Totally Chocolate	X	-20.00	-435,952.26
Check	1/24/2007	EFT	Larry Bishins	X	-20,000.00	-455,952.26
Bill Pmt -Check	1/24/2007	2261	Goldstein Lewin & ...	X	-4,891.70	-460,843.96
Bill Pmt -Check	1/24/2007	2260	FedEx	X	-374.72	-461,218.68
Check	1/24/2007	2265	TeleOptions	X	-326.82	-461,545.50
Check	1/25/2007	EFT	CFC of Delaware LLC	X	-40,418.00	-501,963.50
Check	1/25/2007	VISA	BellSouth	X	-460.83	-502,424.33
Check	1/26/2007	2266	American Express	X	-14,284.85	-516,709.18
Check	1/29/2007	VISA	NextStore	X	-43.50	-516,752.68
Check	1/30/2007	EFT	APS	X	-1,000.00	-517,752.68
Check	1/31/2007	SWE...	Wachovia Bank	X	-1,078,000.00	-1,595,752.68
Check	1/31/2007	VISA	Wine Course	X	-117.00	-1,595,869.68
Check	1/31/2007	EFT	Paychex Taxpay	X	-48.31	-1,595,917.99
Check	1/31/2007	EFT	Paychex Taxpay	X	-42.86	-1,595,960.85
Total Checks and Payments					-1,595,960.85	-1,595,960.85
Deposits and Credits - 9 items						
Deposit	1/2/2007	SWE...	Arbitrage Internatio...	X	1,591,742.47	1,591,742.47
Deposit	1/5/2007	DEP	Coffee Whiz.com	X	23.96	1,591,766.43
Bill Pmt -Check	1/14/2007		David Stern Designi...	X	0.00	1,591,766.43
Check	1/19/2007	2243	Simon Bernstein	X	0.00	1,591,766.43
Deposit	1/29/2007			X	4,587.18	1,596,353.61
Check	1/30/2007	EFT	APS	X	0.00	1,596,353.61
Bill Pmt -Check	1/31/2007	2276	Peninsula Corp., Ltd.	X	0.00	1,596,353.61
Check	2/1/2007	SWE...	Wachovia Bank	X	0.00	1,596,353.61
Bill Pmt -Check	2/6/2007	2295	Blue Box Design	X	0.00	1,596,353.61
Total Deposits and Credits					1,596,353.61	1,596,353.61
Total Cleared Transactions					392.76	392.76
Cleared Balance					392.76	1,129.00

EXHIBIT
tabbies
11-C

Stansbury's

Exh. 12

to Tescher depo

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dated JUNE 21, 1995 / PROBATE DIVISION

FILE NO.:

DECLARATORY ACTION TO ESTABLISH A LOST TRUST AND APPOINT A SUCCESSOR TRUSTEE

COMES NOW TED BERNSTEIN, son of SIMON BERNSTEIN ("SIMON"), deceased, and alleges the following:

Parties, Jurisdiction and Venue

1. This is an action to establish the terms of a lost trust, including the determination of a successor trustee, pursuant to Florida Statutes 86.011, 86.041 and 736.0201(2) and (4).
2. Florida Statutes 86.736.0201 provides, in part, for the Court to intervene in the administration of a trust when invoked by an interested person relating to the validity, administration or distribution of a trust, appoint or remove a trustee and ascertain beneficiaries.
3. Petitioner, TED S. BERNSTEIN ("TED"), is of legal age and a resident of Palm Beach County, Florida, and the former Personal Representative and current trustee of the FAMILY TRUST F/B/O SIMON BERNSTEIN under the SHIRLEY BERNSTEIN REVOCABLE TRUST.
4. SHIRLEY BERNSTEIN is the predeceased spouse of SIMON, who upon information and belief was the Trustee of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST (the "ILIT") , an irrevocable trust established by SIMON on June 21, 1995 .
5. SIMON died on September 13, 2012 and his estate is now being probated in the Circuit Court for Palm Beach County, Florida. SIMON is survived by the following adult children:

EXHIBIT tabbies 12

TED S. BERNSTEIN, resident of Palm Beach County, Florida ;
PAMELA BERNSTEIN, resident of Chicago, Illinois;
ELIOT BERNSTEIN, resident of Palm Beach County, Florida;
JILL IANTONI, resident of Highland Park, Illinois; and
LISA S. FRIEDSTEIN, resident of Highland Park, Illinois (hereinafter sometimes referred to as the "Children").

All of the Children are sui juris and have either executed and filed Consents to the relief sought or have been served with this Petition.

6. Venue of this proceeding is proper in this Court pursuant to Florida Statutes 737.0204 and Chapter 47 because the ILIT's principal place of administration and Trust situs was and remained in Palm Beach County, Florida.

General Allegations

7. Attached as Exhibit "A" is a copy of the Form SS-4, Application for Employer Identification Number, reflecting the name of the ILIT and signed by SHIRLEY as the Trustee and dated June 21, 1995.

8. Diligent search for the ILIT or a copy of it has been made, including inquiry with the insurance carrier, HERITAGE UNION LIFE INSURANCE COMPANY ("HERITAGE"), search of SIMON'S and SHIRLEY's papers and documents, lawyer files and accountant files, and no original or copy has been located.

9. Upon information and belief, the Petitioner, TED, was named as the successor Trustee to SHIRLEY of the ILIT. (See Affidavit of David Simon, Esq., son-in-law of SIMON and SHIRLEY, attached hereto as Exhibit "B").

10. Upon information and belief, the beneficiaries of the ILIT were the children of SIMON and SHIRLEY, in equal shares and per stirpes. (See Affidavit of Robert L. Spallina, Esq., personal attorney to SIMON and SHIRLEY during their lifetimes, attached hereto as Exhibit "C").

11. HERITAGE has advised counsel for the Petitioner that their records reflect the owner of the life insurance policy to be SIMON and the beneficiary to be the ILIT. (See copy of communication from carrier dated _____ attached hereto as Exhibit

"D ").

12. HERITAGE will not settle and pay the death benefit under policy #1009208 until receipt of a court order identifying the successor trustee of the ILIT.

13. In order to avoid delays occasioned by the need to open new banking arrangements for the ILIT to process and distribute the insurance proceeds, TED wishes to authorize HERITAGE to disburse the death benefit proceeds to Tescher & Spallina, P.A. Trust Account at Sabadell Bank.

WHEREFORE, Petitioner respectfully requests this Court to determine that

A. TED S. BERNSTEIN is the successor trustee to SHIRLEY BERNSTEIN of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dated June 21, 1995;

B. The remainder beneficiaries of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dated June 21, 1995 are the five (5) children of SIMON and SHIRLEY, in equal shares, per stirpes;

C. HERITAGE UNION LIFE INSURANCE COMPANY be directed to distribute the death benefit proceeds to the Tescher & Spallina, P.A. Trust Account at Sabadell Bank.

UNDER PENALTIES OF PERJURY, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on _____, 2013

_____
TED S. BERNSTEIN

_____
Donald R. Tescher, Esq.
Attorney for Petitioner
Florida Bar No. 121086
Tescher & Spallina, P.A.
4855 Technology Way, Suite 720
Boca Raton, FL 33431
Telephone: (561) 997-7008
Fax: (561) 997-7308

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Stansbury's

Exh. 13

to Tescher Depo

WILL OF

SIMON L. BERNSTEIN

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

WILL OF

CONFORMED COPY

SIMON L. BERNSTEIN

The original of this Will is being held in the safe deposit box of the law firm of Tescher & Spallina, P.A.

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. My spouse is SHIRLEY BERNSTEIN ("***SHIRLEY***"). My children are TED S. BERNSTEIN ("***TED***"), PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to SHIRLEY, if SHIRLEY survives me, my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if SHIRLEY does not survive me, I give this property to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical, and if neither SHIRLEY nor any child of mine survives me, this property shall pass with the residue of my estate.

ARTICLE II. RESIDENCES

I give to SHIRLEY, if SHIRLEY survives me, my entire interest in any real property used by us as a permanent or seasonal residence, subject to any mortgage or other lien. If SHIRLEY does not survive me, such interest shall pass with the residue of my estate.

ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate to the Trustee then serving under my revocable Trust Agreement dated today, as may be amended and restated from time to time (the "***Existing Trust***"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

ARTICLE IV. PERSONAL REPRESENTATIVES

1. **Appointment and Bond**. I appoint SHIRLEY and WILLIAM E. STANSBURY, or either of them alone if the other is unable to serve, as my Personal Representative (the "***fiduciary***"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. **Powers of Personal Representatives**. My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "***estate***"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. Distributions or Divisions. To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. Management. To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. Borrowing. To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on

the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "***Business Entities***"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and

define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorised and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. **Survivorship.** A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. **Death Costs.** My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Articles I and II of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs.

5. **Reimbursement for Debts and Expenses.** My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. **Expenses of Handling Tangible Personal Property.** All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. **Dealing with Estate.** Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good

faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. **Spouse**. The term "***spouse***" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. **Other Beneficiary Designations**. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

[remainder of page intentionally left blank]

I have published and signed this instrument as my Will at Boca Raton, Florida, on the 20 day of May, 2008.

/s/ Simon L. Bernstein
SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this 20 day of May, 2008.

/s/ Robert L. Spallina residing at 7387 Wisteria Ave
[Witness Signature] [Witness Address]

Parkland, FL 33076
[Witness Address]

/s/ Diana Banks residing at 23415 Boca Trace Dr
[Witness Signature] [Witness Address]

Boca Raton, FL 33433
[Witness Address]

State Of Florida

SS.

County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

/s/ Simon L. Bernstein
SIMON L. BERNSTEIN, Testator

We, Robert Spallina and Diana Banks, have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

/s/ Robert L. Spallina
Witness

/s/ Diana Banks
Witness

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and Diana Banks, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this 20 day of May, 2008.

Kimberly Moran
Commission # DD766470
Expires: APR. 28 2012

/s/ Kimberly Moran
Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

F:\WPDATA\drt\Bernstein, Shirley & Simon\2008 Estate Planning\Will of Simon L. Bernstein.wpd [08 15:41:29 5 19]

LAW OFFICES
TESCHER & SPALLINA, P.A.

BOCA VILLAGE CORPORATE CENTER I
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FLORIDA 33431

TEL. 561-997-7008
FAX 561-997-7308
TOLL FREE: 888-997-7008
WWW.TESCHERSPALLINA.COM

ATTORNEYS
DONALD R. TESCHER
ROBERT L. SPALLINA
LAUREN A. GALVANI

SUPPORT STAFF
DIANE DUSTIN
KIMBERLY MORAN
SUANN TESCHER

STANSBURY EXHIBIT
502012CP004391SB
F

December 6, 2012

VIA FACSIMILE: 803-333-4936
Attn: Bree
Claims Department
Heritage Union Life Insurance Company
1275 Sandusky Road
Jacksonville, IL 62651

Re: **Insured: Simon L. Bernstein**
Contract No.: 1009208

Dear Bree:

As per our earlier telephone conversation:

- We are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.
- Mrs. Shirley Bernstein was the initial beneficiary of the 1995 trust, but predeceased Mr. Bernstein.
- The Bernstein children are the secondary beneficiaries of the 1995 trust.
- We are submitting the Letters of Administration for the Estate of Simon Bernstein showing that we are the named Personal Representatives of the Estate
- We would like to have the proceeds from the Heritage policy released to our firm's trust account so that we can make distributions amongst the five Bernstein children
- If necessary, we will prepare for Heritage an Agreement and Mutual Release amongst all the children.
- We are enclosing the SS4 signed by Mr. Bernstein in 1995 to obtain the EIN number for the 1995 trust.

If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

Robert L. Spallina

ROBERT L. SPALLINA

RLS/km

Enclosures

EXHIBIT
tabbies
14

IBT000083

CLAIMANT STATEMENT

0000880.0002719

DECEDENT INFORMATION

1. Name of Deceased (Last, First Middle)	2. Last 4 digits of Deceased's Social Security No:
Bernstein, Simon Leon	5211

3. If the Deceased was known by any other names, such as maiden name, hyphenated name, nickname, derivative form of first and/or middle name or an alias, please provide them below.

4. Policy Number(s)	5. If policy is lost or not available, please explain:
1009208	Unable to locate, policy is 30 years old

6. Deceased's Date of Death	7. Cause of Death	8.
09/13/12	natural causes	☑ Natural ☐ Accidental ☐ Suicide ☐ Homicide ☐ Pending

CLAIMANT INFORMATION

9. Claimant Name (Last, First, Middle). If trust, please list trust name and complete Trustee Certification section.
Simon Bernstein Irrevocable Insurance Trust

10. Street Address	11. City	12. State and Zip	13. Daytime Phone Number

14. Date of Birth	15. Social Security or Tax ID Number	16. Relationship to Deceased
	[redacted]	

17. I am filing this claim as:
☐ an individual who is named as a beneficiary under the policy
☐ a Trustee of a Trust which is named as a beneficiary under the policy
☐ an Executor of Estate which is named as a beneficiary under the policy
☐ Other

18. Are you a U.S. Citizen? ☐ Yes ☐ No
If "No" please list country of citizenship

19. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement? ☐ Yes ☐ No

CLAIMANT INFORMATION (to be completed by 2nd claimant, if any)

20. Claimant Name (Last, First, Middle). If trust, please list trust name and complete Trustee Certification section.

21. Street Address	22. City	23. State and Zip	24. Daytime Phone Number

25. Date of Birth	26. Social Security or Tax ID Number	27. Relationship to Deceased

28. I am filing this claim as:
☐ an individual who is named as a beneficiary under the policy
☐ a Trustee of a Trust which is named as a beneficiary under the policy
☐ an Executor of Estate which is named as a beneficiary under the policy
☐ Other

29. Are you a U.S. Citizen? ☐ Yes ☐ No
If "No" please list country of citizenship

30. Policies subject to Viatical / Life Settlement transactions – Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement? ☐ Yes ☐ No

YOUR SIGNATURE IS REQUIRED ON THE NEXT PAGE.

CLAIMANT STATEMENT

0000880.0002711

SETTLEMENT OPTIONS

The policy may contain one or more settlement options, such as Interest Payments, Installments for a Specified Amount, Life Annuity, Life Annuity with Period Certain, and/or Joint Life and Survivorship Annuity. You may choose to receive a lump sum payment or another settlement option available in the policy under which a claim is made. For more information, refer to the optional methods of policy settlement provision in the policy or contact us at the mailing address noted on the front of the claim form.

If you wish to select a settlement option, please indicate your settlement selection by name (not by number) on the line below after you have carefully reviewed the options available in the policy. Availability of settlement options are subject to the terms of the policy. If you do not choose a settlement option, we will send a lump sum settlement to you.

_____
Name of Settlement Option from Policy

Important Information About the USA PATRIOT Act

To help fight the funding of terrorism and money-laundering activities, the U.S. government has passed the USA PATRIOT Act, which requires banks, including our processing agent bank, to obtain, verify and record information that identifies persons who engage in certain transactions with or through a bank. This means that we will need to verify the name, residential or street address (no P.O. Boxes), date of birth and social security number or other tax identification number of all account owners.

SUBSTITUTE FOR IRS FORM W-9

This information is being collected on this form versus IRS form W-9 and will be used for supplying information to the Internal Revenue Service (IRS). Under penalty of perjury, I certify that 1) the tax ID number above is correct (or I am waiting for a number to be issued to me), 2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3) I am a U.S. person (including a U.S. resident alien). Please cross through item 2 if you have been notified by the IRS that you are subject to backup withholding because you have failed to report all interest and dividends on your tax return.

SIGNATURES

I/We do hereby make claim to said insurance, declare that the answers recorded above are complete and true, and agree that the furnishing of this and any supplemental forms do not constitute an admission by the Company that there was any insurance in force on the life in question, nor a waiver of its rights or defenses.

For Residents of New York: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.
For Residents of All Other States: See the Fraud Information section of this claim form.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Signature of Claimant and Title: Personal Rep / Trustee	Date: 11/1/12
Signature of Second Claimant, if any, and Title	Date

CLAIMANT STATEMENT

TRUSTEE CERTIFICATION

00008680.0002712

TRUSTEE CERTIFICATION (to be completed only if trust is claiming proceeds)

COMPLETE THIS SECTION ONLY IF A TRUST IS CLAIMING BENEFITS.
Please include a copy of the trust agreement, including the signature page(s) and any amendments.

I/We, the undersigned trustee(s), represent and warrant that the copy of the trust agreement, which we will provide you pursuant to this certification, is a true and exact copy of said agreement, that said agreement is in full force and effect, and that we have the authority to make this certification.

Generation Skipping Transfer Tax Information - THIS MUST BE COMPLETED FOR PAYMENT

I/We the undersigned, on oath, deposes and states as follows with respect to the possible application of the Generation Skipping Transfer (GST) tax to the death benefit payment (Mark the appropriate item):

____1. The GST tax does not apply because the death benefit is not included in the decedent's estate for federal estate tax purposes.

____2. The GST tax does not apply because the GST tax exemption will offset the GST tax.

____3. The GST tax does not apply because at least one of the trust beneficiaries is not a "skipped" person.

____4. The GST tax does not apply because of the reasons set forth in the attached document (Please attach document setting forth the reasons why you believe the GST tax does not apply.)

____5. The GST tax may apply. As a result, the death benefit payment IS subject to withholding of the applicable GST tax. Enclosed is the completed Schedule R-1 (Form 706) for submission to the Internal Revenue Service.

Name of Trust	Date of Trust Agreement
Simon Bernstein Irrevocable Insurance Trust	06/01/1995
Date of all Amendments	**Trust Tax ID Number**
	65-6178916

Printed Name of Trustee(s)	Signature(s)
a.	Robert L. Spallina
b.	
c.	
d.	

Stansbury's
Exh. 15
to Tescher's depo

FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS

Detail by Entity Name

Florida Limited Liability Company

T & S REGISTERED AGENTS, LLC

Filing Information

Document Number	L08000110070
FEI/EIN Number	N/A
Date Filed	11/25/2008
State	FL
Status	ACTIVE
Last Event	REINSTATEMENT
Event Date Filed	10/11/2012
Event Effective Date	NONE

Principal Address

925 S. FEDERAL HIGHWAY,
SUITE 500
BOCA RATON, FL 33432

Changed: 03/06/2014

Mailing Address

925 S. FEDERAL HIGHWAY,
SUITE 500
BOCA RATON, FL 33432

Changed: 03/06/2014

Registered Agent Name & Address

TESCHER, DONALD R
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

Authorized Person(s) Detail

Name & Address

Title MGRM

TESCHER, DONALD R

EXHIBIT
tabbies
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4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL 33431

Title MGRM

SPALLINA, ROBERT L
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL 33431

Annual Reports

Report Year	Filed Date
2012	10/11/2012
2013	03/21/2013
2014	01/08/2014

Document Images

01/08/2014 -- ANNUAL REPORT	View image in PDF format
03/21/2013 -- ANNUAL REPORT	View image in PDF format
10/11/2012 -- REINSTATEMENT	View image in PDF format
03/04/2011 -- ANNUAL REPORT	View image in PDF format
04/05/2010 -- ANNUAL REPORT	View image in PDF format
04/01/2009 -- ANNUAL REPORT	View image in PDF format
11/25/2008 -- Florida Limited Liability	View image in PDF format

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State of Florida, Department of State

2014 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L08000110070

FILED
Jan 08, 2014
Secretary of State
CC6039854493

Entity Name: T & S REGISTERED AGENTS, LLC

Current Principal Place of Business:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

Current Mailing Address:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

FEI Number: NOT APPLICABLE

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

TESCHER, DONALD R
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent — Date

Authorized Person(s) Detail :

Title	MGRM	Title	MGRM
Name	TESCHER, DONALD R	Name	SPALLINA, ROBERT L
Address	4855 TECHNOLOGY WAY, SUITE 720	Address	4855 TECHNOLOGY WAY, SUITE 720
City-State-Zip:	BOCA RATON FL 33431	City-State-Zip:	BOCA RATON FL 33431

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: ROBERT L. SPALLINA VP 01/08/2014

Electronic Signature of Signing Authorized Person(s) Detail — Date

2013 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L08000110070

FILED
Mar 21, 2013
Secretary of State
CC3486156996

Entity Name: T & S REGISTERED AGENTS, LLC

Current Principal Place of Business:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

Current Mailing Address:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

FEI Number: NOT APPLICABLE

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

TESCHER, DONALD R
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent — Date

Authorized Person(s) Detail :

Title	MGRM	Title	MGRM
Name	TESCHER, DONALD R	Name	SPALLINA, ROBERT L
Address	4855 TECHNOLOGY WAY, SUITE 720	Address	4855 TECHNOLOGY WAY, SUITE 720
City-State-Zip:	BOCA RATON FL 33431	City-State-Zip:	BOCA RATON FL 33431

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: DONALD R. TESCHER MGRM 03/21/2013

Electronic Signature of Signing Authorized Person(s) Detail — Date

2012 LIMITED LIABILITY COMPANY REINSTATEMENT

DOCUMENT# L08000110070

FILED
Oct 11, 2012
Secretary of State

Entity Name: T & S REGISTERED AGENTS, LLC

Current Principal Place of Business:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Principal Place of Business:

Current Mailing Address:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Mailing Address:

FEI Number: **FEI Number Applied For ( )** **FEI Number Not Applicable (X)** **Certificate of Status Desired ( )**

Name and Address of Current Registered Agent:

TESCHER, DONALD R
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: DONALD R. TESCHER
Electronic Signature of Registered Agent — Date

MANAGING MEMBERS/MANAGERS:

Title: MGRM
Name: TESCHER, DONALD R
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

Title: MGRM
Name: SPALLINA, ROBERT L
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statues.

SIGNATURE: DONALD R. TESCHER MGR 10/11/2012
Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

2011 LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L08000110070

FILED
Mar 04, 2011
Secretary of State

Entity Name: T & S REGISTERED AGENTS, LLC

Current Principal Place of Business:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Principal Place of Business:

Current Mailing Address:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Mailing Address:

FEI Number: **FEI Number Applied For ( )** **FEI Number Not Applicable (X)** **Certificate of Status Desired ( )**

Name and Address of Current Registered Agent:

TESCHER, DONALD R
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent — Date

MANAGING MEMBERS/MANAGERS:

Title: MGRM
Name: TESCHER, DONALD R
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

Title: MGRM
Name: SPALLINA, ROBERT L
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statues.

SIGNATURE: DONALD R. TESCHER MGR 03/04/2011

Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

2010 LIMITED LIABILITY COMPANY ANNUAL REPORT

FILED
Apr 05, 2010
Secretary of State

DOCUMENT# L08000110070

Entity Name: T & S REGISTERED AGENTS, LLC

Current Principal Place of Business:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Principal Place of Business:

Current Mailing Address:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Mailing Address:

FEI Number: **FEI Number Applied For ( )** **FEI Number Not Applicable (X)** **Certificate of Status Desired ( )**

Name and Address of Current Registered Agent:

TESCHER, DONALD R
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent — Date

MANAGING MEMBERS/MANAGERS:

Title: MGRM
Name: TESCHER, DONALD R
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

Title: MGRM
Name: SPALLINA, ROBERT L
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statues.

SIGNATURE: DONALD R. TESCHER MGRM 04/05/2010

Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

2009 LIMITED LIABILITY COMPANY ANNUAL REPORT

FILED
Apr 01, 2009
Secretary of State

DOCUMENT# L08000110070

Entity Name: T & S REGISTERED AGENTS, LLC

Current Principal Place of Business:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Principal Place of Business:

Current Mailing Address:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Mailing Address:

FEI Number: **FEI Number Applied For (X)** **FEI Number Not Applicable ( )** **Certificate of Status Desired ( )**

Name and Address of Current Registered Agent:

TESCHER, DONALD R
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____
Electronic Signature of Registered Agent — Date

MANAGING MEMBERS/MANAGERS:

Title: MGRM ( ) Delete
Name: TESCHER, DONALD R
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

Title: MGRM ( ) Delete
Name: SPALLINA, ROBERT L
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

ADDITIONS/CHANGES:

Title: ( ) Change ( ) Addition
Name:
Address:
City-St-Zip:

Title: ( ) Change ( ) Addition
Name:
Address:
City-St-Zip:

I hereby certify that the information supplied with this filing does not qualify for the exemption stated in Chapter 119, Florida Statutes. I further certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes.

SIGNATURE: DONALD R. TESCHER MGRM 04/01/2009
Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

Electronic Articles of Organization For Florida Limited Liability Company

L08000110070
FILED 8:00 AM
November 25, 2008
Sec. Of State
nculligan

Article I

The name of the Limited Liability Company is:

T & S REGISTERED AGENTS, LLC

Article II

The street address of the principal office of the Limited Liability Company is:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL. 33431

The mailing address of the Limited Liability Company is:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL. 33431

Article III

The purpose for which this Limited Liability Company is organized is:

ANY AND ALL LAWFUL BUSINESS.

Article IV

The name and Florida street address of the registered agent is:

DONALD R TESCHER
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL. 33431

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: DONALD R. TESCHER

Article V

L08000110070
FILED 8:00 AM
November 25, 2008
Sec. Of State
nculligan

The name and address of managing members/managers are:

Title: MGRM
DONALD R TESCHER
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL. 33431

Title: MGRM
ROBERT L SPALLINA
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL. 33431

Signature of member or an authorized representative of a member

Signature: DONALD R. TESCHER

APPENDIX 14

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO: 502012CP4391XXXXNB

IN RE: ESTATE OF SIMON L. BERNSTEIN

Deceased.

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PROCEEDINGS BEFORE
HONORABLE JOHN PHILLIPS

DATE: September 15, 2015

TIME: 9:27 a.m. to 10:32 a.m.

APPEARANCES:

APPEARING ON BEHALF OF THE PERSONAL REPRESENTATIVE:

BRIAN O'CONNELL, ESQ.
JOIELLE A. FOGLIETTA, ESQ.
CIKLIN, LUBITZ & O'CONNELL
West Palm Beach, FL 333401

APPEARING OF BEHALF OF WILLIAM STANSBURY:

PETER FEAMAN, ESQ.
PETER M. FEAMAN, P.A.
3695 Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436

APPEARING ON BEHALF OF MOLLY SIMON, et al:

JOHN MORRISSEY, ESQ.
MORRISSEY LAW
330 Clematis Street, 213
West Palm Beach, FL 33401

APPEARING ON BEHALF OF TED S. BERNSTEIN:

ALAN B. ROSE, ESQ.
PAGE, MRACHEK, FITZGERALD & ROSE, P.A.
505 S. Flagler Drive, Suite 600
West Palm Beach, FL 33401

APPEARING ON BEHALF OF TESCHER & SPALLINA:

KENNETH S. POLLOCK, ESQ.
SHENDELL & POLLOCK, P.L.
2700 N. Military Trail, Suite 150
Boca Raton, FL 33431

ALSO PRESENT: Eliot Bernstein

BE IT REMEMBERED, that the following proceedings were taken in the above-styled cause before Honorable JOHN PHILLIPS, at the Palm Beach County Courthouse, 3188 PGA Blvd., Palm Beach Gardens, County of Palm Beach, State of Florida, on Tuesday, the 15th day of September, 2015, to wit:

THE COURT: We're here on the Simon Bernstein case; is that right?

MS. FOGLIETTA: Yes, Judge.

THE COURT: This ended up in this division of the Court because of a recusal from somebody else in another division of the Court, right?

MR. FEAMAN: That raises an interesting point. Peter Feaman on behalf of William Stansbury, a creditor of the estate. I was late coming in. Mr. O'Connell is late. All the attorneys and the litigants are either in West Palm or south. I respectfully don't understand how we ended up here in the north branch. Should we set it back to the main branch?

THE COURT: No. That would be judge shopping. When somebody recuses themselves then it's randomly reassigned. I was verifying

this isn't a case that started out with me. It's a case that started out with somebody else.

MR. FEAMAN: Judge Colin, actually, specifically said in his recusal order north branch, which I didn't understand.

THE COURT: That's what the 4th DCA is for. I'm not here to question some other judge's order. You won't have me saying he was wrong. I'm not the appellate judge. If somebody made a mistake and you all think there's relief that should be granted to correct his mistake that's what the 4th is for. Please have a seat.

We're here because somebody else is not the judge in the case anymore and I am, right?

MR. FEAMAN: Right.

THE COURT: We'll go to the next step. This is a case management conference. What is it that I need to do to manage the case? I received the trustees' status report which is lengthy and comprehensive. I've read that.

Other than being brought up to speed by having read that report what else needs to be resolved to get this case done?

MR. ROSE: Good morning. I'm Alan Rose. Can I speak from here?

THE COURT: You can.

MR. ROSE: I'm not planning on doing the whole hearing, but briefly there are, technically, four other cases that all were assigned. I think we've noticed a status conference in all four cases.

There are two estates. The Simon Bernstein that Your Honor mentioned, he died in 2012.

THE COURT: Then there's the wife who pre-deceased him, has a case, and I've been asked to consider -- one of the things that needs to be done is the closing of that estate.

MR. ROSE: Correct. She died in 2010. Each of those estates builds into a trust, so there's technically four pieces of pending litigation; an estate of Shirley, a Shirley trust construction, and an estate of Simon and claim in the Simon trusts for the removal of my client. Those are the four separate matters. And then we came before you -- when Judge Colin recused himself there were pending motions counsel thought best to come and get some sort

of order.

The one thing that we believe, at least which was in the status report which should be addressed fairly early on, is whether we're going to have a guardian ad litem for the three minor children that are represented by Eliot Bernstein, and try to bring some order to this case which I think was a little bit out of control in Judge Colin's courtroom.

THE COURT: Is there a motion for appointment of a GAL? Has a motion been filed by someone?

MR. ROSE: I think the -- my understanding is the beneficiaries were about to file one. I don't think they filed yet. There is a pending motion to appoint an attorney for the children. It's sort of a similar issue. Maybe Mr. O'Connell can -- it's on one of his lists of motions.

And then there's -- I think the main thing we need to discuss is what order we're going to do the hearings in because along with the guardian ad litem it's our position the first thing we should decide, since almost every motion you're going to hear on Mr. O'Connell's

list is filed by Eliot Bernstein, is he's not a beneficiary. We have a one-count complaint to determine the validity of the documents. And under the documents, as drafted, he's disinherited. He's not a beneficiary under any way and if you remove his standing then I believe we can go to mediation and resolve almost all of these motions without taking up, probably, two or three weeks of the Court's time.

THE COURT: Well, I noticed in the trustee's status report that there was mentioned several times that he's not a beneficiary. So has there been an order that establishes that or is that just the position that's being argued by the --

MR. ROSE: Well, the documents themselves, the operative document, for example, Simon Bernstein's will -- the sole beneficiary is the trust. Simon Bernstein's trust the soul beneficiaries are his ten grandchildren. Shirley Bernstein's will, the sole beneficiary is her trust. Shirley Bernstein's trust gave Simon Bernstein the power of appointment to appoint and he appointed to his grandchildren.

So what we filed was a one-count complaint to determine those documents. We actually filed a trust construction action. Judge Colin advised us to file -- to add a count. We added one count to determine the validity of those documents. It's been answered by everybody, and what Judge Colin did was he severed that one count from everything else and he stayed everything else until we resolved that one count. That's the issue that we believe, if you resolve that issue first, a lot of the stuff would go away and that was part of the purpose of the status conference. The parties can't, among themselves, agree what issues should be heard first. If you did that issue, either if he has standing or he doesn't, if he doesn't have standing we'll good through hundreds of thousands of dollars of legal fees resolving motions that he filed if he lacked standing.

I think if you couple it with a motion for a guardian ad litem there is a motion pending in a fifth case, the Oppenheimer case, that's also before you, not today, for a guardian ad litem. Judge Colin deferred on that. I

believe Mr. Morrissey's clients are going to move for a guardian ad litem. I believe Mr. Eliot Bernstein, in his papers, has indicated that he has a conflict with his children and they should have a lawyer and a guardian representing them. He can speak for himself to that point.

Those are the two issues we think should go first. If it happens first this case would become much more manageable and can even be resolved because, as we indicated in our report, these are relatively small estates.

There was a belief that's driving this that there was $100 million left behind but they left behind modest estates. Over time we've been trying to sell property and trying to narrow things and all we've been doing is spending attorneys' fees between a curator --

THE COURT: I just want to figure out what's on the judicial plate that needs to be addressed.

MR. ROSE: That's what we think should happen first, those two issues, and everything else will fall into place.

THE COURT: What is the name or where is

the document to be found that has this single count for determination of validity of estate documents or trust documents that was severed out by Judge Colin?

MR. ROSE: It's in case 5020143698 --

THE COURT: What are the two letters in between the 14 and the 36 --

MR. ROSE: I'm sorry, CP003698XXX and now --

THE COURT: I don't need that stuff. What's the docket entry number?

MS. FOGLIETTA: The filing number?

THE COURT: I want to know where to find this thing that seems to be one of the first things --

MS. FOGLIETTA: Are you talking about the amended complaint? I have a copy.

MR. ROSE: Just the docket entry, if you don't mind.

THE COURT: I have a computer here so don't think I'm being rude if I look away from you all.

MR. ROSE: It was filed October 3, 2013.

MS. FOGLIETTA: I have a copy.

MR. ELIOT BERNSTEIN: Can I make an

objection?

THE COURT: Who are you?

MR. ELIOT BERNSTEIN: I'm Eliot Bernstein.

THE COURT: You can't object yet.

MR. ELIOT BERNSTEIN: Can I make a statement?

THE COURT: Not yet. I'm looking at this computer screen trying to find the docket. Everybody, please be seated. You're making me nervous.

I'm just scrolling through the attorneys. I haven't even gotten to the pleadings yet. I'm looking for a pleading or an order entered October 3rd.

MR. ROSE: An amended complaint.

THE COURT: I have an amended complaint by Ted Bernstein.

MR. ROSE: Yes.

THE COURT: And in that amended complaint is the count that was referred to. It's Count II?

MR. ROSE: I believe it is, Sir.

THE COURT: All right.

MR. ROSE: Page 13 is the actual -- the count itself incorporates the allegations and

the documents.

THE COURT: All right. Count II starts at Paragraph 79 of the document?

MR. ROSE: Yes, sir.

THE COURT: All right. And then at some point in time you say Judge Colin severed out this count and said it should be heard separately. Is that --

MR. ROSE: He severed it and stayed --

THE COURT: Do you know when the order was entered on that?

MR. ROSE: 10-6 according to the chart from --

THE COURT: 10-6-14?

MR. ROSE: Yes. It says order on amendments to pleadings. There might be an order that predates that.

MS. FOGLIETTA: I do have a copy of it.

THE COURT: The other is almost the very next docket entry. The amended petition is Docket Entry 26. The order is Docket Entry 27.

MR. ROSE: Specifically Paragraph 3 on Page 2.

THE COURT: There was a response filed by Mr. Bernstein and the other defendants. Are

those things that happened?

MR. ELIOT BERNSTEIN: What case? Is this Shirley Bernstein --

THE COURT: Case Number 14CP3698.

MR. ROSE: Everyone has either answered or been defaulted and I noticed the case for trial.

MR. ELIOT BERNSTEIN: Are we here for Simon Bernstein? I'm confused. I'm not prepared for Shirley Bernstein's case today. Can I raise another point, Your Honor?

THE COURT: I only do one thing at a time. You must stop.

MR. ELIOT BERNSTEIN: What?

THE COURT: You must stop. I do one thing at a time. You're not that thing yet.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: This is a case management conference. I'm not deciding anything. I do decide that I'm the one that runs this courtroom so I don't have people jumping up and blurting things out. That doesn't help me orderly go through figuring out what the problem is and how to attack and resolve the problem. My specialty is wrestling stuff to

the ground and resolving it. That's what I'm going to do in this case and that's what I do in every case. This is a bigger one to wrestle to the ground than some other ones but there's no octopus case that I've ever met that I haven't been able to figure out sooner or later. The only way I can do that is talk to one person at a time. We'll figure out one thing at a time. I'm not a smart guy but I'm persistent. All these guys know me. I'm looking you in the eye because you haven't met me before, right? Sir, yes, you haven't met me?

MR. ELIOT BERNSTEIN: Yes, sir.

THE COURT: Okay. So you don't know me. These other attorneys do because they're in court in front of me on other cases where I've done the same thing. I'm too stupid to -- well, I'm stupid. I take one thing at a time and I make sure I know what I'm doing and I go to the next thing. I try to be courteous to everybody. I try to make sure everybody is heard. I demand that people be courteous to me in return. I don't take any crap. In that method of proceeding we get through whatever is

uncomfortable, whatever is messed up, whatever is complex. We simplify it down enough for me to understand it and then we resolve it. That's what is going to happen in this case.

MR. ELIOT BERNSTEIN: So my question is --

THE COURT: I told you I'm not talking to you yet. I was talking to you to tell you what I'm doing so you're not mystified, but now you sit silently until it's my time to talk to you. Right now I'm talking to some other people.

Okay, so --

MR. ROSE: May I approach --

THE COURT: -- the trustees believe the first thing that needs to be done is the resolution of this order that was entered by Judge Colin severing out the count and the amended complaint that deals with the validity of the testamentary documents, correct?

MR. ROSE: Yes, sir.

THE COURT: All right. Does anybody object to that issue being resolved first in the order of events in this sequence of cases?

MR. O'CONNELL: Are you ready for me?

THE COURT: Yeah, I just want to know if there's any objection to having that issue

heard and resolved first. That's the issue that I'm chewing on right now.

MR. O'CONNELL: Okay. I wouldn't call it an objection, but I'd like to be able to explain my role in it and these other motions.

THE COURT: Well, first I want to know if there's any reason I should attack this as the first order of business in setting a trial or hearing to have it resolved. Do you have any objection?

MR. O'CONNELL: I wouldn't object to that.

THE COURT: All right. Does anybody else seated at the tables have any objection?

MR. FEAMAN: May it please the Court. Peter Feaman on behalf of William Stansbury. He's a $2.5 million creditor of the estate of Simon Bernstein.

We're here in the estate of Simon Bernstein and it's the position of Mr. Stansbury that a removal of Ted Bernstein as successor trustee should be heard first.

THE COURT: Okay. Why?

MR. FEAMAN: The reason for that is if that issue is determined one way or the other we believe that is the linchpin to then

resolving probably all the other issues in this case.

THE COURT: The trustee believes the issue to resolving many of the issues is to determine whether Eliot -- I'm using first names, I'm sorry. Is it Mr. Bernstein, Eliot Bernstein?

MR. ELIOT BERNSTEIN: You can call me Eliot.

THE COURT: Okay. I don't mean to be disrespectful. I don't want to do that.

The trustee's thought is that resolving whether Eliot has any standing to be involved in the litigation is key. You're saying that's not key, it's something else that's key? What else is it that you're suggesting is the key issue to be resolved?

MR. FEAMAN: Because that's the Shirley Bernstein trust. The matter that is before Your Honor today is the estate of Simon Bernstein, and Simon Bernstein had a separate trust which was different from the Shirley Bernstein trust and the -- most of the assets are in the Simon Bernstein trust which then had the pour-over will into -- most of the assets are in the Simon Bernstein estate and then had

the pour-over will into the trust and that's -- that's the matter that is the most significant, in my humble opinion, that is before Your Honor is the Simon Bernstein estate and the Simon Bernstein trust. It's the opinion of Mr. Stansbury that Mr. Ted Bernstein, as a successor trustee to the Simon Bernstein trust, should be heard first.

THE COURT: Let me ask this: How is it that there is an order by Judge Colin severing out this count about the validity of some estate documents in the Simon Bernstein case if the documents in question were filed in a different estate? Maybe the trustee can address that.

MR. ROSE: Sure.

THE COURT: What's up with that?

MR. ROSE: We have a trust construction count that was to determine the validity and then the construction of the Shirley Bernstein trust. Within that claim, because there's an overlap of issues there, the standing issue is the same in both. What Judge Colin ordered me to do was to file an additional count into that complaint. Everyone was properly noticed. We

already had the jurisdiction over all the beneficiaries, those that answered, those that did not. Nobody moved to dismiss upon the ground that it's not properly in one case, and so because there's a direct overlap between documents that were executed and the validity of those documents, and the validity of the will of Simon directly relates to the validity of the exercise of power of appointment because he exercised his power through his will. So what Judge Colin did was he ordered me to file a simple one-count complaint, as simple as it could be, list the four documents and allege that they're all valid and enforceable. In the context of trying that issue you will decide whether, for example, Simon Bernstein was unduly influenced, if that's an allegation, to execute the power of appointment. The power of appointment is what deprives Mr. Eliot Bernstein of standing. Judge Colin ordered us all put it all in this count. He then stayed everything else and severed that and we're supposed to try that and we get bogged down constantly in --

THE COURT: Don't get sidetracked or I'll

get confused and disaster happens.

Mr. Bernstein, Eliot Bernstein, you've got an objection to the trial of the issue about the validity of the estate documents that's just been discussed?

MR. ELIOT BERNSTEIN: Yes, sir.

THE COURT: What's your objection?

MR. ELIOT BERNSTEIN: Several, with that being the first thing. The first part is that Mr. O'Connell has filed with the court in the Simon Bernstein estate nothing to be done with Ted Bernstein as trustee because Mr. O'Connell and Mr. Feaman, two prominent lawyers that you know, have claimed that the document itself that they're operating under precludes Ted Bernstein from being a trustee. The language says he can't be a related party --

THE COURT: You got to get back to my question.

MR. ELIOT BERNSTEIN: Here's the problem --

THE COURT: No. I'm the one that's telling you the question I'd like you to answer. Remember I told you I chew on one tiny thing at a time. I don't want to get confused.

I might make a mistake if I get confused.

This is the thing I'm trying to establish in my mind now: What is your objection to trying the issue about the validity of the estate documents that are found in Count II of the amended petition, Docket Entry Number 26?

MR. ELIOT BERNSTEIN: My problem is is that if Ted is not a trustee properly serving, and a fraudulent trustee as they're claiming and he's acting improperly, to have a hearing where Ted's arguing validity where he's conflicted, I mean if he doesn't argue successfully, his entire family and children are cut out of everything. So he's got a conflict in arguing a construction --

THE COURT: You're not even addressing my question. Thank you. Please be seated.

MR. ELIOT BERNSTEIN: I did answer your question because how can we have -- how can we hear his --

THE COURT: You're asking me a question. Your question started with how do we do something. I don't know.

MR. ELIOT BERNSTEIN: I'm saying we can't hear --

THE COURT: Stop. Please be seated. You failed to answer my question. You got something else on your mind that doesn't address what I'm trying to figure out.

Is it true that Judge Colin issued a stay order on the other parts of the litigation and it intended -- somehow he manifested an intention to resolve the validity of the estate documents? Is there an order that says that somewhere?

MR. ROSE: I think that goes too far. There are multiple proceedings. He severed this count --

THE COURT: I got that.

MR. ROSE: It's our view that that should be what is decided --

THE COURT: I know. But you said a minute ago that he stayed other proceedings. Is there an order that says that? Where do I find that order?

MR. ROSE: It's the one that you looked at, October 6th. It stays the rest of the proceedings inside the Shirley Bernstein trust construction case. It doesn't stay everything in the Simon Bernstein side.

THE COURT: Okay.

MR. ROSE: That's what I was clarifying.

THE COURT: Okay. You've been living with these cases for several years.

MR. ROSE: Yes.

THE COURT: I've been living with them for 30 minutes so I'm not as intimately familiar with the ins and outs of what's going on here. I'm not even familiar with everybody's names, so I apologize to you for that.

Well, then there's no reason for me not to set a trial on that Count II of the amended complaint, right? I'll do that whether everybody wants me to do or not that way I'll get something done and that way we'll move down the road. That will be done. Court to order set. How much time you think we need to try that?

MR. ROSE: Normally I would think we can try the case within a day.

THE COURT: Okay. Anybody think we need a different amount of time?

MR. ELIOT BERNSTEIN: Yeah. I think it will take several days.

THE COURT: Why?

MR. ELIOT BERNSTEIN: Well, you're going to have to first start with is Ted Bernstein a valid trustee to argue the case. So that's --

THE COURT: No, I won't have to decide that.

MR. ELIOT BERNSTEIN: You want somebody to argue who's not valid --

THE COURT: What else? Any other issue? Is there any other issue that's going to take more than a day?

MR. ELIOT BERNSTEIN: Well, it's very complicated.

THE COURT: No, this isn't going to be complicated.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: It's not. There's documents, pieces of paper that somebody claims were executed or not executed.

MR. ELIOT BERNSTEIN: There's been fraud in the document.

THE COURT: I was explaining to you something. If you interrupt me you can be held in contempt. If I interrupt you I'm keeping order in my courtroom. You see the difference there? This is not a conversation. Okay. No

need for me to explain anything further. I intend to set this for trial. I intend to set it for a day. I intend that issue of the validity of the estate documents will be resolved in that trial. Is there any reason to not think I can do that in a day other than what Mr. Eliot Bernstein has mentioned?

MR. FEAMAN: On behalf of Mr. Stansbury we have no involvement in the Shirley Bernstein estate.

THE COURT: So you don't care what I do.

MR. ROSE: Mr. O'Connell is a party, he's intervening because of the overlap of the power of appointment. I can't speak for him but I want to make sure he agrees that a day is enough. We are all bad estimators.

THE COURT: I asked this question to the entire courtroom. If anybody thinks differently then what I'm getting ready to do you're supposed to say something. He hasn't said anything.

MR. MORRISSEY: Judge, John Morrissey. I represent four of the adult grandchildren who will ultimately be beneficiaries under the trust document.

THE COURT: Okay.

MR. MORRISSEY: So certainly my clients have an interest here in what's going on. I just want to let Your Honor know, because I don't think -- I hope Mr. Feaman is not misleading the Court. On two occasions so far he said that he represents a creditor of the estate, that's incorrect.

THE COURT: William Stansbury.

MR. MORRISSEY: Correct. William Stansbury is not a creditor of the estate. He's someone who filed a claim in the estate. An objection was filed by the personal representative, or counsel for the personal representative, which means that Mr. Stansbury had 30 days to run off and file his lawsuit which he's done. He's not done anything with that separate civil litigation. It's not been reduced to a judgment. He is not a creditor, therefore, Judge, he does not have standing not only with respect to the validity of the documents but with respect to anything else in these various litigations.

THE COURT: That's not helping me figure out how much time I need to set aside for this

trial.

MR. MORRISSEY: I'm sorry.

THE COURT: When I'm telling you I'm a simple guy I'm not being modest. I'm just being truthful. That's where I'm at. I'm going to write down what I do next when I leave this room. What I do next when I leave this room is tell my judicial assistant to reserve a day, set this trial date, send you notices. Bang. That thing is done. So that's why I want to stick with this. Do you have any objection to that?

MR. MORRISSEY: No.

THE COURT: Okay. Great. This is the way I intend to proceed -- I love Marty Colin. This guy is a judge that's been around a long time. I know him. He's an entirely different guy than me. I expect that your experience with Judge Colin has been different than sitting here with me. Am I right? I never appeared in front of him as a judge -- I never appeared in front of him while he's a judge and while I was a lawyer. He appeared in front of me while he was a lawyer and I was a judge. I don't know how he is as a judge but I am pretty

sure he's a different guy than me. Nice guy. I like him. But we're different judges. Your experiences with Judge Colin, put them aside. You're having an experience with me now. We have to do it the way I do it or else I'll mess up.

The second thing I have on my list of things to ask you about that I've been jotting down here is this request for guardian ad litem. I think I remember asking and being told that no one has filed a formal request for appointment of a guardian ad litem; is that correct?

MR. O'CONNELL: Correct.

MR. ROSE: In these four cases no one has done that yet.

THE COURT: Okay. Am I going to?

MR. ELIOT BERNSTEIN: I believe they have, actually.

THE COURT: When was it filed? What docket entry?

MR. ELIOT BERNSTEIN: I don't know. It was denied a long time ago by Tescher and Spallina, the guys that were removed for fraud in the court. They tried to put guardians on

--

THE COURT: No, no, no. You see I don't want all the other baggage. I just want the answer to that question. When was it filed?

MR. ELIOT BERNSTEIN: I don't know. At the beginning.

THE COURT: At the beginning. That takes me to the bottom. That slows down progress on our case management conference. I will go through it. What was the title of the pleading?

MR. ELIOT BERNSTEIN: I don't know. I don't think Joy's records went back that far.

MS. FOGLIETTA: We pulled things that were pending, Judge. I don't have that.

MR. MORRISSEY: On behalf of the four adult grandchildren it's our intention to file one. We were hoping to file one before today's hearing.

THE COURT: Okay. Since that hasn't been filed then I'm not taking action on it. That's my practice. If there's something filed I'll move towards getting it resolved. If it's not been filed and it's just in somebody's mind I find that it's difficult to take any action.

I'm crossing that off my list.

There's a pending motion to appoint attorneys -- an attorney for the children. Is that an attorney ad litem?

MR. ELIOT BERNSTEIN: An attorney for my children.

THE COURT: Who filed that motion?

MR. ELIOT BERNSTEIN: Me.

THE COURT: When did you file?

MR. ELIOT BERNSTEIN: Just to pay the fees for counsel for my children.

THE COURT: When did you file it is what I'm trying to figure it out.

MR. ELIOT BERNSTEIN: A while ago.

THE COURT: Any closer estimate than that?

MR. ELIOT BERNSTEIN: I've been filing that since the first petition in this case in May of 2013 which still isn't heard.

THE COURT: May of 2013 is when you filed it?

MR. ELIOT BERNSTEIN: Yeah.

MR. O'CONNELL: We think we found one August 28, 2014 in the Simon Bernstein estate.

THE COURT: The Simon Bernstein estate is the only one I got up on the computer. The

only thing that happened on August 20th is an order by Judge Colin maybe.

MR. O'CONNELL: 28th, sorry, Your Honor, 2-8.

THE COURT: Okay. I just got my trifocals reissued. These are the old ones so an 8 and a 0 look alike. I'm moving my head and trying to focus. Bear with me a second.

I don't see anything anywhere near the 28th of August of '14. Is that the year, '14?

MR. O'CONNELL: Yes. It says, "Motion to compel estates of Simon and Shirley to pay counsel for Eliot and his minor children."

MS. FOGLIETTA: That's in case number --

THE COURT: Well, I don't see any motion with that description. Perhaps the Court doesn't have it scanned in or something. Who knows. Anybody have a paper copy of it that I can look at?

MS. FOGLIETTA: I do.

THE COURT: I wouldn't mind looking at a paper copy if you got one handy.

MR. O'CONNELL: Sure.

THE COURT: And was there a ruling on this motion for having the estate pay for attorneys

for Eliot and his minor children? Has there been an order on this?

MR. O'CONNELL: Not that I'm aware of, Your Honor.

THE COURT: Was there ever a hearing?

MR. ROSE: I don't believe it was set for hearing. That was alluded to that Mr. Bernstein had requested an attorney for his children and I would suggest that -- subject to -- I don't think there was an objection from anyone -- it's not appropriate to appoint an attorney for his children. If you appoint a guardian ad litem to represent his children then the guardian ad litem has the power to go out and retain counsel and to accomplish the relief that's sought. We don't believe it's appropriate though for Mr. Bernstein himself, but certainly his children who are beneficiaries should have --

THE COURT: All right. It looks like this motion just asks for money. It's not asking for the appointment of counsel. Mr. Eliot is seeking the issuance of money from the trust for the estate. He alludes to the children needing an attorney but he doesn't ask for one

to be appointed. He asks if he can be given money.

There's an order I see, Docket Entry 24, where Judge Colin prohibits any new filings. I've not read the order yet but I see the title of the order takes up 20 lines of docket entry here in our computer program. I hope the order is shorter than the title.

MR. O'CONNELL: We got it for Your Honor.

(Handing)

THE COURT: Now are these copies ones I should return to you all or can I keep these?

MS. FOGLIETTA: You can keep them.

THE COURT: Thanks. Judge Colin had a case management conference. It's a case management order. How about that. It's a great order. He must have been having problems with the progress of this case to issue an order like that. That was at Docket Entry Number 24 which leads me to ask this question, perhaps foolishly, and that's the question if this order was entered by Judge Colin in September of 2014 at Docket Entry Number 24 how come we're up to 82 docket entries and other petitions and things and stuff being filed?

Did he disregard the order, because I think it's a great order, or did something else happen that I don't know about that changed the order, or did he retract the order?

MR. O'CONNELL: Let me try to help there. Just so you can get my position in all this, I want to explain. I am a successor personal representative in the Simon Bernstein estate, so that's my universe in terms of this matter. I got over a year at this point that I've been involved in that capacity. With regard to that particular order the way everyone has interpreted it is it has to do with anyone to institute new litigation, a new adversary matter they would have to go before Judge Colin, because we certainly have filed, on an administrative level, a number of motions of things that needed to happen.

THE COURT: Administrative stuff is allowed to happen.

MR. O'CONNELL: To go to your good question, well, why are there so many items, not that we filed a ton of motions and petitions but certainly, on my behalf, there are definitely some that we have filed.

THE COURT: Docket Entry Number 41 there is a petition to remove Theodore Stuart Bernstein as alleged successor trustee filed by Eliot Bernstein. How did that get filed? Did Judge Colin approved that?

MR. ELIOT BERNSTEIN: He directed that.

THE COURT: Say that again?

MR. ELIOT BERNSTEIN: He directed that.

THE COURT: So there was a hearing that he authorized this petition to be filed?

MR. ELIOT BERNSTEIN: Yes. And then a new case was started. He ordered a new case to remove Ted and we're in the middle of that. That's one of the cases.

Just to clarify something, I'm still confused, the first part about the hearing you're ordering, that's not --

THE COURT: We're not on that subject.

MR. ELIOT BERNSTEIN: Are we on Simon's case or Shirley's case? I'm confused by that.

THE COURT: I'm confused too. Welcome to my world.

MR. ELIOT BERNSTEIN: Welcome to mine.

THE COURT: We're going to eliminate some of the confusion by trying some of these things

pled in this case and one of them that's been pled is Count II of the amended petition of Docket Entry 26 that Judge Colin severed out and said is going to be tried separately.

MR. ELIOT BERNSTEIN: That's in Shirley.

THE COURT: I'm telling you what I'm doing. You asked me what I'm doing, to clarify what I'm doing. I just told you.

MR. ELIOT BERNSTEIN: Okay.

MR. ROSE: If I can, just briefly with that, what Judge Colin was doing is you can fax him the motion or bring it to his attention --

THE COURT: He uses fax? Okay. He is a dinosaur.

MR. ROSE: He would give permission that something could be filed or not filed. We had to go through the extra step of sending him in advance, or asking permission if I wanted to file a motion to approve a sale or whatever we had to get his permission in advance.

THE COURT: Okay. Thank you. I find there's no pending motion for appointment of attorneys for the children so I'm striking that off my list.

Now back to the William Stansbury claim

regarding the estate of Simon Bernstein. What is the pleading that sets up any claim that needs to be adjudicated in that case that was not already set? It's the one thing that you're not involved in. What about the claim you said that William Stansbury has?

MR. FEAMAN: That's a separate action that was filed and is pending before Judge Blanc in the general jurisdiction division.

THE COURT: Okay. So Blanc will figure that one out, right?

MR. FEAMAN: And the estate is a defendant.

THE COURT: I'm trying to figure out what I have to set. Blanc has that one, right?

MR. FEAMAN: Yes, yes, Your Honor.

The only thing, with regard to Mr. Stansbury, I believe, is Mr. Stansbury has filed a motion to discharge him from responsibility for funding the estate's participation in some Chicago litigation, and that should be borne by the estate, but that's already set before Your Honor on October 20th in the special set hearing.

THE COURT: When was that set? When did

the document hit the court records when -- setting that hearing?

MR. FEAMAN: I'd say ten days ago. It was set for the day after tomorrow and it had to be reset at my request due to a conflict, and then it was set October 20, 2015 pursuant to a notice of hearing I believe our office sent out, I believe, ten days ago, approximately.

THE COURT: That would be in case number what?

MR. FEAMAN: That would be case Number 124391CP -- 12 -- 2012CP4391.

THE COURT: Okay. So that's a different case than I have on the computer screen. Let me get that one up.

MR. FEAMAN: That's the case number that actually brings us here today pursuant to notice of hearing filed by Mr. O'Connell, the personal representative of the estate.

THE COURT: Just a second. I've been looking at, apparently, the trust case, 14CP3698.

MS. FOGLIETTA: Judge, that's the Shirley trust.

THE COURT: Did you ever see Colin use a

computer in court?

MR. O'CONNELL: Not really.

THE COURT: That's why I call him a dinosaur. I'd say it to his face trying to get him to be more tech savvy.

I'm scrolling, okay. You see me scrolling with my finger. I've scrolled through all the attorneys. This is more like it. We're up to 386, and roughly ten days ago there was some sort of hearing set. A re-notice of hearing.

MR. ELIOT BERNSTEIN: That was an objection to an accounting that I filed timely.

THE COURT: The notice of hearing, Mr. Feaman, that you scheduled, or you sent out that I'm referring to is called the fifth re-notice of hearing and it sets hearing on the motion of creditor William Stansbury for a hearing on October 20.

MR. FEAMAN: Yes, Your Honor.

THE COURT: You set aside a 15-minute period of time for that. Judge Blanc has got the litigation that you referred to in his court and he'll figure that out.

MR. FEAMAN: Correct.

THE COURT: All right.

MR. FEAMAN: But there's also, with regard, if I may, Your Honor, to Mr. Stansbury's claim, Mr. O'Connell has also filed a motion to enter and approve a settlement agreement between the estate and Mr. Stansbury which is still out there. But related to that is a motion by Mr. O'Connell filed on 7-20-2015 to have Simon Bernstein declared the beneficiary of the JP Morgan IRA account, and the reason it relates to Mr. Stansbury is because the settlement money contemplated to be paid to Mr. Stansbury would come out of that account and there's a question whether that is actually money that should be part of the estate or not so before we actually wanted to fund the settlement we wanted to -- I don't mean to speak for Mr. O'Connell -- we wanted to make sure that that would be appropriate source of funds to fund the settlement so there would be no clawback claims either against Mr. Stansbury or the estate subsequent to the consummation of the settlement.

THE COURT: Is that petition at issue?

MR. FEAMAN: It -- Mr. O'Connell?

MR. O'CONNELL: I don't think it was filed as an adversary matter. It's a free-standing petition.

THE COURT: Okay.

MR. O'CONNELL: Everybody has been served with it.

MR. ROSE: For the record we have no objection to that motion being granted. I don't know if anybody objects to the motion. That's certainly something that should be heard if it's objected to very early.

THE COURT: Unless somebody notices it up for hearing, get ready for that.

We've used up all the time I set aside for the Bernstein case. It would sure be nice to spend the rest of my career talking to you about this but I have other people scheduled at 10:30 and I must see them now. Thanks a lot. I'll do my work on setting the trial on the one thing we got and we'll see what happens next.

MR. O'CONNELL: Thank you.

THE COURT: It was fun and look forward to a long list of hearings as well.

(Whereupon, the hearing is concluded at 10:32 a.m.)

CERTIFICATE OF COURT REPORTER

I, JULIE ANDOLPHO, do hereby certify that the foregoing transcript of the proceedings, consisting of pages numbered 1 through 42, inclusive, is a true and correct transcript of the proceedings taken by me before the Honorable JOHN PHILLIPS, on September 15, 2015.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested, directly or indirectly, in this action.

The certification does not apply to any reproduction of the same by any means unless under direct control and/or direction or the reporter.

Dated this 12th day of October, 2015.

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Julie Andolpho, FPR

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APPENDIX 15

00001

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA
PROBATE/GUARDIANSHIP DIVISION IY
CASE NO.: 502011CP000653XXXXSB

IN RE: THE ESTATE OF:
SHIRLEY BERNSTEIN,
Deceased
_____/

ELIOT IVAN BERNSTEIN, PRO SE,
Petitioner,
vs.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA (BOTH PERSONALLY & PROFESSIONALLY); DONALD R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY); THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE DOE'S (1-5000),
Respondents.
_____/

TRANSCRIPT OF PROCEEDINGS
BEFORE
THE HONORABLE MARTIN H. COLIN

South County Courthouse
200 West Atlantic Avenue, Courtroom 8
Delray Beach, Florida 33344

Friday, September 13, 2013
1:30 p.m. - 2:15 p.m.

Stenographically Reported By:
JESSICA THIBAULT

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APPEARANCES

On Behalf of the Petitioner:
ELIOT IVAN BERNSTEIN, PRO SE
2753 NW 34th Street
Boca Raton, Florida 33434

On Behalf of the Defendants:
LAW OFFICE OF MARK MANCERI, P.A.
2929 East Commercial Blvd., Ste. 702
Fort Lauderdale, Florida 33308
(954) 491-7099
mrmlaw@comcast.net
BY: MARK MANCERI, ESQ.

Also present:
Robert Spallina, Esq.
Theodore Bernstein
Mrs. Bernstein, Petitioner's wife

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P R O C E E D I N G S

THE COURT: All right, we're here on the Shirley Bernstein estate, 2011CP000653. Counsel, make your appearances.

MR. MANCERI: Good afternoon, your Honor, Mark Manceri. I'm here on behalf of Robert Spallina and Donald Tescher, named respondents.

MR. ELIOT BERNSTEIN: Good afternoon, your Honor, my name is Eliot Bernstein, and I'm representing myself pro se.

MR. THEODORE BERNSTEIN: Your Honor, Ted Bernstein, trustee of the estate, and I'm here representing myself today.

THE COURT: Okay, thanks.

Let me just get the case up on the computer, please.

All right, so I set oral argument based upon Mr. Bernstein's emergency motions, and I did so with the cautionary language in the notice of hearing that I assume both of you have, that indicates that I first want to hear what makes this matter emergency as defined by our law, so, because you're pro se, Mr. Bernstein, I want to make sure you're aware

of that particular aspect of what I just said.

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Counsel knows. This is not an emergency in your mind. It's an emergency as the law calls it an emergency. You're probably going to show me a case or an administrative order and tell me how this is an emergency.

The second part of it is what type of evidentiary hearing we need to have, so you're up first.

MR. ELIOT BERNSTEIN: Okay, you want me to step up or?

THE COURT: You could do it right from there.

MR. ELIOT BERNSTEIN: It's an emergency because three of the beneficiaries --

THE COURT: Say again? I couldn't -- you mumbled, I couldn't hear you.

MR. ELIOT BERNSTEIN: It's an emergency because three of the beneficiaries of the estates lives have been put in danger.

THE COURT: Okay, so they're about to be killed?

MR. ELIOT BERNSTEIN: They're about to be cut off of school, insurance, the necessary care that was set aside in the estates.

THE COURT: So it's not physical harm?

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MR. ELIOT BERNSTEIN: No.

THE COURT: So it's financial harm?

MR. ELIOT BERNSTEIN: Correct.

THE COURT: Educational harm?

MR. ELIOT BERNSTEIN: Correct.

THE COURT: Show me in either the law or the administrative order where that is defined as an emergency.

MR. ELIOT BERNSTEIN: If it's not then I made a mistake.

THE COURT: You're supposed to know that. That's why we're having this hearing.

MR. ELIOT BERNSTEIN: Well, I'm pro se.

THE COURT: I know. We brought all this judicial effort here. No, sir, this is not a free shot for you.

MR. ELIOT BERNSTEIN: I thought that it was an emergency.

THE COURT: No, it's not your thought.
MR. ELIOT BERNSTEIN: Okay.
THE COURT: I cautioned you in the notice of hearing you so came today -- I kind of cautioned you whether this is an emergency, okay? So you need to demonstrate to me where under our laws this situation that you say the

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evidence would show is imminently happening, imminent means today, okay, where an emergency exists.
The last two emergencies I did, someone was on the way to the airport waiting to be taken illegally to Iran, a non-hate convention country. We had to get an order out so that Homeland Security would rush down with armed guards and protect a child from going overseas and never coming back to the U.S.
The other one was we had to get an order so police could break down the door to prevent someone from being physically killed or harmed physically.
Those two were emergencies. Is this an emergency like that?
MR. ELIOT BERNSTEIN: I believe so.
THE COURT: Okay, all right, so let me tell you, I'm going to let you go forward. If I do not believe so, get your checkbook out.
MR. ELIOT BERNSTEIN: Okay.
THE COURT: You're going to personally pay for the cost of this.
MR. ELIOT BERNSTEIN: Okay.
THE COURT: It doesn't seem so based upon

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what you've told me, but you have this belief that it is. Remember, show me that it's a legal emergency like I gave the example of it. Someone is going to die, be taken out of the jurisdiction, someone's wellbeing today is going to be -- you know, they're going to be without food, they'll be on the street tomorrow.
MR. ELIOT BERNSTEIN: Okay.
THE COURT: So is that the type of hearing I need?
MR. ELIOT BERNSTEIN: Yes.

THE COURT: Okay. So tell me how that -- what evidence is there that this is an emergency along those lines?

MR. ELIOT BERNSTEIN: Okay, the estate representatives when my parents died told us that they were understanding the special circumstances me and my three children are in, and that funds had been set aside and not to worry, there would be no delay of paying their living costs and everything that my father and mother had been paying for years to take care of them, and then they were paying that out of a bank account at Legacy Bank.

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THE COURT: Who is they?

MR. ELIOT BERNSTEIN: Mr. Spallina had directed Rachel Walker to pay the expenses of a Legacy bank account. It was being paid. And then Mr. Spallina stated that I should or that Rachel should -- she was fired, she should now turn the accounts over to my wife to start writing checks out of an account we've never seen.

So I said I didn't feel comfortable writing checks out of an account, especially where it appeared my dad was the signer, so I called Legacy Bank with Rachel and they were completely blown away that checks had been being written out of a dead person's account. Nobody had notified them that Simon had deceased. And that no -- by under no means shall I write checks out of that account, and so then Mr. Spallina told me to turn the accounts over to Janet Craig of Oppenheimer, and Oppenheimer was going to pay the bills as it had been done by Rachel in the past. And so we sent her the Legacy account. We thought all that was how things were being done and, you know, he doesn't give us any documents

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whatsoever in the estate, so we don't know, you know, what he's operating out of, but Oppenheimer then started to pay the things -- first they said, wait a minute, these are school trust funds -- well, they actually said that after they started paying, and they were a

little hesitant that these funds were being used for personal living expenses of everybody, which the other Legacy account had been paying for through an agreement between and my parents. And then what happened was Mr. Spallina directed them to continue, stating he would replenish and replace the funds if he didn't get these other trusts he was in the process of creating for my children in place and use that money he would replenish and replace it.

So the other week or two weeks or a few week ago Janet Craig said that funds are running low and she contacted Mr. Spallina who told her that he's not putting any money into those trusts and that there's nothing there for me, and that basically when that money runs out the kids' insurance, school, their home electricity and everything else I would

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consider an emergency for three minor children will be cut off, and that was not --

THE COURT: Let me ask you a question.

MR. ELIOT BERNSTEIN: Yes, sir.

THE COURT: At the time when you say things were as they should be, your parents were alive and they were paying bills of you and your children?

MR. ELIOT BERNSTEIN: Correct, 100-percent, through an agreement.

THE COURT: An agreement with them?

MR. ELIOT BERNSTEIN: Yes.

THE COURT: Okay. Then who died first?

MR. ELIOT BERNSTEIN: My mom.

THE COURT: Because this is what -- you filed it under your mom's estate.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: Is your father alive or dead?

MR. ELIOT BERNSTEIN: My father is deceased today a year ago.

THE COURT: All right. So you're saying that after your father died, however it happened, bills for you and your children continued to be paid somehow?

MR. ELIOT BERNSTEIN: First out of an

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account that they shouldn't have been being paid out of.

THE COURT: And then it stopped?

MR. ELIOT BERNSTEIN: It stopped. Then it was transferred to Oppenheimer.

THE COURT: And they paid for a little while?

MR. ELIOT BERNSTEIN: Correct.

THE COURT: And when did that stop?

MR. ELIOT BERNSTEIN: Correct, just on August 28th, with one-day's notice.

THE COURT: Okay. So the bills that they were paying for you were what bills?

MR. ELIOT BERNSTEIN: All of them.

THE COURT: All the bills.

MR. ELIOT BERNSTEIN: Health insurance, electricity, water, food, clothing, everything, 100-percent.

THE COURT: When did the emergency take place?

MR. ELIOT BERNSTEIN: On August 28th. They told me if I didn't sign releases that Robert wanted me to sign and turn the money over to my brother, the remaining corpus of the trust, that they were going to shut the funds

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off as of that day.

THE COURT: And they did?

MR. ELIOT BERNSTEIN: I'm not 100-percent sure, because then I asked them for their operating documents that Mr. Spallina had sent them, and once again we've got un-notarized documents --

THE COURT: We'll talk about the notary thing in a second.

MR. ELIOT BERNSTEIN: Okay. Then we have new improperly notarized documents authorizing the trust to operate, and they sent me incomplete documents which are unsigned on every page of the trust agreement, so they're telling me and I've asked them three times if they have signed copies and three times they've sent me unsigned copies.

THE COURT: Okay, but what bills today --

MR. ELIOT BERNSTEIN: All of them.

THE COURT: What bills are unpaid as overdo today?

MR. ELIOT BERNSTEIN: Health insurance is one.
THE COURT: What's overdue today?
MR. ELIOT BERNSTEIN: Health insurance is
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one.
THE COURT: All right, name the health insurance company.
MR. ELIOT BERNSTEIN: It's COBRA.
THE COURT: COBRA is not a company.
MR. ELIOT BERNSTEIN: Blue Cross.
THE COURT: Blue Cross, okay. How much is overdue to Blue Cross today?
MR. ELIOT BERNSTEIN: $2,000 or so.
THE COURT: It's not $2,000 a day.
MR. ELIOT BERNSTEIN: A month.
THE COURT: $2,000 a month is the health insurance bill?
MR. ELIOT BERNSTEIN: Correct.
THE COURT: When was that bill due?
MR. ELIOT BERNSTEIN: Well, this is the problem. All of the bills are going to them and they don't share with me any of that.
THE COURT: So how do you know that you don't have health insurance coverage?
MR. ELIOT BERNSTEIN: Only because it's paid by them on that date. Usually on the first.
THE COURT: September 1st?
MR. ELIOT BERNSTEIN: Yes. As of
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September 1st I don't believe they have --
THE COURT: Is the coverage in effect today?
MR. ELIOT BERNSTEIN: I don't know.
THE COURT: If you don't know, how do you know that it's an emergency?
MR. ELIOT BERNSTEIN: I just know they haven't paid it.
THE COURT: Okay, so --
MR. ELIOT BERNSTEIN: I don't have --
THE COURT: So you have coverage you said as of August 31st you had coverage?
MR. ELIOT BERNSTEIN: We don't know. We don't have an accounting if she stated that, I'm sorry.

THE COURT: Okay, so you may be covered, you may not be covered?
MR. ELIOT BERNSTEIN: Correct.
THE COURT: What other bill is unpaid as of today.
MR. ELIOT BERNSTEIN: And that's my wife and my children too.
THE COURT: Okay.
MR. ELIOT BERNSTEIN: Again, they have all the bills, so when they're due, like the

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electric was due on the 28th, then they usually pay it. I don't even get the bills. So the bills are going straight to Oppenheimer.
THE COURT: How do you know authoritatively that they're not being paid?
Ma'am, you can't speak. You're not a lawyer, right?
MRS. BERNSTEIN: No.
THE COURT: Up, move to the back.
MR. ELIOT BERNSTEIN: You want her to go back?
THE COURT: Yes, because she's disruptive. I can't speak to you and hear her.
MR. ELIOT BERNSTEIN: Okay.
THE COURT: So stay there in absolute silence. You could write something if you want, is that agreed?
MRS. BERNSTEIN: Yes.
THE COURT: Okay, go ahead. How do you know these monthly bills are not being paid? How do you know the way you know today is Friday, you know what your name is, know meaning indisputable knowledge.
MR. ELIOT BERNSTEIN: I can't say for certainty since I don't receive it and manage

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and pay the bills.
THE COURT: Well then how is it an emergency if you don't know?
MR. ELIOT BERNSTEIN: Well, because we know that within this next month if electricity isn't paid and there's no money to pay it and he doesn't reimburse the trusts that all those bills on whatever date they were due were lapsing in the next few hours.

THE COURT: From today?
MR. ELIOT BERNSTEIN: From the 28th.
THE COURT: The 28th of August?
MR. ELIOT BERNSTEIN: Correct, sir.
THE COURT: All right. So you don't know if they've been paid or not. You still have your electric on?
MR. ELIOT BERNSTEIN: Yes.
THE COURT: Are any services shut off?
MR. ELIOT BERNSTEIN: No.
MR. ROTHMAN: Maybe like things like lawn and stuff, the lawn guys have been coming, said we owe them money, which we've never heard that from this guy knocking on the door.
THE COURT: All right. Is the lawn an emergency situation?

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MR. ELIOT BERNSTEIN: No. You just asked if any bills --
THE COURT: These are not emergencies then.
MR. ELIOT BERNSTEIN: Okay.
THE COURT: Remember, you filed a motion that stopped the courthouse from working.
MR. ELIOT BERNSTEIN: I'm very sorry.
THE COURT: We thought you were ready to die on the day you filed the motion.
MR. ELIOT BERNSTEIN: I'm very sorry.
THE COURT: Okay.
MR. ELIOT BERNSTEIN: I believed it was an emergency. The minor children are in there.
THE COURT: Let me ask, how old are you?
MR. ELIOT BERNSTEIN: I'm 50.
THE COURT: Can you pay an electric bill?
MR. ELIOT BERNSTEIN: No.
THE COURT: Why not?
MR. ELIOT BERNSTEIN: I don't have any employment.
THE COURT: Why not? If there's an emergency and you're not eating and you have children --
MR. ELIOT BERNSTEIN: It's very

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complicated, but --
THE COURT: Well, could you work to pay your electric bill? If that made a difference?

MR. ELIOT BERNSTEIN: No, I haven't been able to gain employment due to Ricco-related-type crimes that have been committed against me and my family.
THE COURT: So your kids are without food, you would have them starve rather then go over to Burger King or Dunkin Donuts and get a job doing --
MR. ELIOT BERNSTEIN: I've tried all those things.
THE COURT: And they won't hire you?
MR. ELIOT BERNSTEIN: Let me explain.
THE COURT: Will they hire you to make enough money?
MR. ELIOT BERNSTEIN: No. And that's why my father and mother had set aside these funds to pay those bills because they understood the gravity --
THE COURT: So here's what we'll do, we're going to have a hearing, tell me if you're comfortable, whether there's any employment you could get, so I'm going to bring the people

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from Florida State Employment who tell me there's hundreds of jobs today that you could work.
MR. ELIOT BERNSTEIN: Okay.
THE COURT: You could start today as a laborer right outside this courthouse. Why don't you do that?
MR. ELIOT BERNSTEIN: Well, because if I do that I have tax liens that are --
THE COURT: Who cares? You want to feed your children. They're going to pay you money to feed your children.
MR. ELIOT BERNSTEIN: Okay, I'll explain. I have tax liens which are under investigation by the inspector general of the tax administration department, currently ongoing, that were put on me as part of the efforts in a Ricco-related lawsuit that I'm involved in. These are just the facts, I'm just telling you --
THE COURT: What's to stop you from working as a laborer?
MR. ELIOT BERNSTEIN: Because they then attach my wages --

THE COURT: They don't even know that

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you're working, and you have an emergency, you could feed your children.

MR. ELIOT BERNSTEIN: They know I'm working.

THE COURT: How do they know you're working?

MR. ELIOT BERNSTEIN: Well, actually, if you read the last articles I put in the petition six or five, one of those two, I put in the articles that have been released in the press that say that they were misusing joint terrorism task force funds and resources to monitor and violate our rights through the Patriot Act violations, and that they have done that to me in the related cases in the federal court.

THE COURT: All right, whatever you say. I don't think you want -- if you want a hearing on whether you could go to work today, physically go to work and pay, I'll give you that hearing right now and I'll get someone from Florida Employment. Here's the deal, you lose all your motions as soon as they tell you that you could go outside and work.

Do you want that hearing or not? You

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could physically earn enough money to pay for food for your children today, you tell me you can't do -- that someone is going to tackle you and stop you from working outside as a laborer to get enough money to feed your children? That's the emergency, your children are starving. You're a parent. You're going to tell me you're going to let your children starve and not work to earn enough money to feed them, that's what you're telling me, correct?

MR. ELIOT BERNSTEIN: No. Well, I won't tell you that because, I guess, if you say there's some job that you could get me I'll get it.

THE COURT: There's tons of jobs.

MR. ELIOT BERNSTEIN: I know, I've applied for so many over the years --

THE COURT: I mean maybe not as a CEO of a company. $10, $9.00 an hour jobs --

MR. ELIOT BERNSTEIN: I've applied for minimum wage and had trouble, believe me.

THE COURT: I'm talking about getting work today -- if you tell me you can't work today I'll have a hearing on that.

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MR. ELIOT BERNSTEIN: I can work today.

THE COURT: Well, then you could feed your children today.

MR. ELIOT BERNSTEIN: Okay, if I could get a job --

THE COURT: That's not an emergency. You might have a hearing on it down the line, but it's not an emergency.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: An emergency means my kids are starving, they haven't eaten, there's no food, and I can't legally get them food because I can't work. I have people who are blind, who have no arms and legs, and they can't work.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: That's different, that's not you.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: Okay. Can't work and don't want to work, think they're reasons not to work are two different things.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: Okay. What's your position on the emergency before we go to some of these others issues which concern me about what he

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said.

MR. MANCERI: Good afternoon, your Honor. As I stated in my opening, I represent Robert Spallina and Mr. Tescher. I would like to apologize --

THE COURT: So their roles are what in this case?

MR. MANCERI: They were counsel or are counsel for the estate of Shirley Bernstein, as well as counsel for the estate of Simon Bernstein, who is in front of Judge French.

THE COURT: Okay.

MR. MANCERI: But before I make my presentation, I would just like to apologize for Mr. Tescher's absence. He's out of town for the holiday.
THE COURT: Okay. Who are the PR's that you represent?
MR. MANCERI: Well, Shirley Bernstein there is no technically any PR because we had the estate closed.
THE COURT: Okay.
MR. MANCERI: And what emanated from Mr. Bernstein's 57-page filing, which falls lawfully short of any emergency, was a petition

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to reopen the estate, so technically nobody has letters right now.
Simon Bernstein, your Honor, who died a year ago today as you heard, survived his wife, Shirley Bernstein, who died December 10, 2010. Simon Bernstein was the PR of his wife's estate.
As a result of his passing, and in attempt to reopen the estate we're looking to have the estate reopened. So nobody has letters right now, Judge. The estate was closed.
THE COURT: So you agree that in Shirley's estate it was closed January of this year, there was an order of discharge, I see that. Is that true?
MR. ELIOT BERNSTEIN: I don't know.
THE COURT: Do you know that that's true?
MR. ELIOT BERNSTEIN: Yes, I believe.
THE COURT: So final disposition and the order got entered that Simon, your father --
MR. ELIOT BERNSTEIN: Yes, sir.
THE COURT: -- he came to court and said I want to be discharged, my wife's estate is closed and fully administered.
MR. ELIOT BERNSTEIN: No. I think it

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happened after --
THE COURT: No, I'm looking at it.
MR. ELIOT BERNSTEIN: What date did that happen?
THE COURT: January 3, 2013.
MR. ELIOT BERNSTEIN: He was dead.

MR. MANCERI: That's when the order was signed, yes, your Honor.
THE COURT: He filed it, physically came to court.
MR. ELIOT BERNSTEIN: Oh.
THE COURT: So let me see when he actually filed it and signed the paperwork. November. What date did your dad die?
MR. ELIOT BERNSTEIN: September. It's hard to get through. He does a lot of things when he's dead.
THE COURT: I have all of these waivers by Simon in November. He tells me Simon was dead at the time.
MR. MANCERI: Simon was dead at the time, your Honor. The waivers that you're talking about are waivers from the beneficiaries, I believe.
THE COURT: No, it's waivers of

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accountings.
MR. MANCERI: Right, by the beneficiaries.
THE COURT: Discharge waiver of service of discharge by Simon, Simon asked that he not have to serve the petition for discharge.
MR. MANCERI: Right, that was in his petition. When was the petition served?
THE COURT: November 21st.
MR. SPALLINA: Yeah, it was after his date of death.
THE COURT: Well, how could that happen legally? How could Simon --
MR. MANCERI: Who signed that?
THE COURT: -- ask to close and not serve a petition after he's dead?
MR. MANCERI: Your Honor, what happened was is the documents were submitted with the waivers originally, and this goes to Mr. Bernstein's fraud allegation. As you know, your Honor, you have a rule that you have to have your waivers notarized. And the original waivers that were submitted were not notarized, so they were kicked back by the clerk. They were then notarized by a staff person from Tescher and Spallina admittedly in error. They

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should not have been notarized in the absentia of the people who purportedly signed them. And I'll give you the names of the other siblings, that would be Pamela, Lisa, Jill, and Ted Bernstein.

THE COURT: So let me tell you because I'm going to stop all of you folks because I think you need to be read your Miranda warnings.

MR. MANCERI: I need to be read my Miranda warnings?

THE COURT: Everyone of you might have to be.

MR. MANCERI: Okay.

THE COURT: Because I'm looking at a formal document filed here April 9, 2012, signed by Simon Bernstein, a signature for him.

MR. MANCERI: April 9th, right.

THE COURT: April 9th, signed by him, and notarized on that same date by Kimberly. It's a waiver and it's not filed with The Court until November 19th, so the filing of it, and it says to The Court on November 19th, the undersigned, Simon Bernstein, does this, this, and this. Signed and notarized on April 9, 2012. The notary said that she witnessed Simon

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sign it then, and then for some reason it's not filed with The Court until after his date of death with no notice that he was dead at the time that this was filed.

MR. MANCERI: Okay.

THE COURT: All right, so stop, that's enough to give you Miranda warnings. Not you personally --

MR. MANCERI: Okay.

THE COURT: Are you involved? Just tell me yes or no.

MR. SPALLINA: I'm sorry?

THE COURT: Are you involved in the transaction?

MR. SPALLINA: I was involved as the lawyer for the estate, yes. It did not come to my attention until Kimberly Moran came to me after she received a letter from the Governor's Office stating that they were investigating some fraudulent signatures on some waivers that were signed in connection with the closing of

the estate.
THE COURT: What about the fact, counsel, let me see who signed this. Okay, they're all the same as to -- so let me ask this, I have a

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document where Eliot, you're Eliot, right?
MR. ELIOT BERNSTEIN: Yes, sir.
THE COURT: Where you purportedly waived accounting, agreed to a petition to discharge on May 15th, and you signed that. Do you remember doing that? Do you remember that or not? I'm looking at it.
MR. ELIOT BERNSTEIN: I remember signing it and sending it with a disclaimer that I was signing it because my father was under duress and only to relieve this stress that he was being --
THE COURT: Well, I don't care -- I'm not asking you why you signed it.
MR. ELIOT BERNSTEIN: I also signed it with the expressed -- when I signed it I was coned by Mr. Spallina that he was going to send me all the documents of the estate to review. I would have never lied on this form when I signed it. It's saying that I saw and I never saw --
THE COURT: Let me ask you --
MR. ELIOT BERNSTEIN: I lied.
THE COURT: Did you have your signature notarized?

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MR. ELIOT BERNSTEIN: No.
THE COURT: Kimberly Moran never signed or notarized his signature?
MR. MANCERI: Yes, your Honor, and that's been addressed with the Governor's office.
THE COURT: You need to address this with me.
MR. MANCERI: I am going to address it with you.
THE COURT: Here's what I don't understand because this is part of the problem here, is that Shirley has an estate that's being administered by Simon.
MR. MANCERI: Correct.
THE COURT: There comes a time where they

think it's time to close out the estate.
MR. MANCERI: Correct.
THE COURT: Waivers are sent out, that's kind of SOP, and people sign off on that.
MR. MANCERI: Right.
THE COURT: And why are they held up for six months, and when they're filed it's after Simon is already deceased?
MR. MANCERI: They were originally filed away, your Honor, under the signature of the

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people.
THE COURT: No, they weren't filed, that's the whole thing. I'm looking at the file date, filed with The Court.
MR. MANCERI: No, they were returned by the clerk because they didn't have notarization. We have affidavits from all those people, Judge.
THE COURT: Well you may have that they got sent up here.
MR. MANCERI: We have affidavits from all of those people.
MR. ELIOT BERNSTEIN: Including Simon?
THE COURT: Slow down. You know how we know something is filed? We see a stamp.
MR. MANCERI: It's on the docket sheet, I understand.
THE COURT: So it's stamped in as filed in November. The clerk doesn't have -- now, they may have rejected it because it wasn't notarized, and that's perhaps what happened, but if in the meantime waiting cured the deficiency of the document, two things happen you're telling me, one, Simon dies.
MR. MANCERI: Correct.

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THE COURT: And when those documents are filed with the clerk eventually in November they're filed and one of the documents says, I, Simon, in the present.
MR. MANCERI: Of Ms. Moran.
THE COURT: No, not physically present, I Simon, I would read this in November Simon saying I waive -- I ask that I not have to have an accounting and I want to discharge, that

request is being made in November.
MR. MANCERI: Okay.
THE COURT: He's dead.
MR. MANCERI: I agree, your Honor.
THE COURT: Who filed that document?
MR. MANCERI: Robert, do you know who filed that document in your office?
MR. SPALLINA: I would assume Kimberly did.
MR. MANCERI: Ms. Moran.
THE COURT: Who is she?
MR. MANCERI: She's a staff person at Tescher and Spallina.
THE COURT: When she filed these, and one would think when she filed these the person who purports to be the requesting party is at least

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alive.
MR. MANCERI: Understood, Judge.
THE COURT: Not alive. So, well -- we're going to come back to the notary problem in a second.
MR. MANCERI: Okay.
THE COURT: In the meantime, based upon all that I discharge the estate, it's closed.
Here's what I don't understand on your side, you're representing yourself, but the rules still apply. You then file, Eliot Bernstein, emergency petitions in this closed estate, it's closed.
MR. ELIOT BERNSTEIN: You reopened it.
THE COURT: When did I reopen it?
MR. MANCERI: No, it hasn't been reopened, your Honor.
THE COURT: There's an order that I entered in May of 2013 denying an emergency petition to freeze assets. You filed this one in May. Do you remember doing that?
MR. ELIOT BERNSTEIN: I believe so.
THE COURT: And what you said was there's an emergency in May, you want to freeze the estate assets appointing you PR, investigate

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the fraud documents, and do a whole host of other things, and the estate had been closed. The reason why it was denied among other

things, one, it may not have been an emergency, but, two, the case was not reopened. There's no reopen order.

MR. ELIOT BERNSTEIN: I paid $50 to someone.

THE COURT: You may have paid to file what you filed, but there's no order reopening the estate.

MR. ELIOT BERNSTEIN: Okay, that's my mistake.

THE COURT: It's closed, the PR is discharged, they all went home.

MR. ELIOT BERNSTEIN: And I filed to reopen because we discovered the fraudulent documents.

THE COURT: But then you still had to ask to reopen --

MR. ELIOT BERNSTEIN: And notice, your Honor, that they haven't come to you in all of that time, he said he just got notified from the governor the other day about this fraud, I put it in your court and served him months ago

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and he never came to me or you or anybody else to know that the police are calling him, the sheriff and the governor's Office.

THE COURT: Then you filed another emergency similarly, served you folks, Tescher and Spallina. I denied it because it wasn't an emergency because nothing was happening I thought had to happen on the day or two after.

MR. ELIOT BERNSTEIN: Well, now that I understand emergency --

THE COURT: The estate wasn't open and it really wasn't an emergency at the time. And then you filed a motion in the ordinary course to have things heard, and a motion to -- bunch of other motions, to remove PR.

MR. ELIOT BERNSTEIN: Well, with each successive crime we found -- by the way, that's kind of why this is an emergency because with the use of these fraudulent documents a bunch of other crimes are taking place.

THE COURT: Okay. Representing yourself is probably not the easiest thing.

MR. ELIOT BERNSTEIN: I had counsel, your Honor, but Mr. Spallina abused her so much and

she ran up a $10,000 bill.

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THE COURT: Doesn't help me.
MR. ELIOT BERNSTEIN: Doesn't help you, okay.
THE COURT: Then in August you started again, September you started again, and at least I set the hearing because it's kind of hard when I read your allegations I couldn't figure it out. Now I think, okay -- so now let me ask you this, counsel.
MR. MANCERI: Yes, sir.
THE COURT: So the pleadings get filed, the estate gets closed.
MR. MANCERI: Correct.
THE COURT: Simon dies. So what happened with Shirley's estate?
MR. MANCERI: Shirley's estate is closed, as you said.
THE COURT: I know the administration is closed. What happened with her estate? Where did that go? Did she have a will?
MR. MANCERI: Her assets went into trusts, and her husband had a power of appointment which he exercised in favor of Mr. Bernstein's children.
THE COURT: Okay.

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MR. MANCERI: And that leads to the trust that he mentioned at Oppenheimer which he mislead The Court as to what's happening with that.
THE COURT: Let me slow you down.
MR. MANCERI: Okay.
THE COURT: So her estate assets went into a trust?
MR. MANCERI: Correct.
THE COURT: And that trust is --
MR. MANCERI: And Ted Bernstein, I believe, is the trustee of that trust.
THE COURT: And you're brothers?
MR. THEODORE BERNSTEIN: That's correct.
THE COURT: All right. So then -- so Simon really wasn't alive long when he died as trustee?
MR. MANCERI: Not terribly long.

THE COURT: All right. So he was a trustee. Was she a trustee as well?
MR. MANCERI: He died, your Honor. Again she died December 10, 2010. He died September of 2012.
THE COURT: Right, but was he a trustee also of Shirley's trust?

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MR. MANCERI: Yes.
THE COURT: So she dies, the estate is closed, her assets are in a trust. Simon then dies. What happened with his estate? Judge French is hearing it, but tell me what happened.
MR. MANCERI: My understanding is that money went into a trust for the grandchildren.
THE COURT: Grandchildren of Eliot?
MR. MANCERI: Well there's actually ten of them, ten grandchildren, which he has three.
THE COURT: So the beneficiary level for Simon was he skipped over his children and gave everything to the grandchildren?
MR. MANCERI: That's correct.
MR. ELIOT BERNSTEIN: No.
THE COURT: That's not what happened with your father's estate?
MR. ELIOT BERNSTEIN: No.
THE COURT: That's not what the rule says to do?
MR. ELIOT BERNSTEIN: No.
THE COURT: What does the rule say to do?
MR. ELIOT BERNSTEIN: The rule is not properly notarized. He didn't appear --

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THE COURT: What did the will say that The Court used?
MR. ELIOT BERNSTEIN: The Court filed a will and amended trust, both improperly notarized.
THE COURT: You didn't answer my question, so stop speaking.
MR. ELIOT BERNSTEIN: Okay.
THE COURT: If you don't answer me you give up your right to participate. Stop, don't speak, all right, because you waived your right because you refused to answer my question,

okay. So I'll let you answer it.
MR. MANCERI: If I can, your Honor.
THE COURT: Go ahead.
MR. MANCERI: The ten grandchildren shares -- and I want to be clear on this, this gentleman is only a tangible personal property beneficiary. He and his own proper person. And the mother. That's all he's entitled to. No cash request, nothing directly to him, because of his financial problems among other issues.
THE COURT: Okay.
MR. MANCERI: He has been asked to

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establish accounts for the benefit of his children and he refused to do it.
THE COURT: I'm not interested in that, here's what I'm interested in.
MR. MANCERI: All right.
THE COURT: So before this latest realm of pleadings were filed, both parents are deceased?
MR. MANCERI: Yes.
THE COURT: They both have trusts?
MR. MANCERI: Right.
THE COURT: Simon's trusts are for the benefit of the grandchildren?
MR. MANCERI: Correct.
THE COURT: And Shirley's trust is for the benefit of who?
MR. MANCERI: The grandchildren now because Simon died.
THE COURT: So children-level, Eliot, Ted were skipped over as beneficiaries?
MR. MANCERI: That's correct, your Honor.
THE COURT: Now, tell me the best you can the way Eliot described that there was some deal that had been in effect with Shirley and Simon while they were alive that kept on going

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after Shirley died to help support his children.
MR. MANCERI: That I can't comment on personally, your Honor, because I never met either one of them.
THE COURT: Do you know anything about

that?
MR. MANCERI: He was the draftsman. His firm was the draftsman.
THE COURT: So did Shirley and --
MR. ELIOT BERNSTEIN: They didn't draft --
THE COURT: Stop. Next time you speak out of turn you will be held in contempt of court.
MR. ELIOT BERNSTEIN: Sorry.
THE COURT: Why get yourself in trouble? You're being rude.
MR. ELIOT BERNSTEIN: Sorry.
THE COURT: So is it true that when they were alive they were helping to support Eliot's family?
MR. SPALLINA: To the best of my knowledge, yes, sir.
THE COURT: So after Shirley died, did that continue?
MR. SPALLINA: Yes, I assume so, that Si

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was paying bills.
THE COURT: And when he died in September of last year, what happened, if anything?
MR. SPALLINA: There was an account that we set up in the name of Bernstein Family Reality. That was owned by three old trusts not that we created, but were created by Mr. Bernstein in 2006 that owned the house that the family lives in, so there was an LLC that was set up, Bernstein Family Realty, LLC, there's the three children's trust that own the membership interest in that, and there was a bank account at Legacy Bank that had a small amount of money that Si's assistant Rachel had been paying the bills out of on behalf of the trusts.
When Mr. Bernstein died, Oppenheimer, as trustee of the three trusts and in control of the operations of that entity, assigned themselves as manager, had the account moved from Legacy to Oppenheimer, and continued to pay the bills they could with the small amount of money that was in the Legacy account.
At this time, the Legacy account was terminated because there were no funds left,

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they started using the funds inside the three trusts at Oppenheimer to pay for health, education, maintenance and support --

THE COURT: Of the grandchildren?

MR. SPALLINA: Of the grandchildren. And it was probably at the time that Mr. Bernstein died about $80,000 in each of those trusts last September.

THE COURT: Okay, so then what happened?

MR. SPALLINA: So over the course of the last year -- the kids go to private school, that's an expensive bill that they pay, think it's approximately $65,000. There were other expenses throughout the year. The trust assets as of this week I spoke to Janet Craig, have depleted down collectively across the three trusts for about $25,000.

THE COURT: Total left?

MR. SPALLINA: Total left in the three trusts.

THE COURT: Any other trusts?

MR. SPALLINA: Again, this is not part of the estate right now, so let's leave the estate of Shirley and Si completely separate. Just trying to get to the issue that Mr. Bernstein

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spoke about first.

THE COURT: Right.

MR. ELIOT BERNSTEIN: Oppenheimer called me and said that the trusts are coming to the end of their useful life, it doesn't pay to administer them anymore. They're going to make final distribution to Mr. Bernstein and his wife as the guardians of their children.

They sent out standard waivers and releases for him to sign in exchange for the remaining money that was there. There was a disagreement that ensued and I have the e-mail correspondence between Eliot and Janet Craig at Oppenheimer that this is extortion and that Mr. Spallina and you have devised a plan not to give us the rest of the money. That's not the case at all. In fact, we told them to distribute the rest of the money, there's been $12,000 in bills submitted to them that they are either paying today or on Monday, and the $14,000 or some-odd dollars that would be left

are in securities that they have to liquidate, supposedly they would have good funds today, but there was some threats of litigation and so they said that it might be prudent to hold onto

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this. There's also some expenses outstanding on accounting fees and tax preparation fees.
THE COURT: Let me ask you this, what's the other part of the estate planning that Shirley or Simon had, another trust?
MR. SPALLINA: Both of their estates say that at the death of the second of us to die, pursuant to Si's exercise over his wife's assets, that all of those assets would go down to ten grandchildren's trust created under their dockets.
Mr. Bernstein was on a call while his father was alive with his other four siblings where he had called me and said, Robert, I think we need to do a phone call with my children to explain to them that I'm going to give this to the ten grandchildren.
THE COURT: And that happened?
MR. SPALLINA: And that happened.
THE COURT: So right now the status, there's a trust that deals with that, or more than one trust.
MR. SPALLINA: There's both Si's estates and Shirley's estates basically say after and again there is some litigation.

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THE COURT: And that's different than this $14,000 --
MR. SPALLINA: Yeah, those are three trusts that were just designed to hold.
THE COURT: Who's administering those trusts?
MR. SPALLINA: Those trusts, Ted Bernstein is the trustee of his mother's trust and holds three assets.
THE COURT: Who is the trustee of the father's trust?
MR. SPALLINA: Don Tescher and myself.
THE COURT: And what are those trusts doing with trust assets?
MR. SPALLINA: On the estate side there

was a claim filed by a former employee of Mr. Bernstein for $2.5 million-plus, so there's litigation that's been pending in the estate now for basically since this date, and those funds are just sitting in a partnership account at JP Morgan with no distributions that have been made at all.
THE COURT: So what's the total corpus of the what I'll call the ten grandchildren's trust of both grandparents?

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MR. SPALLINA: Not taking into account the litigation?
THE COURT: Well, no, you haven't paid anything out yet.
MR. SPALLINA: I would say it's approximately $4 million.
THE COURT: So there's litigation going on in Simon's --
MR. SPALLINA: Estate.
THE COURT: And at some point when that claim is resolved the trust will then be administered by your firm and...
MR. SPALLINA: No, that's not the case. Each of the adult children for their own children are designated to serve as trustee of their children's trust.
THE COURT: So a distribution takes place then once the money gets to the trust age?
MR. SPALLINA: Correct, and today again the Shirley Bernstein trust does have liquid assets in it. There was two properties, real estate properties, the residential home and a condo on the beach. The condo on the beach sold back in April or May. There were funds that came into the account at that time. Ted

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was going to make partial distribution. He sent out an e-mail with tax I.D. numbers and the naming of the trust to the five children for the purposes of them opening up the accounts.
THE COURT: Okay, what happened?
MR. SPALLINA: Seven of ten accounts were opened and were actually funded this week with $80,000.

THE COURT: Total or each?
MR. SPALLINA: Each.
THE COURT: Three of Eliot's --
MR. SPALLINA: Are not open. And we've asked multiple --
THE COURT: And he executed documents to open $240,000 immediately or very quickly go into those accounts?
MR. SPALLINA: Yes, sir.
THE COURT: Go ahead.
MR. SPALLINA: Now, there was a question from our client as trustee of his mother's trust because he has apprehension as do the other siblings as to whether or not Mr. Bernstein is the proper trustee for that trust.

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THE COURT: Okay, all right.
MR. SPALLINA: We had discussions about possibly making emergency distributions to pay the expenses, but not necessarily --
THE COURT: Not giving the money directly to him.
MR. SPALLINA: Not necessarily put in all $80,000 in all three of those trusts.
THE COURT: Does the trust pay expenses directly or give money to the parent who pays the expenses? Do you pay the electric bill or do you give money to Eliot to pay the electric bill?
MR. SPALLINA: Today?
THE COURT: Now, how does that work with the others kids?
MR. SPALLINA: They were just funded, but normally the trustee of the trust would pay for expenses on behalf of the beneficiary if they're minor children. Some of the children here are adults. So to the extent they're adults they would make distribution.
THE COURT: So what's the resolution of the notary problem? Has that been resolved?
MR. SPALLINA: I can speak to it.

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MR. MANCERI: Please, Robert, go ahead. The Judge is addressing you, be my guest.
MR. SPALLINA: In April of last year we

met with Mr. Bernstein in April of 2012 to close his wife's estate.
THE COURT: No, I know that part.
MR. SPALLINA: Okay.
THE COURT: I mean everyone can see he signed these not notarized. When they were sent back to be notarized, the notary notarized them without him re-signing it, is that what happened?
MR. SPALLINA: Yes, sir.
THE COURT: So whatever issues arose with that, where are they today?
MR. SPALLINA: Today we have a signed affidavit from each of the children other than Mr. Bernstein that the original documents that were filed with The Court were in fact their original signatures which you have in the file attached as Exhibit A was the original document that was signed by them.
THE COURT: It was wrong for Moran to notarize -- so whatever Moran did, the documents that she notarized, everyone but

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Eliot's side of the case have admitted that those are still the original signatures of either themselves or their father?
MR. SPALLINA: Yes, sir.
THE COURT: I got it.
MR. MANCERI: And we can file those affidavits, Judge, at any time.
THE COURT: So now I'm trying to deal with the oral argument for today.
So I only have in front of me Shirley's estate. Shirley's estate is closed.
MR. MANCERI: Your Honor, could I bring you up to speed on one thing maybe you're not seeing on your docket.
THE COURT: Yes.
MR. MANCERI: We actually filed a motion to actually reopen the estate when we learned about the deficiency in the affidavit issue.
THE COURT: Okay.
MR. MANCERI: And that was signed August 28th of this year. Do you have a copy of that, Judge, can I approach?
THE COURT: Hold on, it should be here, but let's see. Because I have an August 28th

file, I have that.

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MR. MANCERI: You have that.
THE COURT: Motion to reopen the estate.
MR. MANCERI: Right, your Honor. We set it for an evidentiary hearing.
THE COURT: When is it set?
MR. MANCERI: It's set for October 28th, your Honor, for an hour at 11:00 a.m.
THE COURT: I'm going to decide on Shirley's case whether to open it and how to deal with whatever issues pertain to this, but, Eliot, on your side you have an emergency motion to freeze assets of the estate, so I would say to you with a closed estate where the PR, Simon, has been already discharged, and a petition for discharge approved, what assets are there in a closed estate where the estate assets have already been distributed that I can now in your motion freeze?
MR. ELIOT BERNSTEIN: The petition --
THE COURT: Listen to my question. It's artful. What assets now that the estate's been closed, that the estate's been fully administered, and the estate has been discharged, can I freeze that I could identify still belong to Shirley's estate?

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MR. ELIOT BERNSTEIN: I can't tell you because I never got a document regarding the assets.
THE COURT: But when you say it's an emergency hearing --
MR. ELIOT BERNSTEIN: But I was supposed to get those documents, correct?
THE COURT: Well, I don't know what documents --
MR. ELIOT BERNSTEIN: I was a beneficiary, unlike they said, me, my brother was cut out of my mother's estate and my older sister.
THE COURT: They said you were a beneficiary of personal property.
MR. ELIOT BERNSTEIN: No, I was the third beneficiary to the entire estate.
THE COURT: All right, I don't know.
MR. SPALLINA: At one point he was.

MR. MANCERI: Early on, your Honor.
THE COURT: But on the will that was probated?
MR. MANCERI: No.
THE COURT: Okay, so maybe you don't know then, your mother changed her will, they say.
MR. ELIOT BERNSTEIN: Did my mother change

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her will?
MR. SPALLINA: You know that your father did.
MR. ELIOT BERNSTEIN: No, he asked if my mother did.
MR. SPALLINA: Oh, yes.
THE COURT: Okay, all right --
MR. ELIOT BERNSTEIN: After she was dead using alleged --
THE COURT: Not after she was dead.
MR. ELIOT BERNSTEIN: No, your Honor, my father went back into my mother's estate and made changes after we believe he was dead using documents that are signed forged, by the way those documents you're looking at --
THE COURT: Here's the thing.
MR. ELIOT BERNSTEIN: Yes.
THE COURT: You want me to freeze assets of an estate that's already been fully probated. I can't freeze something that doesn't exist.
MR. ELIOT BERNSTEIN: Can you reopen it because it was closed on fraudulent documents?
THE COURT: They asked for the estate to be reopened. They want to have a hearing on

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that.
MR. ELIOT BERNSTEIN: Okay.
THE COURT: Do you have responses to your motion?
MR. MANCERI: Mr. Spallina filed it, but I don't believe so yet, your Honor.
THE COURT: So we know one person wants to reopen it, Eliot, correct? Who did you notice of that motion?
MR. MANCERI: This motion was served on Ted Bernstein, Pamela --
THE COURT: Ted, do you want the estate

reopened, Shirley's estate reopened?
MR. THEODORE BERNSTEIN: I think you're asking me a legal question, your Honor.
THE COURT: Does anyone represent you?
MR. MANCERI: Not at the moment, your Honor. I may depending on how far this goes.
THE COURT: All right, well, what I'm getting at is, is anyone opposing the reopening of the estate?
MR. MANCERI: No, your Honor. We want to open it to cure what his allegation is.
THE COURT: First step, one, is reopen.
MR. MANCERI: Correct.

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THE COURT: So why do we have to wait until the end of October to reopen the estate when we could do that in mid-September?
MR. MANCERI: No reason, your Honor.
THE COURT: Any reason why we need to wait?
MR. ELIOT BERNSTEIN: No.
THE COURT: All right, so...
MR. MANCERI: You haven't heard any objections to this from anybody else, have you Robert?
MR. SPALLINA: No.
THE COURT: All right, so get me up an agreed order that I could open up the estate.
MR. MANCERI: Okay, you'll take care of that, Robert?
MR. SPALLINA: Uh-Huh.
MR. MANCERI: We'll take the October hearing off your docket.
THE COURT: You don't need an evidentiary hearing to prove it, I'm going to do it, and under these circumstances that makes sense.
Okay, so I'm going to have it reopen the estate. So now the question is --
MR. MANCERI: Your Honor, just so I'm

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clear.
THE COURT: Yes, Shirley's estate.
MR. MANCERI: The reason we asked to reopen it is to cure or address this alleged fraud.
THE COURT: But all I'm physically doing

is saying, Rich, reopen.
MR. MANCERI: Agreed. I just wanted to be clear.
THE COURT: I don't want you to get rid of the hearing.
MR. MANCERI: Oh, you don't, okay.
THE COURT: So at the hearing whatever it is in relief that you want now that the estate is open, I'll hear that.
MR. MANCERI: Okay.
THE COURT: And, Mr. Bernstein, whatever you want relief-wise to happen with respect to Shirley's estate, not Shirley's trust, but Shirley's estate, you could have a hearing on that. I'll combine everyone who has an interest in getting some relief.
MR. MANCERI: Only thing I was going to say, your Honor, after this was noticed I got into this matter. I have a conflict on the

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28th at that hour. If we could move it to the afternoon I'd appreciate it.
THE COURT: I'll get my book and see. Maybe I can, I don't know.
MR. MANCERI: That's my only issue on the 28th.
THE COURT: I don't know, I'll look.
So let me try to make some progress, all right.
So today is whether in Shirley's estate there's an emergency, here is my order, no. Okay?
MR. MANCERI: Okay.
THE COURT: Next, whether -- what type of evidentiary hearing, if any, needs to be held. For Shirley's estate purposes I guess I have to figure out the following: It appears that there could be some problem in the documents that took place to lead Shirley's estate to be closed and distributed as it took place, okay because --
MR. MANCERI: Right.
THE COURT: It took place pursuant to documents that may have been improperly notarized. Now. That doesn't mean that

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anything happened, it just means the documents may have a taint to them themselves.

MR. MANCERI: Right.

THE COURT: But I'll take a look at it and see whether there's anything that has to happen differently than what already happened with respect to that.

MR. MANCERI: Judge, in furtherance in making that determination, would you like us to submit these to you?

THE COURT: What are those?

MR. MANCERI: These are the original affidavits. I haven't made copies.

THE COURT: File them.

MR. MANCERI: Just file them, okay. Very good, we'll file them and serve them.

THE COURT: Mr. Bernstein, I want you to understand something. Let's say you prove what seems perhaps to be easy, that Moran notarized your signature, your father's signature, other people's signatures after you signed it, and you signed it without the notary there and they signed it afterwards. That may be a wrongdoing on her part as far as her notary republic ability, but the question is, unless someone

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claims and proves forgery, okay, forgery, proves forgery, the document will purport to be the document of the person who signs it, and then the question is, will something different happen in Shirley's estate then what was originally intended? Originally intended they say, the other side, was for Simon to close out the estate. The estate they say was small. The estate gave everything to the trust and that's what it did, and that was the end of the estate.

Remember, this is not everything about your parents and their estate planning. This is one small component, Shirley's estate alone, not her trust, and nothing to do with what happened with Simon, okay, because that's not before me. Simon's case is before Judge French.

Having said that, one of the other reasons why I have to consider whether your matter is an emergency, even if there was something that

I could enter an order on or have a hearing on immediately that could free up money from Shirley that you personally would be entitled to, you tell me you don't even know that you

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were not a beneficiary of the estate, so certainly you're not doing your groundwork to tell me if it's an emergency or not because it could be an emergency if you were a beneficiary of her will that was probated, but you don't even know one way or the other. So you could be a stranger to the estate. She may have disinherited you from the estate. She may have chosen to only give you personal property. So if you're not entitled to anything, you don't have an emergency. You're not entitled to anything. Go ahead.

MR. ELIOT BERNSTEIN: I never was noticed --

THE COURT: It doesn't matter.

MR. ELIOT BERNSTEIN: -- by the estate planner when she died.

THE COURT: Okay.

MR. ELIOT BERNSTEIN: So he's supposed to notify the beneficiaries.

THE COURT: Who?

MR. ELIOT BERNSTEIN: Mr. Spallina.

THE COURT: Of what?

MR. ELIOT BERNSTEIN: That there are beneficiaries of the estate.

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THE COURT: But what if you weren't a beneficiary?

MR. ELIOT BERNSTEIN: I was at that time. My dad doesn't change that until a year-and-a-half later. Are you following?

THE COURT: This may be about it, but you're interested in some financial relief. If you don't want to go out and get a laborer job today to feed your children that's your choice.

MR. ELIOT BERNSTEIN: I didn't say that.

THE COURT: I'm not in charge of feeding your children or paying your electric bills, you are. You have to do what a parent does to take care of their children. It doesn't sound like you're doing everything that you can, but

that's technically not before me.
But in the meantime not knowing a whole lot about this case, it's my first time I'm really having this type of dialogue. I heard some voice that said there's cash to feed your children that could become readily in your pocket or in someone's pocket to pay bills that could help your children. I heard that. They say the stumbling block to your children getting the benefit of that money is you. I

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don't know whether that's true or not, but if you want your children to imminently get money and they have imminent money to give your children, maybe you want to sit with Ted and that other side and see if there's some money that could come to your children.
MR. ELIOT BERNSTEIN: Excuse me.
THE COURT: Sure.
MR. ELIOT BERNSTEIN: That's like asking me to participate in what I allege is a fraud.
THE COURT: No, it doesn't --
MR. ELIOT BERNSTEIN: Listen, if the money comes to my children and it was supposed to have gone to me, and these documents that are all shady and unsigned wills with -- un-notarized wills and trusts don't stand. The money comes to me personally, Eliot Bernstein.
MR. MANCERI: Your Honor --
THE COURT: Let me just say this to you. Maybe two, three years from now as a result of the same trust litigation you'll be right, but in the meantime according to you there's money that could feed your children that you don't want to touch because you think the money should go to you instead of your children that

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they're willing to --
MR. ELIOT BERNSTEIN: Well, I think there are other beneficiaries.
THE COURT: -- put in accounts to go for the benefit of your children.
MR. ELIOT BERNSTEIN: I think there are other beneficiaries that are also --
THE COURT: They signed off.
MR. ELIOT BERNSTEIN: No, just their

parents have. The children don't even know.
They're not even represented.
THE COURT: Well, the parents represent
the child.
MR. ELIOT BERNSTEIN: No, but they have
conflicting interests.
THE COURT: Well, you say that --
MR. ELIOT BERNSTEIN: Our attorney wrote a
subpoena and said it. I had to get two lawyers
because my attorney couldn't represent both
sides of this.
MR. MANCERI: I'm very concerned about
something Mr. Bernstein just told The Court.
He's the one objecting they're in conflict,
he's stating from what I'm piecing together
that he believes that his children are getting
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money that the parents really was supposed to
go to him personally. He's got the inherent
conflict with that mindset.
MR. ELIOT BERNSTEIN: I'm not saying I
don't.
THE COURT: Okay, here's the point, if
you're at a point where you're asking The Court
for an emergency because you can't feed
children, and there's someone around the corner
that's holding out a $20 bill and says you
could have it to feed your children, and you
go, you know, I'm not going to take that to
feed my children because I want to have a court
determine that it really was mine, then I don't
know that you're treating this as an emergency.
Emergencies mean you figure out a way of
getting the money to your children sooner than
later, and they say it's happening imminently,
cash that could pay bills for your children.
That's what they say. If it's an emergency and
your kids are starving, and you as the parent
say that might be my money and not my kids', so
I want to wait for two or three years and let
the money stay in a bank account until I could
figure it out, and not feed my children, I
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think you need to reflect upon some of your
decisions.
MR. MANCERI: Your Honor --

THE COURT: What?
MR. MANCERI: I'm not saying we're going to do this, Judge, but this sounds like this may need an ad litem for these kids.
THE COURT: Well, I don't know, let's not add fuel to the fire.
MR. MANCERI: Because I'm troubled by what he's saying.
THE COURT: All right, so --
MR. ELIOT BERNSTEIN: Here's why I have not taken that money.
THE COURT: Why?
MR. ELIOT BERNSTEIN: Because if you told me, your Honor, that you just murdered him, and here's $20 from his pocket to feed your kids from the crime --
THE COURT: If they were starving I would take the $20.
MR. ELIOT BERNSTEIN: On that advice, I'll take the money.
THE COURT: If they were starving --
MR. ELIOT BERNSTEIN: On that advice --

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THE COURT: Your kids are starving. I'm not giving you advice.
MR. ELIOT BERNSTEIN: On that advice, I will --
THE COURT: The $20 didn't murder anybody, did it? Did the $20-bill murder someone?
MR. ELIOT BERNSTEIN: It's stealing money from people.
THE COURT: They're not -- this isn't stolen money. This is your parents' money.
MR. ELIOT BERNSTEIN: If I take that money and put it in my kids' accounts, it's actually taking money from what we believe are the true and proper beneficiaries --
THE COURT: Which is you.
MR. ELIOT BERNSTEIN: No, through -- one of, through --
THE COURT: So meanwhile if your kids are starving and you don't take the money, all I could say to you, there's obviously -- if you look at the documents I mean you're not going to confess to killing Kennedy as part of receiving the money, but if they want to give you money for your children and you don't want

to take it because you think it's yours, and

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you want to wait years --
MR. ELIOT BERNSTEIN: That's not why I want to dispute it.
THE COURT: You think that there's some --
MR. ELIOT BERNSTEIN: I think that it's part of a fraud that forged documents were used to --
THE COURT: But it's still your parents money --
MR. ELIOT BERNSTEIN: -- convert estate assets to the wrong beneficiary.
THE COURT: But they want to now get it to you.
MR. ELIOT BERNSTEIN: No, not me.
THE COURT: To your children.
MR. ELIOT BERNSTEIN: Listen, I'll take the money without explanation on it. I agree. Listen, the only reason I didn't want to take the money was so I wouldn't be part of a fraud.
THE COURT: You're not, obviously no one is accusing you of fraud. If they give you money to care for --
MR. ELIOT BERNSTEIN: But then I could accuse them of fraud if I'm participating.
THE COURT: I mean all you're doing is

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signing a receipt. You don't know where the money came from. You're not signing off -- you're not saying that you make a declaration that the money came from them, the other side to you in only legal means. You're just signing a receipt.
MR. MANCERI: But he is signing off on that he's going to honor the terms of the trust. If he is signing off to that --
THE COURT: If it comes to you as trustee for your children, you are -- you have a duty to only use it for the children, not yourself. Not you. You still have to work for you. Now, you don't have to work for your children, maybe. You still have to support yourself.
MR. ELIOT BERNSTEIN: Yeah.
THE COURT: The money has to get spent on your children if that's how you get it.

MR. ELIOT BERNSTEIN: Right.
THE COURT: That's all we're talking about is money to feed your children.
MR. ELIOT BERNSTEIN: You see, if the money came to me, it's also for me and my wife and feeds our children.
THE COURT: That's not what they said. It

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does not go to support you and your wife.
MR. ELIOT BERNSTEIN: If the money comes to me as a beneficiary, it does. If all these nonsense documents that are forged and --
THE COURT: If they want to give it to you only under their condition this is because their version is it belongs to your children.
MR. ELIOT BERNSTEIN: Right.
THE COURT: Don't accept it, you don't get it. If you accept it, it goes to your children. You may not like that, but it only could be used for your children, because that's the deal that they make. You take that deal because you don't want your kids to starve.
You may not like it, you want to be supported too, but they don't want to support you. They don't think it's your money, they think it's your children's money. So why turn that -- maybe you're entitled to it, but why turn down money that could help support your children in the meantime.
MR. ELIOT BERNSTEIN: If your logic is correct, your Honor, I agree.
THE COURT: Well, I don't know if my logic is correct.

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MR. ELIOT BERNSTEIN: Here's the legal problem --
THE COURT: Stop, no, the hearing is over. I'm not giving more legal advice. Your hearing goes on, okay, see you.
MR. MANCERI: Your Honor, any chance of resetting it?
THE COURT: I'm going to ask my office to flip it around to the afternoon. I'll take care of that.
MR. MANCERI: Thank you, your Honor. We'll submit an order to your Honor.

THE COURT: Okay, clear it with him and see if you could actually get something that makes sense. It's really narrow.
MR. MANCERI: It's very narrow. We've got the transcript, Judge.
THE COURT: It's only really that there's no emergency here. Everything everyone raises on the 28th.
MR. MANCERI: Very good, Judge. Do you think we can do it in an hour, Judge?
THE COURT: We'll try.
MR. MANCERI: Okay.
MR. ELIOT BERNSTEIN: I'm sorry, your

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Honor, for calling an emergency.
THE COURT: All right. Just there's a lot of work when you call something an emergency.
MR. ELIOT BERNSTEIN: I didn't understand what you go through.
THE COURT: Okay, bye.
MR. MANCERI: It's an evidentiary, Judge, we're going to call witnesses.
THE COURT: Witnesses and evidence.
MR. MANCERI: Very good.
- - -
(The proceeding was concluded at 2:15 p.m.)

00073

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Jessica Thibault, a Court Reporter,

certify that I was authorized to and did stenographically report the proceedings in the above-styled cause before the Honorable Martin H. Colin, pages 1 through 72; and that the transcript is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 17th day of September, 2013.

_____
Jessica Thibault
Court Reporter

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APPENDIX 16

Tescher & Spallina Production all 7202 Pages Bates Stamped Production Documents of Tescher and Spallina upon Resignation for admitted fraud on beneficiaries and fraud on court, all pages included in entirety by reference herein @ http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140602%20PRODUCTION%20OF%20DOCUMENTS%20SIMON%20ESTATE%20BY%20COURT%20ORDER%20TO%20BEN%20BROWN%20CURATOR%20DELIVERED%20BY%20TESCHER%20AND%20SPALLINA.pdf

APPENDIX 17

LIMITED LIABILITY COMPANY

OPERATING AGREEMENT

of

BERNSTEIN FAMILY REALTY, LLC

a Florida limited liability company

OPERATING AGREEMENT OF

BERNSTEIN FAMILY REALTY, LLC

This Limited Liability Company Agreement (the "Agreement") is made and entered into as of the ____ day of June, 2008, by and among BERNSTEIN FAMILY REALTY, LLC, a Florida limited liability company (the "Company"); STANFORD TRUST COMPANY, Trustee of the DANIEL BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006, STANFORD TRUST COMPANY, Trustee of the JAKE BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006, and STANFORD TRUST COMPANY, Trustee of the JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006, and any subsequent transferee as the Members ("Members"). The Members are herein sometimes referred to individually as a "Member" and collectively as "Members.

WITNESSETH:

WHEREAS, Articles of Organization for ***BERNSTEIN FAMILY REALTY, LLC*** (the "Company") were filed with the Florida Department of State on June 2, 2008.

WHEREAS, the Members desire to reduce their agreements to writing, to set forth the rights and obligations of the Members and the Manager.

NOW, THEREFORE, the Members and the Company hereby agree as follows:

ARTICLE I

DEFINITIONS

The following terms used in this Agreement shall have the following meanings:

(a) "***Act***" shall mean the Florida Limited Liability Company Act at F.S § 608.401, *et seq* and all amendments to the Act.

(b) "***Articles of Organization***" shall mean the Articles of Organization of ***BERNSTEIN FAMILY REALTY, LLC,*** as filed with the Department of State of Florida on June 2, 2008, and as may be amended from time to time.

(c) ***"Capital Contribution"*** shall mean any contribution to the capital of the Company in cash or the fair market value of property by a Member whenever made, net of any liabilities secured by such contributed property.

(d) "***Capital Account***" as of any given date shall mean the Capital Contribution to the Company by a Member as adjusted up to such date pursuant to Article VIII.

(e) "***Code***" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

(f) "***Company***" shall refer to ***BERNSTEIN FAMILY REALTY, LLC***, a limited liability company formed under the laws of the State of Florida.

(g) "***Distributable Cash***" shall mean all cash, revenues and funds received by the Company from Company operations, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred in the normal operation of the Company's business; and (iii) such Reserves as the Managers deem reasonably necessary for the proper operation of the Company's business.

(h) "***Entity***" shall mean any general partnership, limited liability partnership, limited partnership, limited liability limited partnerships, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization.

(i) "***Gifting Member***" shall mean any Member who gifts, bequeaths or otherwise transfers for no consideration (by operation of law or otherwise, except with respect to bankruptcy) all or any part of its Membership Interest.

(j) "***Initial Capital Contribution***" shall mean the initial contribution to the capital of the Company pursuant to this Agreement.

(k) ***"Interest"*** shall mean "Percentage Interest" unless otherwise specifically agreed or in the case of special allocations.

(l) "***Majority Interest***" shall mean the Interests of Members, which in the aggregate exceed 50% of all Interests.

(m) "***Manager***" shall mean one or more managers designated as such pursuant to this Agreement or by subsequent vote of the Members. References to the Manager in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be. Any Person may be named a Manager pursuant to this Agreement

(n) "***Member***" shall mean each of the parties who executes a counterpart of this Agreement as a Member and each of the parties who may hereafter become Members. To the extent a Manager has purchased a Membership Interest in the Company, he will have all the rights of a Member with respect to such Membership Interest, and the term "Member" as used herein shall include a Manager to the extent he has purchased such Membership Interest in the Company. If a Person is a Member immediately prior to the purchase or other acquisition by such Person of an Transferee Interest, such Person shall have all the rights of a Member with respect to such purchased or otherwise acquired Membership Interest or Transferee Interest, as the case may be.

(o) "***Membership Interest***" shall mean a Member's entire interest in the Company including such Member's Transferee Interest and, the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Agreement and the Act.

(p) "***Net Income***" and "***Net Losses***" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with sound accounting principles employed under the cash method of accounting at the close of each fiscal year on the Company's tax return filed for federal income tax purposes.

(q) ***"Operating Agreement" (or "Agreement")*** shall mean this Operating Agreement of ***BERNSTEIN FAMILY REALTY, LLC,*** as originally executed and as amended from time to time.

(r) "***Percentage Interest***" shall mean, for any Member, the percentage interest that the Capital Account of the Member bears to the total Capital Accounts of all of the Members of the Company, as set forth at Section 9.1 herein, and Exhibit A, as may be changed from time to time by the unanimous vote of the Members.

(s) "***Person***" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.

(t) "***Reserves***" shall mean funds set aside or amounts allocated to reserves which shall be maintained in amounts reasonably deemed sufficient by the Managers for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

(u) "***Selling Member***" shall mean any Member or Transferee which sells, assigns, pledges, hypothecates or otherwise transfers for consideration all or any portion of its Membership Interest or Transferee Interest.

(v) "***Transferee***" shall be person who has not been admitted by the Company as a Member Partner, but, by virtue of a Transfer of an Interest in the Company to said person, said person is entitled to a pro rata share of one or more of the Company's items of income, losses, credits, and distributions of the Company's assets pursuant to this Agreement and the Act, but said person shall not have, and is not entitled to any right to participate in the management or affairs of the Company, including, the right to vote on, consent to or otherwise participate in any decision of the Members or Manager.

(w) "***Transferring Member***" shall collectively mean a Selling Member and a Gifting Member.

(x) "***Treasury Regulations***" shall include proposed, temporary and final regulations promulgated under the Code.

ARTICLE II

FORMATION OF COMPANY

2.1 ***Organization.***

BERNSTEIN FAMILY REALTY, LLC, has been organized as a Florida limited liability company by executing and delivering the Articles of Organization to the Florida Department of State in accordance with and pursuant to the Act.

2.2 *Name.*

The name of the Company is ***BERNSTEIN FAMILY REALTY, LLC***, and all business of the Company shall be conducted under that name unless a majority of the Members agree to the filing and use of a fictitious name.

2.3 ***Principal Place of Business.***

The initial principal place of business of the Company shall be 950 Peninsula Corporate Circle, Suite 3010, Boca Raton, Florida 33431. The Company may locate its places of business and registered office at any other place or places as the Manager may deem advisable.

2.4 ***Registered Office and Registered Agent.***

The Company's initial registered office shall be at the office of its registered agent in Florida, and the name of its initial registered agent shall be Donald R. Tescher, 2101 Corporate Blvd., Suite 107, Boca Raton, Florida, 33431. The registered office and registered agent may be changed by filing the address of the new registered office and/or the name of the new registered agent with the Florida Department of State pursuant to the Act.

2.5 ***Term.***

The term of the Company has filed Articles of Organization with the Florida Department of State, and shall have perpetual existence, unless the Company is earlier dissolved in accordance with either the provisions of this Agreement or the Act.

ARTICLE III

BUSINESS OF COMPANY

The business of the Company shall be to engage in management of investments, and closely-held business or real estate ventures, and such lawful activities as are reasonably necessary or useful to the furtherance of the forgoing purpose (the "Business").

ARTICLE IV

NAMES AND ADDRESSES OF MEMBERS

The names and addresses of the Members are listed on Exhibit A attached hereto and incorporated herein, as amended from time to time.

ARTICLE V

RIGHTS AND DUTIES OF MANAGERS

5.1 ***Management.***

5.1.1 ***General.*** The business and affairs of the Company shall be managed by its Managers. The Managers shall direct, manage, and control the business of the Company. Except for situations in which the approval of the Members is expressly required by this Agreement or by nonwaivable provisions of the Act, the Managers shall have exclusive, sole, full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company's business. At any time when there is more than one Manager, any one Manager may take any action permitted to be taken by the Managers, unless the approval of more than one of the Managers is expressly required pursuant to this Agreement or the Act. The Managers may create a Board of Directors, and may also appoint individuals with or without titles, including the titles of General Manager, Executive Director, President, Vice President, Treasurer, Secretary, and Assistant Secretary, to act on behalf of the Company with such power and authority as the Managers or Board of Directors may delegate to any such Person.

5.1.2 ***Initial Managers/Designation of Managers/Voting.*** The Members agree that the initial Manager of the Company is SIMON BERNSTEIN. Unless otherwise specifically agreed herein, business decisions of the Company shall be made by said Manager. The Members shall vote their Interests such that only the aforementioned person is Manager of the Company for so long as he is alive and not mentally disabled or incompetent. After proper notice, in the event of death or mental disability or incompetence of the Manager, the Members shall vote on and elect a new Manager.

5.2 ***Certain Powers of Managers.***

Without limiting the generality of Section 5.01, the Manager (or, if more than one Manager, then the Managers) shall have power and authority, on behalf of the Company to do the following:

(a) To acquire or lease property from any Person as the Managers may determine, whether or not such Person is directly or indirectly affiliated or connected with any Manager or Member;

(b) To borrow money for the Company from banks, other lending institutions, the Managers, Members, or affiliates of the Managers or Members on such terms as the Managers deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Managers, or to the extent permitted under the Act, by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Managers;

(c) To purchase liability and other insurance to protect the Company's property and business;

(d) To hold and own Company real and personal properties in the name of the Company;

(e) To invest Company funds in time deposits, short-term governmental obligations, commercial paper or other investments;

(f) To sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan as long as such disposition is not in violation of or a cause of a default under any other agreement to which the Company may be bound;

(g) To execute on behalf of the Company all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments, bills of sale; leases; and any other instruments or documents necessary to the business of the Company;

(h) To employ accountants, legal counsel, managing agents or other experts to perform services for the Company;

(i) To enter into any and all other agreements on behalf of the Company, in such forms as the Managers may approve; and

(j) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

Unless authorized to do so by this Agreement or by the Manager of the Company, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Manager to act as an agent of the Company in accordance with the previous sentence.

5.3 ***Liability for Certain Acts.***

Each Manager shall perform his duties as Manager in good faith, in a manner he or she reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, unlawful acts, or a wrongful taking by the Manager.

5.4 ***No Exclusive Duty to Company.***

A Member or Manager shall not be required to manage the Company as his or her sole and exclusive function and may have other business interests and engage in activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of a Manager or to the income or proceeds derived therefrom.

5.5 ***Bank Accounts.***

The Manager may from time to time open bank accounts in, the name of the Company, and the Manager shall be the sole signatory thereon, unless Members owning a Majority Interest determine otherwise.

5.6 ***Indemnity of the Managers, Employees and Other Agents.***

The Company shall, to the maximum extent permitted under the Act, indemnify and make advances for expenses to Managers, its employees, and other agents.

5.7 ***Resignation.***

Any Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later date specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

5.8 ***Removal.***

A Manager shall not be subject to removal by vote of the Members except, if at all, pursuant to the provisions of this Agreement, as it may be amended by agreement of all of the Members.

5.9 ***Vacancies.***

To the extent not expressly provided for in Section 5.1.2 "Voting Agreement of Members," and only to said extent, if any: Any vacancy occurring for any reason in the number of Managers of the Company may be filled by the affirmative vote of Members holding a majority of the Percentage Interests present at an election at a meeting of Members called for that purpose or by the Members' unanimous written consent. A Manager elected to fill a vacancy shall be elected for the unexpired term of their predecessor in office and shall hold office until the expiration of such term and until their successor shall be elected and qualified or until the Manager's earlier death, resignation or removal. A Manager chosen to fill a position resulting from an increase in the number of Managers shall hold office until his successor shall be elected and qualified, or until his earlier death, resignation or removal.

5.10 ***Salaries.***

Each Manager shall receive annual compensation (the "Management Fee") if such compensation is agreed to by a majority of the Percentage Interest of the Members in writing, and and shall be entitled to reimbursement of reasonable and necessary expenses advanced on behalf of the Company.

ARTICLE VI

RIGHTS AND OBLIGATIONS OF MEMBERS

6.1 ***Limitation of Liability.***

Each Member's liability to the Company shall be limited as set forth in this Agreement, the Act and other applicable law.

6.2 ***Company Liability.*** A Member will not be personally liable for any debts, obligations, liabilities or losses of the Company, whether arising in contract, tort, or otherwise, solely by reason of being a Member, beyond his respective Capital Contributions or any obligation of the Member under Sections 8.1 and 8.2 hereunder, except as provided in Section 6.7 or as otherwise required by law.

6.3 ***List of Members.***

Upon the written request of any Member, the Managers shall provide a list showing all of the names, addresses and Membership Interests and Transferee Interests in the Company.

6.4 ***Approval of Sale of All Assets.*** The Managers shall have the right, to approve the sale, exchange or other disposition of all, or substantially all, of the Company's assets which is to occur as part of a single transaction or plan.

6.5 ***Company Books.***

The Managers shall maintain and preserve, during the term of the Company, the accounts, books, and other relevant Company documents described in Section 9.9. Upon reasonable written request, each Member and Transferee shall have the right, at any time during ordinary business hours, as reasonably determined by the Manager, to inspect and copy, at the requesting Member's or Transferee's expense, the Company documents required to be maintained under Section 608.4101 of the Act, and such other documents which the Managers, in their reasonable discretion, deem appropriate.

6.6 ***Priority and Return of Capital.***

Except as may be expressly provided in Article IX, no Member or Transferee shall have priority over any other Member or Transferee, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section shall not apply to loans which a Member has made to the Company.

6.7 ***Liability of a Member to the Company.***

A Member who receives a distribution or return in whole or in part of its contribution is liable to the Company only to the extent provided by the Act.

ARTICLE VII

MEETINGS OF MANAGERS AND MEMBERS

7.1 ***Meetings.***

Meetings of the Managers, for any purpose or purposes, may be called by any Manager. Meetings of the Members for any purpose or purposes, may be called by any Members holding at least 51% of the Percentage Interests of the Members.

7.2 ***Place of Meetings.***

The Managers may designate any location within the U.S., either within or outside the State of Florida, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal place of business of the Company.

7.3 ***Notice of Meetings.***

Except as provided in Section 7.04, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the Managers or Member or Members calling the meeting, to each Member or Manager entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, certified mail return receipt requested, addressed to the Member or to the Manager at its address as it appears on the books of the Company, with postage therein prepaid. Notice may also be given by telegram, teletype or facsimile, or other form of electronic communication. Managers and Members may participate in and hold meetings whereby all conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other. Participation by communications equipment shall constitute presence as the meeting, unless a Member or Manager is participating in the meeting for the express purpose of objecting to the transaction of any business on the ground the meeting is not lawfully called or convened.

7.4 ***Meeting of All Members and Meetings of All Managers.*** If all of the Members or all of the Managers shall meet at any time and place, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

7.5 ***Record Date.***

For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declared such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

7.6 ***Quorum.***

Members holding at least fifty percent (50%) of all Percentage Interests, represented in person or by proxy, shall constitute a quorum at any meeting of Members, and if there is more than one Manager then serving, then a majority of the number of the then-serving Managers shall constitute a quorum at a meeting of the Managers, who shall be represented in person, and shall constitute a quorum at any meeting.

7.7 ***Manner of Acting.***

If a quorum is present, the affirmative vote of a majority of all of the Members represented at the meeting, who must hold a majority Percentage Interest in the Company, shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, or by this Agreement. Unless otherwise expressly provided herein or required under applicable law, only Members who have a Membership Interest may vote or consent upon any matter and their vote or consent, as the case may be, shall be counted in the determination of whether the matter was approved by the Members.

7.8 ***Proxies.***

At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Managers of the Company before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Managers shall not be able to vote by Proxies.

7.9 ***Action by Members Without a Meeting.***

Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote and delivered to the Managers of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date.

7.10 ***Waiver of Notice.***

When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

ARTICLE VIII

CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS

8.1 ***Members' Initial Capital Contributions.***

Each Member shall contribute such amount as is set forth on the books and records of the Company. No interest shall accrue on any Capital Contribution and the Member shall not have the right to withdraw or be repaid any Capital Contribution except as provided in this Agreement.

8.2 ***Additional Contributions.***

A Member may, but shall not be obligated to, make such additional Capital Contributions as shall be determined by the Managers. Such additional Capital Contributions shall be reflected in the Account of the Contributing Member and shall not be a part of any other Member's Capital Account absent written agreement of the Members. After the making of any such determination, the Managers

shall give written notice to each Member of the amount of required additional contribution, if any, and each Member may deliver to the Company its pro rata share thereof (in proportion to the *respective* Percentage Interest of the Member on the date such notice is given) no later than thirty (30) days following the date such notice is given. None of the terms, covenants, obligations or rights contained in this Section 8.2 is or shall be deemed to be for the benefit of any person or entity other than the Members and the Company, and no such third person shall under any circumstances have any right to compel any actions or payments by the Managers and/or the Members.

8.3 ***Capital Accounts.***

(a) A separate Capital Account will be maintained for each Member. Each Member's Capital Account will be increased by (1) the amount of money contributed by such Member to the Company; (2) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Code Section 752); (3) allocations to such Member of Net Profits and Net Losses; and (4) allocations to such Member of income described in Code Section 705(a)(1)(B). Each Member's Capital Account will be decreased by (1) the amount of money distributed to such Member by the Company; (2) the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752); (3) allocations to such Member of expenditures described in Code Section 705(a)(2)(B); and (4) allocations to the account of such Member of Company loss and deduction as set forth in such Regulations, taking into account adjustments to reflect book value.

(b) In the event of a permitted sale or exchange of a Membership Interest or a Transferee Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the Transferee to the extent it relates to the transferred Membership Interest or Transferee Interest in accordance with Section 1.704-1(b) (2) (iv) of the Treasury Regulations.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 8.3 is intended to comply with the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder. If the Company determines that the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 8.3 should be modified in order to comply with Code Section 704(b) and the Treasury Regulations, then notwithstanding anything to the contrary contained in the preceding provisions of this Section 8.3, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members as set forth in this Agreement.

(d) Except as otherwise required in the Act (and subject to Sections 8.1 and 8.2), no Member or Transferee shall have any liability to restore all or any portion of a deficit balance in such Member's or Transferee's Capital Account.

8.4 ***Withdrawal or Reduction of Members' Contributions to Capital.***

(a) A Member or Transferee Interest Holder shall not receive out of the Company's property any part of its Capital Contribution until all liabilities of the Company, except liabilities to

Members on account of their Capital Contributions, have been paid or there remains property of the Company sufficient to pay them.

(b) A Member or Transferee Interest Holder, irrespective of the nature of its Capital Contribution, has only the right to demand and receive cash in return for its Capital Contribution.

(c) Notwithstanding anything to the contrary in this Agreement, a Member may withdraw from the Company only at the time or upon the occurrence of an event specified in this Agreement or in the Articles of Organization. No such event is specified in either the Articles of Organization or in this Agreement at the date hereof. A Member which violates the withdrawal prohibition in this Section shall be liable for breach of this Agreement and shall become a Transferee. A withdrawing Member shall not have a right to receive the fair value of receive the withdrawing member's Interest in the Company as of the date of the resignation but rather, shall have only such rights as a Transferee would have to receive distributions as are made by the Company in the discretion of the Managers.

ARTICLE IX

ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS AND REPORTS

9.1 ***Allocations of Income and Losses from Operations.***

The Net Income and Net Losses of the Company for each fiscal year, and each Member or Transferee's share of Cash Flow, will be allocated in accordance with the Percentage Interests schedule set forth in Exhibit A attached hereto, and, except as provided therein, the Percentage Interests of Members shall be proportionate to the amount of their Capital Accounts as determined hereinabove.

9.2 ***Special Tax Provisions As to Extraordinary Allocations, if Any, to Capital***

Allocations of Net Income and Net Losses other than those set forth above shall be made based upon the determinations of the tax accountants and attorneys employed by the Company, giving regard to the intention expressed hereinabove and otherwise herein, with respect to special or priority allocations if any, and with regard to federal partnership tax and capital accounting principles described in Section 8.3 hereinabove.

9.3 ***Distributions.***

Within the discretion of the Managers as to amounts, if any, and as to timing, the Managers may distribute Cash Flow to the Members, in accordance with their Percentage Interests .

9.4 ***Limitation upon Distributions.***

(a) No distributions or return of contributions shall be made and paid if, after the distribution or return of distribution is made either

(1) the Company would be insolvent; or

(2) the net assets of the Company would be less than zero.

(b) The Managers may base a determination that a distribution or return of contribution may be made under Section 9.4(a) in good faith reliance upon a balance sheet and profit and loss statement of the Company represented to be correct by the person having charge of its books of account or certified by an independent public or certified public accountant or firm of accountants to fairly reflect the financial condition of the Company.

9.5 ***Tax Accounting Principles.***

The income and losses of the Company shall be determined in accordance with sound tax accounting principles applied on a consistent basis using generally accepted tax accounting principles as applied consistent with the Code.

9.6 ***Interest on and Return of Capital Contributions.***

No Member shall be entitled to interest on its Capital Contribution or to a return of its Capital Contribution, except as otherwise provided in this Agreement.

9.7 ***Loans to Company.***

Nothing in this Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company, provided that such loans are arms-length transactions, containing terms customary in the lending industry at the time such loans were made.

9.8 ***Accounting Period.***

The Company's accounting period shall be the calendar year ("Fiscal Year").

9.9 ***Records, Audits and Reports.***

At the expense of the Company, the Managers shall maintain records and accounts of the operations and expenditures of the Company. At a minimum, the Company shall keep at its principal place of business the following records:

(a) A current list of the full name and last known address of each Member and Transferee setting forth the amount of cash each Member and Transferee has contributed, a description and statement of the agreed value of the other property or services, each Member and Transferee has contributed or has agreed to contribute in the future, and the date on which each became a Member or Transferee, and their respective Percentage Interest in the Company;

(b) A copy of the Articles of Organization of the Company and all amendments thereto together with executed copies of any powers of attorney pursuant to which any amendment has be executed;

(c) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(d) Copies of the Company's currently effective written Agreement, all amendments thereto, and copies of any financial statements of the Company for the three most recent years;

(e) Notices of and minutes of every Member and Managers meeting,

(f) Any written consents obtained from Members for actions taken by Members without a meeting; and

(g) Unless contained in the Articles of Organization or the Agreement, a writing prepared by the Managers setting out the following:

(1) The times at which or events on the happening of which any additional contributions agreed to be made by each Member and Transferee are to be made.

(2) Any right of a Member or Transferee to receive distributions of include a return on all or any part of the Member or Transferee's contributions.

(3) Any power of a Member or Transferee to grant the right to become an assignee of any part of the Member's or Transferee's interest, and the terms and condition of the power.

9.10 ***Returns and Other Elections.***

The Managers shall cause the preparation and timely filing of tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, and pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year upon the Members' written request. All elections permitted to be made by the Company under federal or state laws shall be made by the Managers in their sole discretion. It is the intention of the Members that the Company shall be taxed as a "Partnership" for federal, state, and local income tax purposes.

9.11 ***Tax Matters Partner.***

SIMON BERNSTEIN is designated the "Tax Matters Partner" (as defined in Code Section 6231), and is authorized and required to represent the Company (at the Company's expense), either directly, or through accounting or tax representatives, in connection with all examinations for the Company's affairs by tax authorities, including, without limitation administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The Members agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings.

ARTICLE X

TRANSFERABILITY

10.1 ***General.***

10.1.1. ***Transferees Not Members, Generally.*** Except as otherwise set forth in Section 10.1.2, or with the consent of all of the Members, neither a Member nor a Transferee shall have the right, as to all or any part of its Membership Interest or Transferee Interest to:

(a) sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration (collectively, "sell" or, as context requires "selling"); or

(b) gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy) (collectively, "gift").

Absent the written consent of all Members to the contrary or otherwise provided by law, the Interest of the Transferee shall be a Non-Voting Interest.

10.1.2 ***Transferees Who are Lineal Descendants of a Member.*** Any Transferees who are lineal descendants of both SHIRLEY BERNSTEIN and SIMON BERNSTEIN, either directly, or indirectly, as beneficiaries of a Trust, or other entity beneficially owned solely for or by that Member (including, but not limited to a revocable trust established by a Member for the sole lifetime benefit of the Member or the Member's descendants) shall be Members upon their written agreement to be bound by the terms of this Agreement and shall be subject to the voting agreements described in Article V, hereinabove.

10.2 ***Right of First Refusal.***

(a) If a Selling Member desires to sell all or any portion of its Membership Interest in the Company to a third party purchaser, the Selling Member shall obtain from such third party purchaser a bona fide written offer to purchase such Interest, stating the terms and conditions upon which the purchase is to be made and the consideration offered; provided, however, the offer shall include a "tag along" or "take along" provision, pursuant to which, all Members have the right to sell a pro-rata portion (determined in accordance with the Percentage Interests of all of the Members) of their Interests to the third party. The Selling Member or Transferee shall give written notification to the remaining Members, by certified mail or personal delivery, of its intention to so transfer such Interest, furnishing to the remaining Members a copy of the written offer to purchase such Interest.

(b) Each of the remaining Members, on a basis pro rata to their Percentage Interests or on a basis pro rata to the Percentage Interests of those remaining Members exercising their rights of first refusal, shall have the right to exercise a right of first refusal to purchase all (but not less than all) of the Interest proposed to be purchased by the third party and sold by the Selling Member and the "tag along Members"upon the same terms and conditions as stated in the aforesaid written offer to purchase by giving written notification to the Selling Member and the "tag along Members", by certified mail or personal delivery, of the intention to do so within thirty (30) days after receiving written notice from the Selling Member. Subject to the following paragraph, the failure of the remaining Members to so notify the Selling Member and the "tag along Members" of their desire to exercise this right of first refusal within said thirty (30) day period shall result in the termination of the right of the first refusal and the Selling Member and the "tag along Members" shall be entitled to consummate the sale of its Interest in the Company to such third party purchaser, provided that the sale shall be consummated within sixty (60) days following the expiration of the aforesaid thirty (30) day period. In the event the remaining

Members (or any one or more of the remaining Members) give written notice to the Selling Member and the "tag along Members" of their desire to exercise this right of first refusal and to purchase all of the Interests of the Selling Member and the "tag along Members" offered upon the same terms and conditions as are stated in the aforesaid written offer to purchase, the remaining Members shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within sixty (60) days after written notification to the Selling Member of the remaining Member or Members' election to exercise their right of the first refusal. In the event that two (2) or more Members give written notice of their desire to exercise their right of first refusal, absent an agreement between all the Members so exercising such right, each such Member exercising their right of first refusal shall be entitled to purchase that percentage of the selling Member's share according to the proportion that their Percentage Interests bears to the total Percentage Interests exercising such right of first refusal. The Members shall communicate with each other during the pendency of any offer made in accordance with the terms of this Section 10.2 in order to effectuate the intent of this Section.

(c) As a condition to the Company recognizing the effectiveness of either the sale or gift of an Interest in the Company (including, in both cases, a Transferee Interest), the remaining Members may require the Selling Member, Gifting Member and/or the proposed purchaser, donee or successor-in-interest, as the case may be, to execute, acknowledge and deliver to the remaining Members such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the remaining Members' may deem necessary or desirable to:

(1) verify the purchase, gift or transfer, as the case may be;

(2) confirm that the person desiring, to acquire an Interest in the Company, or to be admitted as a Member, has accepted, assumed and agreed to be subject and bound by all of the terms, obligations and conditions of the Agreement (whether such Person is to be admitted as a new Member or as a Transferee);

(3) maintain the status of the Company as a partnership for federal tax purposes; and

(4) assure compliance with any applicable state and federal laws including securities laws and regulations.

(d) Any sale or gift of a Membership Interest or Transferee Interest in compliance with this Article X shall be deemed effective upon the last day of the calendar month in which all the terms and conditions hereof relating thereto have been satisfied. The admission of a Member in compliance with this Article X shall be deemed effective as of the last day of the calendar month in which the remaining Members' consent thereto was given. The Selling Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article X.

10.3 ***Permitted Transfer to Descendants & Spouse/Mandatory Offer at Death.***

10.3.1 ***No Mandatory Offer At Death.*** If a Member's Interest is Transferred to a lineal descendant of the Member or Member's spouse, to a Trust or other entity beneficially owned solely for or by that Member, that Member's spouse, or the lineal descendant of that Member or Member's spouse, the Transferee shall not be required to sell or offer to sell his or her Interest, shall be eligible to become a Member pursuant to Sections 10.1.1 and 10.1.2 above, and shall be subject to the voting agreements described in Article V, above. If Members of the Company are trusts for the lifetime benefit of the lineal descendants of a Member either directly or indirectly, then the successors in interest to the Interests in the Company pursuant to the terms of such trusts shall be considered as Members hereof (regardless of indirect ownership as trust beneficiaries) as long as the beneficial interests are owned by the lineal descendants of the Member or their spouses, and said persons shall be subject to the voting agreements described in Article V, above.

10.3.2 ***Mandatory Offer At Death.*** Except with transfers described in 10.3.1., above, the death of any Member or Transferee who owns an Interest shall constitute an offer by the Member's Estate, Trust, or other legal successor in interest, to sell all of the Member's Interest to the Company (the "Offer") at its fair market value (determined as of the date of death). The Company shall have one hundred eighty (180) days in which to accept the Offer at an agreed price, which acceptance shall be made by delivery of written notice thereof to the legal representative of the estate of the Member or Transferee, by certified mail or personal delivery, within said one hundred eighty (180) day period. If the Company does not elect to purchase the Interest within said one hundred eighty (180) day period, the remaining Members shall have the right, but are not required to, purchase the remaining part, or all, as the case may be, of the Interest at its fair market value (as determined herein) determined as of the date of death, in proportion to their existing Interests. Such right to purchase shall be exercised by delivery of written notice thereof, by certified mail or personal delivery, during the thirty (30) days immediately after the one hundred eighty (180) day period (the "30 Day Period"). If any such Member does not desire to purchase his/her or its full proportionate part of the Interest offered for sale, but the remaining Members desire to purchase all of the Interest offered for sale, said Members shall then have the right to purchase said Interest proportionally in accordance with their respective Interests and the Members shall communicate with each other during the 30 Day Period in order to effectuate the intent of this Section 10.3. Except as provided in Section 10.1.2 and 10.1.3, to the extent that any part, or all, of an Interest is not purchased under the provisions of this Section 10.3, the deceased's Member's Interest shall become a Transferee's Interest, if not owned beneficially or directly by another Member hereof. The purchase price shall be as agreed by the parties, and, unless otherwise agreed, shall be paid in cash at the closing, which shall occur no later than thirty (30) days after the end of the 30 Day Period. For purposes of this Agreement, the "fair market value" of an Interest is equal to its Percentage Interest multiplied by the value of the Company (as agreed by the parties). If the value of the Company is not agreed to by the parties, then for purposes of this Agreement "fair market value" of a Member's Interest shall be determined without reduction for minority, lack of marketability or other entity/Company level discounts, based upon a reasonable appraisal procedure to determine the fair market value of the Company's assets. The appraisal procedure shall be agreed upon by the Member and Company. If the parties cannot agree to an appraisal procedure, then an MAI appraiser shall be selected by the Personal Representative of the deceased Member's estate, and if the Company does not agree as to that appraiser, then the Company shall select its own appraiser and each MAI appraiser then shall select a third MAI appraiser and the average of all three (3) appraisals shall be the fair market value of the Interest. As set

forth hereinabove, fair market value" of a Member's Interest shall be determined without reduction for minority, lack of marketability or other entity/Company level discounts.

10.4 ***Transferee Not Member in Absence of Unanimous Consent.***

(a) Except as provided in Section 10.1.2 and 10.1.3, if all of the remaining Members do not approve by unanimous written consent of the proposed, sale or gift of the Transferring Member's Membership Interest to a transferee or donee which is not a Member immediately prior to the sale or gift, then the proposed transferee or donee shall have no right to participate in the management of the business and affairs of the Company or to become a Member. The transferee or donee shall be merely a Transferee entitled solely to economic rights to profits, losses and distributions and shall have no voting rights under this Agreement or in matters relating to the Company and its business; provided, however, any sale of a Transferee's interest in the Company should be subject to Section 10.2. No transfer of a Member's Interest in the Company (including any transfer of the Transferee Interest or any other transfer which has not been approved by unanimous written consent of the Members) shall be effective unless and until written notice (including the name and address of the proposed transferee or donee and the date of such transfer) has been provided to the Company and the nontransferring Member(s).

(b) Upon and contemporaneously with any sale or gift of a Transferring Member's Interest in the Company which does not at the same time transfer the balance of the rights associated with the Transferee Interest transferred by the Transferring Member (including, without limitation, the rights of the Transferring Member to participate in the management of the business and affairs of the Company), all remaining rights and interest which were owned by the Transferring Member immediately prior to such sale or gift or which were associated with the transferred Interest shall immediately lapse until the remaining Members, by unanimous written consent, reinstate such rights to the Transferee who did not previously obtain the unanimous written consent, reinstating such rights to a successor or transferee of such Transferee.

ARTICLE XI

ADDITIONAL MEMBERS

From the date of the formation of the Company, any Person or Entity acceptable to the Members by their unanimous vote thereof may become a Member in this Company for such consideration as the Members by their unanimous votes shall determine, subject to the terms and conditions of this Agreement. No new Members shall be entitled to any retroactive allocation of profits losses, income or expense deductions incurred by the Company. The Manager(s) may, at their option, at the time a Member is admitted, close the Company books (as though the Company's tax year has ended) or make pro rata allocations of income, loss, and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Code Section 706(d) and the Treasury Regulations promulgated thereunder.

ARTICLE XII

DISSOLUTION AND TERMINATION

12.1 ***Dissolution.***

(a) The Company shall be dissolved upon the occurrence of any of the following events:

(i) by the unanimous written consent of all Members; or

(ii) the sale, transfer or assignment of substantially all of the assets of the Company; or

(iii) as otherwise required by law.

12.2 ***Winding Up, Liquidation and Distribution of Assets.***

(a) Upon dissolution, an accounting shall be made by the Company's independent accountant of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Managers shall immediately proceed to wind up the affairs of the Company.

(b) If the Company is dissolved and its affairs are to be wound up, the Managers shall:

(1) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Managers may determine to distribute any assets to the Members in kind),

(2) Allocate any profit or loss resulting from such sales to the Member's and Transferees' Capital Accounts in accordance with Article IX hereof.

(3) Discharge all liabilities of the Company, including liabilities to Members and Transferees who are creditors, to the extent other-wise permitted by law, other than liabilities to Members and Transferees for Distributions, and establish such Reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Members and Transferees, the amounts of such Reserves shall be deemed to be an expense of the Company),

(4) Distribute the remaining assets in the following order:

(i) If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of all of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and

the Capital Accounts of the Members and Transferees shall be adjusted pursuant to the provisions of Article IX and Section 8.3 of this Agreement to reflect such deemed sale.

(ii) To the Members and Transferees, pro rata, in accordance with the positive balance (if any) of each Member's and Transferee's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's taxable year during, which the liquidation occurs) shall be distributed to the Members and Transferee either in cash or in kind, as determined by the Managers, with any assets distributed in kind being valued for: this purpose at their fair market value as determined pursuant to Section 12.2(b)(i).

(iii) Thereafter, to the Members and Transferee's pro rata, in accordance with their respective Percentage Interests.

(c) Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

(d) Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

(e) The Manager(s) shall comply with all requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

12.3 ***Articles of Dissolution.***

When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets of the Company have been distributed among its members in accordance with their respective rights and interests, a Articles of Dissolution of the Company shall be filed with the Florida Department of State.

12.4 ***Effect of Filing Articles of Dissolution.***

Upon the filing of Articles of Dissolution with the Florida Department of State, and upon issuance of the Certificate of Dissolution by the Department of the State, the existence of the Company shall cease, except for the purpose of suits, of the proceedings and appropriate action as provided in the Act. The Managers shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

12.5 ***Return of Contribution Nonrecourse to Other Members.***

Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member and Transferee shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members or Transferees, such Member(s) or Transferee(s) shall have no recourse against any other Member or Transferee, except as otherwise provided by law.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 *Notices.*

Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally or by express mail or courier service (with receipt acknowledged) to the party or to an executive officer of the party to whom the same is directed, if telecopied (with receipt acknowledged) to the party or an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Agreement. Except as otherwise provided herein any such notice shall be deemed to be given two (2) business days after the date on which the same was deposited in the United States mail, addressed and sent as aforesaid, if sent by mail or upon confirmation of receipt if delivered by telecopier, personal delivery or courier service.

13.2 ***Books of Account and Records.***

Proper and complete records and books of account shall be kept or shall be caused to be kept by the Managers in which shall be entered fully and accurately all transactions relating. to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such books and records shall be maintained as provided in Section 9.9. The books and records shall at all times be maintained at the principal place of business of the Company. Additionally, the Managers shall promptly distribute to all Members, copies of the Company' financial statements on an annual basis.

13.3 ***Application of Florida Law.***

This Agreement and its interpretation shall be governed exclusively by its terms and by the laws of the State of Florida, and specifically the Act.

13.4 ***Waiver of Action for Partition.***

Each Member and Transferee irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

13.5 ***Amendments.***

This Agreement may not be amended except in writing by the affirmative vote of a majority of the Members of the Company which vote must include the affirmative vote of the Manager. Any amendment changing either the Percentage Interests of the Members or any provision within Article V requires the unanimous vote of the Members.

13.6 ***Execution of Additional Instruments.***

Each Member hereby agrees to execute such other and further statements of interest and holdings, designations and other instruments necessary to comply with an laws, rules or regulations.

13.7 ***Construction.***

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

13.8 ***Headings.***

The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision thereof

13.9 ***Waivers.***

The failure of any party to seek redress for default of or to insist upon the strict performance of any covenant of condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default, from having the effect of an original default.

13.10 ***Rights and Remedies Cumulative.***

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shah not preclude or waive the right to use any other remedy. Said rights and remedies are given in addition to any other legal rights that parties may have.

13.11 ***Severability.***

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

13.12 ***Heirs, Successors and Assigns.***

Each and all of the covenants, terms, provisions and agreement herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

13.13 ***Creditors.***

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

13.14 ***Counterparts.***

This Agreement may be executed in counterparts, each of shall be deemed an original but all of which shall constitute one and the same instrument.

13.15 ***Conflict of Interest Waiver.*** The Members and the Company acknowledge that the law firm of TESCHER & SPALLINA, P.A. has represented the Company in connection with the drafting of this Agreement and the formation and structuring of the Company, and that said law firm also represents one or more of the Managers and Trustees. The Company and its Members acknowledge that they have been advised that there are material income tax consequences and economic ramifications from being a Member in the Company, that they fully understand the tax consequences and economic ramifications of a Member's investment in the Company, and that they have been encouraged to consult with separate and independent counsel to advise them on Company and Member issues including this Agreement and the formation of the Company. The Company and the Members hereby waive any conflicts of interest with respect to the foregoing law firm's representation of the Company and the afore described Members and owners of interests in entity Members, in connection with the services set forth in this Section.

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IN WITNESS WHEREOF, the parties hereto have caused their signatures to be set forth below on the day and year first above written.

Witnesses:

Robin Bass

Eliska M. Lynch

COMPANY:

BERNSTEIN FAMILY REALTY, LLC, a Florida limited liability company

By: _____
SIMON BERNSTEIN, Manager

MEMBERS:

DANIEL BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006

STANFORD TRUST COMPANY, Trustee

By: _____
LOUIS B. FURNER, PRESIDENT
Name Title

JAKE BERNSTEIN IRREVOCABLE TRUST
dated September 7, 2006

STANFORD TRUST COMPANY, Trustee

By: _____
LOUIS B. FOURNET, PRESIDENT
Name Title

Raven Bass
Elvira M. Lynch

JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006

STANFORD TRUST COMPANY, Trustee

By: _____
LOUIS B. FOURNET, President
Name Title

Raven Bass
Elvira M. Lynch

F:\WPDATA\drt\Bernstein, Shirley & Simon\Bernstein Family Realty, LLC\Bernstein Family Realty LLC Operating Agreement.wpd

BERNSTEIN FAMILY REALTY, LLC

OPERATING AGREEMENT

EXHIBIT A

Member(s)	Percentage Interest*	Capital Contributions
DANIEL BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006	33.34%	$33.34
JAKE BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006	33.33%	$33.33
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006	33.33%	$33.33

The addresses of all of the Members is 950 Peninsula Corporate Circle, Suite 3010, Boca Raton, Florida 33487.

*proportionate to capital accounts of Members

AGREEMENT OF LIMITED PARTNERSHIP OF BERNSTEIN FAMILY INVESTMENTS, LLLP

AGREEMENT OF LIMITED PARTNERSHIP OF BERNSTEIN FAMILY INVESTMENTS, LLLP

This is an Agreement of Limited Partnership ("Agreement") dated this 20 day of May, 2008, by and between BERNSTEIN HOLDINGS, LLC, a Florida limited liability company (the "General Partner"); and SIMON L. BERNSTEIN, Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008 and SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, together with any individual, partnership, corporation, trust, estate or other entity subsequently admitted as Limited Partners, referred to as the "Limited Partners," and individually as a "Limited Partner". The General Partner and the Limited Partners are herein sometimes referred to individually as a "Partner" and collectively as "Partners."

The parties agree as follows:

1. Formation. BERNSTEIN FAMILY INVESTMENTS, LLLP, a limited partnership under the Revised Uniform Limited Partnership Act of Florida ("Act"), became effective on February 15, 2008, the date of filing of the Certificate of Limited Partnership with the Florida Secretary of State by the General Partner. Except as otherwise provided in this Agreement, the Act shall govern the rights and liabilities of the Partners. The limited partnership has elected to be a Florida limited liability limited partnership.

2. Name. The name of the Partnership is BERNSTEIN FAMILY INVESTMENTS, LLLP. The General Partner may, in its discretion, change the name of the Partnership and adopt such trade or fictitious names as it may deem appropriate.

3. Definitions. In this Agreement, the following terms have the following meanings unless the context otherwise requires:

3.1 "Act" means the Revised Uniform Limited Partnership Act of Florida, as amended from time to time.

3.2 "Adjusted Capital Account Deficit" means, with respect to any Partner, the deficit balance, if any, in such Partner's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

3.2.1 Credit to such Capital Account any amounts which such Partner is obligated to restore (pursuant to the terms of such Partner's promissory note or otherwise) or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

3.2.2 Debit to such Capital Account the items described in Sections 1.704--1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

3.3 "Aggregate Capital Contribution" means the net fair market value of all contributions made to the capital of the Partnership by a Partner pursuant to Section 7.

3.4 "Agreement" means this Agreement of Limited Partnership, as it may be amended from time to time.

3.5 "Capital Account" means, with respect to any Partner, the Capital Account maintained for such Partner in accordance with the following provisions:

3.5.1 To each Partner's Capital Account there shall be credited such Partner's Capital Contributions, such Partner's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 9.3 or Section 9.4 hereof, and the amount of any Partnership liabilities assumed by such Partner or which are secured by any Partnership Property distributed to such Partner.

3.5.2 To each Partner's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Partnership Property distributed to such Partner pursuant to any provision of this Agreement, such Partner's distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 9.3 or Section 9.4 hereof, and the amount of any liabilities of such Partner assumed by the Partnership or which are secured by any property contributed by such Partner to the Partnership.

3.5.3 In the event all or a portion of an Interest in the Partnership is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

3.5.4 In determining the amount of any liability for purposes of Sections 3.5.1, and 3.5.2 hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the General Partner shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Partnership, the General Partner, or Partners), are computed in order to comply with such Regulations, the General Partner may make such modification, provided that it is not likely to have a material effect on the amounts distributable to a Partner pursuant to Section 10.3 hereof upon the dissolution of the Partnership. The General Partner also

shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications in the event unanticipated events (for example, the acquisition by the Partnership of oil or gas properties) might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

3.6 "Capital Contributions" means, with respect to a Partner, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Partnership with respect to the Partnership Interest held by such Partner. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Partnership by the maker of the note (or a person related to the maker of the note within the meaning of Regulations Section 1.704-1(b)(2)(ii)(c)) shall not be included in the Capital Account of any Partner until the Partnership makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2).

3.7 "Certificate" means the certificate of limited partnership required by the Act to be filed with the Department of State of Florida, as it may be amended from time to time.

3.8 "Code" means the Internal Revenue Code of 1986, as amended, or subsequent revenue laws.

3.9 "Depreciation" means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the General Partner.

3.10 "Event of Withdrawal" means an event described as such in Fla.Stats.§620.1603, or successor provision thereto.

3.11 "Fiscal Year" means (i) the period commencing on the effective date of this Agreement and ending on the last day of the Partnership's taxable year, (ii) any subsequent twelve (12) month period commencing on day after the last day of the partnership's taxable year and ending on the last day of the partnership's taxable year, or (iii) any portion of the period described in clause (ii) for which the Partnership is required to allocate Profits, Losses, and other items of Partnership income, gain, loss, or deduction pursuant to Section 9 hereof.

3.12 "General Partner" means BERNSTEIN HOLDINGS, LLC, and its successors as provided herein.

3.13 "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

3.13.1 The initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset, as determined by the contributing Partner and the General Partner, provided that, if the contributing Partner is a General Partner, the determination of the fair market value of a contributed asset shall be determined by appraisal;

3.13.2 The Gross Asset Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the General Partner, as of the following times: (a) the acquisition of an additional Interest in the Partnership by any new or existing Partner in exchange for more than a de *minimis* Capital Contribution; (b) the distribution by the Partnership to a General Partner or Partner of more than a *de minimis* amount of Partnership Property as consideration for an Interest in the Partnership; and (c) the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g): provided, however, that the adjustments pursuant to clauses (a) and (b) above shall be made only if the General Partner reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the General Partner and Partners in the Partnership;

3.13.3 The Gross Asset Value of any Partnership asset distributed to a Partner shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the General Partner, provided that, if the distributee is a General Partner, the determination of the fair market value of the distributed asset shall be determined by appraisal; and

3.13.4 The Gross Asset Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and Sections 3.26.6 and 9.3.7 hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this Section 3.13.4 to the extent the General Partner determiners that an adjustment pursuant to Section 3.13.2 hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 3.13.4.

If the Gross Asset Value of an asset has been determined or adjusted pursuant to Section 3.13.1, Section 3.13.2, or Section 3.13.4 hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

3.14 "Involuntary Transfer" means any involuntary sale, transfer, encumbrance or other disposition, by or in which any Partner or assignee of a Partnership Interest shall be deprived or divested of any right, title or interest in or to any Partnership Interest, or portion thereof, to any Person or governmental entity other than a Partner, including, without limitation, (i) any sale in connection with the execution of a judgment pursuant to court order, (ii) a transfer or sale in connection with a bankruptcy or a transfer or sale by a receiver, (iii) any transfer to a judgment creditor pursuant to court

order, (iv) any transfer in connection with a reorganization, insolvency or similar proceeding, (v) any transfer to a public officer or agency pursuant to any abandoned property or escheat law, or (vi) any transfer to the spouse or former spouse of a Partner or assignee of a Partnership Interest as the result of or incident to any dissolution of marriage, marital separation, or similar event (notwithstanding such transfer is pursuant to a marital or property settlement agreement).

3.15 "Limited Partners" means those Persons identified on the Signature Pages of this Agreement as limited partners and all other Persons who shall be admitted to the Partnership as Substitute Limited Partners as provided in this Agreement and no other Person.

3.16 "Net Cash From Operations" means the gross cash proceeds from Partnership operations (including sales and dispositions in the ordinary course of business) less the portion thereof used to pay or establish reserves for all Partnership expenses, debt payments, capital improvements, replacements, and contingencies, all as determined by the General Partner. "Net Cash From Operations" shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to the first sentence of this Section 3.16 and Section 3.17 hereof. Net Cash from Operations shall include income-type items derived from Partnership investment assets (*e.g.,* dividends, interest, and partnership operating distributions).

3.17 "Net Cash From Sales or Refinancings" means the net cash proceeds from all sales and other dispositions (other than in the ordinary course of business) and all refinancings of Property, from any insurance payments or damage recoveries, other than under policies commonly referred to as a rent insurance paid to the Partnership in respect of its capital assets, and from any exercise by a governmental authority of any right of eminent domain, condemnation or similar right or power with respect to the capital assets of the Partnership, less any portion thereof used to establish reserves, all as determined by the General Partner. "Net Cash From Sales or Refinancings" shall include all principal and interest payments with respect to any note or other obligation received by the Partnership in connection with sales and other dispositions (other than in the ordinary course of business) of Partnership Property.

3.18 "Partner Nonrecourse Debt" has the meaning set forth in Section 1.704-2(b)(4) of the Regulations.

3.19 "Partner Nonrecourse Debt Minimum Gain" means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

3.20 "Partner Nonrecourse Deductions" has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

3.21 "Partners" means collectively the General Partner and all Limited Partners.

3.22 "Partnership" means BERNSTEIN FAMILY INVESTMENTS, LLLP.

3.23 "Partnership Interest" means a Partner's percentage interest in the profits, losses, and property of the Partnership, which percentage is to be determined in accordance with the relative contributions to the capital of the Partnership as made by the Partner and the other Partners from time to time.

3.24 "Partnership Minimum Gain" has the meaning set forth in Sections 1.704-2(b)(2) and 1.704-2(d).

3.25 "Person" means an individual, corporation, partnership, association, trust, estate or any other entity.

3.26 "Profits" and "Losses" means, for each Fiscal Year, an amount equal to the Partnership's taxable income or loss for such year or period, determined in accordance with Code Section 703(a)(for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

3.26.1 Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this Section 3.26 shall be added to such taxable income or loss;

3.26.2 Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this Section 3.26 shall be subtracted from such taxable income or loss;

3.26.3 In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to Section 3.13.2 or Section 3.13.3 hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

3.26.4 Gain or loss resulting from any disposition of Partnership Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

3.26.5 In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with Section 3.9 hereof;

3.26.6 To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv*)(m)(4)* to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Partner's Interest in the Partnership, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss

(if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses;

3.26.7 Notwithstanding any other provision of this Section 3.26, any items which are specially allocated pursuant to Section 9.3 or Section 9.4 hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Partnership income, gain, loss, or deduction available to be specially allocated pursuant to Sections 9.3 or Section 9.4 hereof shall be determined by applying rules analogous to those set forth in Sections 3.26.1 through 3.26.6 above.

3.27 "Property" means the property described in Exhibit "A", and such other property as the Partners shall agree to submit to Partnership ownership.

3.28 "Regulatory Allocations" has the meaning set forth in Section 9.4 hereof.

3.29 "Special Limited Partners" has the meaning set forth in Section 16.5.2.

3.30 "Substitute Limited Partners" means Persons who have acquired Partnership Interests from Limited Partners and who have been substituted for such Limited Partners as provided in this Agreement. Solely for purposes of determining those Persons who are entitled to distributions and allocations under Sections 9 and 10, "Substitute Limited Partners" means Persons who have acquired Partnership Interests from Limited Partners and Special Limited Partners and their assignees, whether or not such Persons have been substituted as provided herein.

3.31 "Transfer" means the mortgage, pledge, hypothecation, transfer, gift, bequest, sale, assignment or other disposition of any part or all or any Partnership Interest including a general partnership interest in the Partnership, whether voluntarily, by operation of law or otherwise.

4. Principal Place of Business and Recordkeeping Office and Agent for Service of Process. The principal place of business and recordkeeping of the Partnership is at BERNSTEIN FAMILY INVESTMENTS, LLLP, 950 Peninsula Corporate Circle, Suite 310, Boca Raton, Florida 33487, or at such other location as the General Partner, in its discretion, may determine. DONALD R. TESCHER shall act as agent for service of process on the Partnership.

5. Term. The Partnership shall continue until December 31, 2058, unless sooner terminated as provided in Section 18.

6. Business and Purposes. The purpose and business of the Partnership shall be the ownership, investment, management and control of the Property and other investment properties (including, without limitation, investments in real property, loans, business enterprises, marketable securities, either directly or through interests in corporations, limited partnerships, limited liability companies, and other entities), to provide a means for the BERNSTEIN family to own investment property and preserve its assets, and

to conduct such other activities as may be necessary or appropriate to promote such business and purposes, it being agreed that each of the foregoing is an ordinary part of the Partnership's business. In addition to the foregoing, or as part thereof, the Partnership shall accomplish among other things the following: (a) maintain control over BERNSTEIN family assets contributed to it, (b) consolidate fractional interests in BERNSTEIN family assets, (c) seek to increase BERNSTEIN family wealth, (d) establish a method by which gifts can be made without fractionalizing BERNSTEIN family assets, (e) provide protection to BERNSTEIN family assets from future claims against members of the families, (f) facilitate the administration and reduce the costs associated with the disability or probate of the estate of members of the BERNSTEIN family, (g) provide a mechanism to resolve BERNSTEIN family disputes, and (h) if applicable, hold restricted securities until such securities become unrestricted and free of underwriting limitations of the Securities and Exchange Commission. The Partnership shall not engage in any other business without the prior consent of Limited Partners owning (in the aggregate) at least eighty (80%) percent of the limited partnership Interests owned by the Limited Partners.

7. Capital Contributions and Capital Accounts.

7.1 Contribution of General Partners. The General Partner shall, as soon as practicable after the execution of this Agreement, contribute to the Partnership the cash and property set forth on Schedule "A" attached hereto and made a part hereof. The value of said capital contribution shall be allocated to the capital account of the General Partner. In addition, the General Partner shall contribute its efforts as managing partner.

7.2 Contribution of Limited Partners. The Limited Partners shall contribute to the Partnership the cash and property set forth on Schedule "A" attached hereto and made a part hereof. The value of each such contribution shall be allocated to the respective capital accounts of the Limited Partners as reflected on Schedule "A."

7.3 Withdrawal of Capital. Except as specifically provided in this Agreement, no Partner shall be entitled to withdraw any part of his capital account or to receive any distribution from the Partnership, and no Partner shall be required to make any additional capital contribution to the Partnership.

7.4 Partner's Loans. Loans by any Partner to the Partnership shall not be considered contributions to the capital of the Partnership and shall not increase the capital account of the lending Partner.

7.5 Interest on Capital Contribution. No interest shall be paid on any capital contributed to the Partnership.

8. Compensation and Expenses of General Partner.

8.1 Compensation and Reimbursement. The Partnership shall pay to the General Partner or its affiliates reasonable fees as compensation for services and reimbursement for sums advanced. The Partnership is authorized to enter into business agreements, contracts, and other transactions with the

General Partner or its affiliates and is authorized to pay fees, commissions or other consideration to the General Partner, or its affiliates on an arms length basis, including without limitation, real estate brokerage commissions, development fees, insurance premiums, rent, property management fees, leasing commissions and mortgage brokerage fees.

8.2 Expenses. The General Partner may charge the Partnership for any reasonable expenses actually incurred by it in connection with the Partnership's business and all allocable portions of expenses incurred in connection with both Partnership and other activities, such allocation to be determined on any equitable basis selected by the General Partner consistent with generally accepted accounting principles. Such expenses shall include, but are not limited to, payment of fees and expenses to attorneys, accountants, property managers and property management companies and other consultants.

9. Allocations of Profit and Loss, Cash Distributions.

9.1 Allocations of Profits. After giving effect to the special allocations set forth in Sections 9.3 and 9.4 hereof, Profits for any Fiscal Year shall be allocated in the following order and priority:

9.1.1 First, to the Partners in an amount equal and in proportion to the excess, if any, of the cumulative Losses allocated to the Partners pursuant to Section 9.2.2 hereof for the current and all prior Fiscal Years, reduced by the cumulative Profits allocated to the Partners pursuant to this Section 9.1.1 hereof for the current and all prior Fiscal Years;

9.1.2 The balance, if any, pro-rata to the Partners or in proportion to their Partnership Interests.

9.2 Allocation of Losses. After giving effect to the special allocations set forth in Sections 9.3 and 9.4, Losses for any Fiscal Year shall be allocated as set forth in Section 9.2.1 below, subject to the limitations in Section 9.2.2 below.

9.2.1 To the Partners in proportion to their Partnership Interests.

9.2.2 The Losses allocated pursuant to Section 9.2.1 hereof shall not exceed the maximum amount of Losses that can be so allocated without causing any Partner who is not a General Partner to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Partners who are not General Partners would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section 9.2.1, the limitation set forth in this Section 9.2.2 shall be applied on a Partner by Partner basis so as to allocate the maximum permissible Losses to each Partner who is not a General Partner under Section 1.704-1(b)(2)(ii)(d) of the Regulations. All Losses in excess of the limitation previously set forth in this Section 9.2.2 shall be allocated to the General Partner.

9.3 Special Allocations. The following special allocations shall be made in the following order:

9.3.1 Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Section 9, if there is a net decrease in Partnership Minimum Gain during any Partnership Fiscal Year, each Partner shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 9.3.1 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

9.3.2 Partner Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Section 9, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Partnership Fiscal Year, each Partner who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Partner's share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 9.3.2 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

9.3.3 Qualified Income Offset. In the event any Partner who is not a General Partner unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), Regulations Section 1.7041(b)(2)(ii)(d)(5), or Regulations Section 1.704-1(b)(2)(ii)(d)(6), items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Partner as quickly as possible, provided that an allocation pursuant to this Section 9.3.3 shall be made if and only to the extent that such Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 9 have been tentatively made as if this Section 9.3.3 were not in the Agreement.

9.3.4 Gross Income Allocation. In the event any Partner who is not a General Partner has a deficit Capital Account at the end of any Partnership Fiscal Year which is in excess of the sum of (i) the amount such Partner is obligated to restore (pursuant to the terms of such Partner's promissory note or otherwise), and (ii) the amount such Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Partner shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 9.3.4 shall be made if and only to the extent

that such Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Section 9 have been tentatively made as if this Section 9.3.4 and Section 9.3.3 hereof were not in the Agreement.

9.3.5 Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Limited Partners.

9.3.6 Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the General Partner or Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

9.3.7 Section 754 Adjustment. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)*(m)(2)* or Regulations Section 1.704-1(b)(2)(iv)*(m)(4)*, to be taken into account in determining Capital Accounts as the result of a distribution to a General Partner or Partner in complete liquidation of his Interest in the Partnership, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the General Partner and the Partners in accordance with their Interests in the Partnership in the event that Regulations Section 1.704-1(b)(2)(iv)*(m)(2)* applies, or to the Partners to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)*(m)(4)* applies.

9.3.8 Allocations Relating to Taxable Issuance of Partnership Interests. Any income, gain, loss, or deduction realized as a direct or indirect result of the issuance of an Interest in the Partnership by the Partnership to a Partner (the "Issuance Items") shall be allocated among the Partners so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Partner, shall be equal to the net amount that would have been allocated to each such Partner if the Issuance Items had not been realized.

9.4 Curative Allocations. The allocations set forth in Sections 9.2.2, 9.3.1, 9.3.2, 9.3.3, 9.3.4, 9.3.5, 9.3.6 and 9.3.7 hereof (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 9.4. Therefore, notwithstanding any other provision of this Section 9 (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such General Partner or Partner would have had if the Regulatory Allocations were not part of the Agreement and all Partnership items were allocated pursuant to Sections 9.1, 9.2.1, 9.3.8, and 9.5. In exercising its discretion under this Section 9.4, the General Partner shall take into account future Regulatory Allocations under Sections 9.3.1 and 9.3.2 that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 9.3.5 and 9.3.6.

9.5 Other Allocation Rules.

9.5.1 Generally, unless otherwise explicitly provided, all Profits and Losses allocated to the Partners shall be allocated among them in proportion to the Partnership Interest held by each. In the event additional Limited Partners are admitted to the Partnership on different dates during any Fiscal Year, the Profits (or Losses) allocated to the Partners for each such Fiscal Year shall be allocated among the Partners in proportion to the Partnership Interest each holds from time to time during such Fiscal Year in accordance with Code Section 706, using any convention permitted by law and selected by the General Partner.

9.5.2 The Partners are aware of the income tax consequences of the allocations made by this Section 9 and hereby agree to be bound by the provisions of this Section 9 in reporting their shares of Partnership income and loss for income tax purposes.

9.5.3 Solely for purposes of determining a General Partner's or Partner's proportionate share of the "excess nonrecourse liabilities" of the Partnership within the meaning of Regulations Section 1.752-3(a)(3), the Partner's Interests in Partnership profits are as follows: Limited Partners one hundred percent (100%) (in proportion to their Partnership Interests).

9.5.4 To the extent permitted by Sections 1.704-2(h)(3) of the Regulations, the General Partner shall endeavor to treat distributions of Net Cash From Operations or Net Cash From Sales or Refinancings as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Partner who is not a General Partner.

9.6 Tax Allocations: Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the General Partner and Partners so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial Gross Asset Value (computed in accordance with Section 3.13.1 hereof). In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to Section 3.13.2 hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 9.6 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Partner's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

10. Distributions.

10.1 Net Cash From Operations. Except as otherwise provided in Section 10.3 hereof, Net Cash From Operations not needed in the General Partner's determination for the reasonable needs of the Partnership business, shall be distributed to the Partners in proportion to their respective Partnership Interests.

To the extent such cash is comprised in whole or in part of nonrental income-type items derived from Partnership passive investment assets (*e.g.*, dividends, interest, and partnership operating distributions), reinvestments of such proceeds in other investment assets shall constitute expenditures for the reasonable needs of the business in the determination of the General Partner.

10.2 Net Cash From Sales or Refinancings. Except as otherwise provided in Section 10.3 hereof, Net Cash From Sales or Refinancings not needed in the General Partner's determination for the reasonable needs of the Partnership business, shall be distributed in the following order and priority:

10.2.1 First, proportionally to the Partners until their aggregate Capital Account balances are reduced to zero; and

10.2.2 thereafter, to the Partners in proportion to their Partnership Interests.

To the extent such cash is comprised in whole or in part of cash from the sale of Partnership non-real property passive investment assets (*e.g.*, marketable securities), reinvestments of such proceeds in other investment assets shall constitute expenditures for the reasonable needs of the business in the determination of the General Partner.

10.3 Liquidating Distributions. Notwithstanding the distribution provisions, liquidating distributions of the partnership, including all distributions made pursuant to a liquidation described in Regulations Section 1.704-1(b)(2)(ii)*(g)*, shall be distributed as follows:

10.3.1 First, to the payment and discharge of all of the Partnership's debts and liabilities to creditors other than the General Partners;

10.3.2 Second, to the payment and discharge of all of the Partnership's debts and liabilities to General Partners; and

10.3.3 The balance, if any, proportionally to the Partners until their aggregate Capital Account balances are reduced to zero; and

10.3.4 thereafter, to the Partners in proportion to their Partnership Interests.

The foregoing liquidating distributions are intended to be made in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2) and subsequent to a revaluation of Partnership property and corresponding adjustment of Capital Accounts under Treas.Regs. §1.704-1(b)(2)(iv)(f). If any General Partner's Capital Account has a deficit balance (after giving effect to all contributions, distributions, and allocations for all Fiscal Years, including the Fiscal Year during which such liquidation occurs), such General Partner

shall contribute to the capital of the Partnership the amount necessary to restore such deficit balance to zero in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(3). If any Limited Partner who is not a General Partner has a deficit balance in his Capital Account (after giving effect to all contributions, distributions, and allocations for all Fiscal Years, including the Fiscal Year during which such liquidation occurs), such Limited Partner shall have no obligation to make any contribution to the capital of the Partnership with respect to such deficit, and such deficit shall not be considered a debt owed to the Partnership or to any other Person for any purpose whatsoever. In the discretion of the General Partner, a pro rata portion of the distributions that would otherwise be made to the General Partner and Limited Partners pursuant to this subsection may be (a) distributed to a trust established for the benefit of the General Partner and Limited Partners for the purposes of liquidating Partnership assets, collecting amounts owed to the Partnership, and paying any contingent or unforseen liabilities or obligations of the Partnership or of the General Partner arising out of or in connection with the Partnership. The assets of any such trust shall be distributed to the General Partner and Limited Partners from time to time, in the reasonable discretion of the General Partner, in the same proportions as the amount distributed to such trust by the Partnership would otherwise have been distributed to the General Partner and Limited Partners pursuant to this Subsection 10.3; or (b) withheld to provide a reasonable reserve for Partnership liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Partnership, provided that such withheld amounts shall be distributed to the Partners as soon as practicable.

10.4 Division Among Partners. Except as otherwise provided above, all distributions to the Partners pursuant to this Section 10 shall be divided among them in proportion to the Partnership Interest held by each.

10.5 Amounts Withheld. All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution, or allocation to the Partnership, the General Partner, or the Partners shall be treated as amounts distributed to the General Partner and the Partners pursuant to this Section 10 for all purposes under this Agreement. The General Partner is authorized to withhold from distributions, or with respect to allocations, to the General Partner and Partners and to pay over to any federal, state, or local government any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state, or local law and shall allocate such amounts to the General Partner and Partners with respect to which such amount was withheld.

10.6 Special Tax Elections. At the written request of any Partner the Partnership shall make an election pursuant to Section 754 of the Code upon a distribution of property described in Code Section 734 or a transfer described in Code Section 743 of a Partnership Interest in accordance with this Agreement. Each Partner shall, upon request, supply the General Partner with the information necessary to make such election.

10.7 General Elections and Limitations. The General Partner is authorized, in its sole discretion, to make any other elections required or permitted with respect to Federal or state taxes in any Partnership tax return; provided, however, no election shall be made by either the Partnership or the Partners to be excluded from the application of the provisions of Subchapter K, Chapter I of Subtitle A of the Code or from any similar provisions of any state tax laws.

10.8 Distribution in Kind. If any assets of the Partnership are distributed in kind, such assets shall be distributed to the Partners entitled to participate in the distribution as tenants-in-common in the same proportions as such Partners would have been entitled to cash distributions.

10.9 Rights of Partners to Property. No Partner shall have the right to withdraw or reduce his capital contribution to the Partnership except as a result of the dissolution of the Partnership or as otherwise provided by law. No Partner shall be entitled to demand and receive property other than cash in return for his capital contribution to the Partnership, and, to the maximum extent permissible under applicable law, each Partner hereby waives all right to partition the Partnership Property.

10.10 Priorities of Limited Partners. No Limited Partner shall have any priority over any other Limited Partner as to the return of his contribution to the capital of the Partnership or as to compensation by way of income.

10.11 Minimum Interest of General Partner. Notwithstanding the allocations contained in these Sections 9 and 10, it is the intent of this Agreement that in no event shall the General Partner be allocated less than 1% of Profits, Losses, Net Cash from Operations or Net Cash From Sales or Refinancings allocated to the Partners.

11. Rights, Duties and Powers of the General Partner and Limited Partners.

11.1 Management. The General Partner shall be solely responsible for the management of and shall use its best efforts to manage and control the Partnership business with all rights and powers generally conferred by law or necessary, advisable or consistent with such responsibility.

11.2 Rights. In addition to any other rights and powers which it may possess, the General Partner shall have all specific rights and powers required or appropriate to the management of the Partnership business which, by way of illustration, but not by way of limitation, shall include the right and power:

11.2.1 To evaluate, select, negotiate for, acquire, purchase, operate, hold, trade, sell, exchange, convey or lease the Partnership Property, and any real property which is or may become a part of the Partnership property, as well as personal or other property connected with it, and except as may be limited by this Agreement to acquire or grant options for the purchase or sale of or sell the Partnership property from or to any Person, including, without limitation, the General Partner for such price, cash or otherwise, and upon such terms as the General Partner in its sole discretion deems to be in the best interests of the Partnership.

11.2.2 To manage, develop, improve, maintain and service Partnership properties; to form corporations or acquire shares of stock in corporations to carry out any of the purposes of the Partnership and to acquire title to property in the name of such corporations and to guarantee or otherwise secure the obligations of such corporations in furtherance of Partnership purposes.

11.2.3 To borrow and lend money and, if security is required for a borrowing, to mortgage or subject to any other security device any portion of the property of the Partnership, to execute replacements of any mortgage or other security device, and to prepay, in whole or in part, refinance, increase, modify and consolidate such indebtedness as determined in their discretion to be in the best interest of the Partnership.

11.2.4 To place of record, title to, or the right to use, Partnership assets in the name or names of a nominee or nominees, including, but not limited to, the General Partner, or a land trustee, for any purpose convenient or beneficial to the Partnership.

11.2.5 To acquire and to enter into any contract of liability and other insurance which the General Partner deems necessary and proper for the protection of the Partners and Partnership, for the conservation of its assets or for any purpose convenient or beneficial to the Partnership.

11.2.6 To employ from time to time persons, firms or corporations for the operation and management of the Partnership business, including, but not limited to, attorneys, accountants, advisors, administrators, property managers and personnel, managing and supervising agents, construction, maintenance and repair contractors, independent contractors furnishing full service components, architects, land planners, financial consultants, engineers, insurance brokers, real estate brokers and loan brokers on such terms and for such compensation as the General Partner may determine. The General Partner is hereby specifically authorized in its sole discretion to employ the General Partner as provided in, and subject to, the provisions of this Agreement. Compensation connected with any such employment shall be an expense of the Partnership.

11.2.7 To make elections under the tax laws of the United States or any state as to the treatment of Partnership income, gain, loss, deduction and credit, and as to all other relevant matters.

11.2.8 To determine the Profits, Losses, Net Cash from Operations and Net Cash From Sales or Refinancings of the Partnership for any period and from any transaction.

11.2.9 To transfer all or part of the real or personal property belonging to the Partnership to one or more general or limited partnerships or corporations in exchange for partnership interests or shares of stock which the Partnership may hold or distribute among the Partners in accordance with their respective Interests in the Partnership.

11.2.10 To perform any and all other acts or activities customary or incidental to the Partnership purposes and businesses.

11.2.11 Adjust Partner Capital Account balances to reflect a revaluation of Partnership property on the books of the Partnership in accordance with and as permitted by the provisions of Treas.Regs. §1.704-1(b)(2)(iv)(f).

11.3 Certain Limitations. The General Partner shall have all of the rights and powers and be subject to all of the restrictions and liabilities of a partner in a partnership without limited partners,

except that without the written consent of all of the Limited Partners as provided in this Agreement, or as otherwise provided by law, the General Partner shall not have authority to do any of the following:

11.3.1 Any act in contravention of the Certificate or this Agreement.

11.3.2 Confess a judgment against the Partnership.

11.3.3 Possess Partnership property, or assign the rights of the Partnership in specific Partnership property, for other than a Partnership purpose.

11.3.4 Admit a Person as a General Partner, except as otherwise provided in this Agreement.

11.3.5 Admit a Person as a Limited Partner, except as otherwise provided in this Agreement.

11.3.6 Require any Limited Partner to make any contribution to the capital of the Partnership not provided in Section 7.

11.4 Other Interests. Any of the Partners and any affiliates of the Partners, or any shareholder or any other Person holding a legal or beneficial interest in an entity which is a Partner or an affiliate of the General Partner, may engage in or possess an interest in other business ventures which may be competitive with the business of, or which may transact business with, the Partnership. Neither the Partnership nor the Partners shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived from them.

11.5 Agreement Beyond the Partnership Term. Agreements entered into by the Partnership, including, but not limited to, security agreements, mortgages and leases, may extend for terms in excess of the term of the Partnership.

11.6 General Partner as Limited Partner. The General Partner or its affiliates may acquire and own Interests as Limited Partners, in addition to its Interest as General Partner. In addition, the General Partner may become a Limited Partner in accordance with the provisions of Section 16.5.2.

11.7 Time Devoted to Partnership Business. The General Partner shall devote only such time to the business of the Partnership as it, in its sole discretion, shall deem to be necessary to manage and supervise the Partnership business.

11.8 General Partner's Liability. The General Partner shall not be liable for the return of any portion of the Aggregate Capital Contributions of the Limited Partners.

11.9 Exculpation and Indemnification of General Partner. No General Partner shall be liable, responsible or accountable in damages or otherwise to the Partnership or any other Partner for

any act performed or failure to act by it unless such act or failure to act is attributable to willful misconduct or gross negligence. The Partnership shall indemnify and hold harmless the General Partner from and against any and all loss, damage, liability, cost or expense, including reasonable attorneys' fees, arising out of any act or failure to act by the General Partner if such act or failure to act is in good faith within the scope of this Agreement and is not attributable to willful misconduct or gross negligence. The General Partner shall indemnify and hold harmless the Partnership and the Partners for any loss, damage, liability, cost or expense (including reasonable attorneys' fees) arising out of any act or failure to act by the General Partner, where such act or failure to act is attributable to willful misconduct or gross negligence.

11.10 Tax Matters Partner. BERNSTEIN HOLDINGS, LLC, shall be the Tax Matters Partner; provided, however, if it is no longer General Partner then it shall be a successor appointed by Limited Partners owning in the aggregate 51% of the Limited Partnership Interests. The Tax Matters Partner shall notify all Partners as to the beginning of any administrative proceedings at the Partnership level with respect to Partnership items and shall further notify the Partners as to any final Partnership administrative adjustment resulting from any such proceeding. The Tax Matters Partner shall be entitled to reimbursement for all costs and expenses incurred in connection with its services to the Partnership as Tax Matters Partner, and shall be indemnified and held harmless by the Partners with respect to such services, except with respect to willful misconduct or gross negligence.

11.11 Powers of Limited Partners. The Limited Partners shall take no part in or interfere in any manner with the conduct or control of the Partnership business and shall have no right or authority to act for or to bind the Partnership. The Partnership may engage Limited Partners or persons associated with them for specific purposes and may otherwise deal with such Limited Partners on terms and for compensation to be agreed upon by any such Limited Partner and the Partnership. The exercise of any of the rights and powers of the Limited Partners pursuant to the terms of this Agreement shall not be deemed taking part in the day-to-day affairs of the Partnership or the exercise of control over Partnership affairs.

11.12 Liability of Limited Partners. A Limited Partner shall not be bound by, or personally liable for, any of the debts, contracts, liabilities, or other obligations of the Partnership or the General Partner, or for any losses of the Partnership in excess of their required capital contribution, and the liability of each Limited Partner shall be limited solely to the amount of his contribution to the capital of the Partnership required by the provisions of Section 7. Notwithstanding any of the foregoing to the contrary, and only to the extent otherwise required by applicable law, a Partner receiving a distribution in part or full return of his aggregate Capital Contribution shall be liable to the Partnership for any sum, not in excess of such amount returned plus interest, necessary to discharge the liabilities of the Partnership to creditors who extended credit or whose claims arose before such distribution, excluding liabilities of the Partnership represented by debt, the repayment of which is secured solely by the Partnership Property.

12. Loans to the Partnership. From time to time any Partner, including the General Partner, upon the request of the General Partner, may make optional loans to the Partnership or advance money on its

behalf. Such loans and advances may be in the form of direct loans, payment of sums payable by the Partnership, payments of guarantees of Partnership indebtedness or otherwise. Loans and advances under this Section shall be accounted for as loans and not as capital contributions to the Partnership. All sums loaned or advanced, together with interest on such sums, shall be deemed an obligation of indebtedness from the Partnership to the lending Partner, and such loan or advance shall bear interest at a reasonable rate agreed to by the Partnership and the lending Partner.

13. Books, Records, Reports, Bank Accounts and Tax Elections.

13.1 Books of Account. At all times during the existence of the Partnership, the General Partner shall keep, or cause to be kept, full and true books of account of the Partnership in accordance with generally accepted accounting principles. The books shall be maintained on such method of accounting, accrual or cash, as the General Partner determines in its discretion to be in the best interests of the Partnership. The books of the Partnership, together with a certified copy of the Certificate, shall be maintained at the principal place of business of the Partnership. During reasonable business hours the Limited Partners and their authorized representatives may inspect and copy the Partnership's books of account.

13.2 Financial Statements. At least annually, unaudited financial statements and an annual report of the business of the Partnership shall be prepared at the direction of the General Partner. If a Partner wishes to obtain an audited financial statement, he may cause it to be prepared, but he shall pay all fees and expenses for its preparation.

13.3 Tax Returns. In addition to the financial statement and annual report, the General Partner shall cause income tax returns for the Partnership to be prepared and filed with the appropriate authorities and the General Partner shall also cause such reports as may be required by regulatory agencies to be prepared, filed and distributed as required.

13.4 Dissemination. The General Partner shall distribute annual reports of the business of the Partnership, financial statements and income tax information to the Limited Partners as soon as is practicable after the close of each fiscal year of the Partnership.

13.5 Fiscal Year. The Partnership tax year shall be the calendar year, unless a General Partner elects another fiscal year and obtains the approval of the Internal Revenue Service to such year.

13.6 Bank Accounts. All funds of the Partnership shall be deposited in the Partnership name in such bank account or accounts as may be designated by the General Partner. Withdrawals from any such bank account or accounts shall be made upon such signature or signatures as the General Partner may designate.

14. Transfer of Limited Partnership Interest.

14.1 Method of Transfer. No Transfer of all or part of a Limited Partner's Interest may be effected except as permitted in this Section 14, and then only if a counterpart of the instrument of Transfer, executed and acknowledged by the parties to the Transfer is delivered to the Partnership. A permitted Transfer shall be effective as of the date specified in the instruments of Transfer. This Partnership is formed by those who know and trust one another, who have surrendered certain management rights (in exchange for limited liability in the case of a Limited Partner), or who have assumed management responsibility and risk (in the case of a General Partner) based upon their relationship and trust. Capital is material to the business and investment objectives of the Partnership and its federal tax status. An unauthorized Transfer of a Limited Partner's Interest could create a substantial hardship to the Partnership, jeopardize its capital base, and adversely affect its tax structure. The restrictions on Transfers set forth in this Section are not intended as a penalty, but as a method to protect and preserve existing relationships based upon trust and the Partnership's capital and its financial ability to continue.

14.2 Transfers by Limited Partners. Except as expressly provided herein, no Limited Partner may Transfer any part or all of his Interest. Notwithstanding the foregoing and without being subject to the right of first refusal provisions of Section 14.3, a Partner may Transfer all or any part of his Interest to (i) another Partner, (ii) a lineal descendant of both SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, (iii) a trust of which a majority in interest of the beneficiaries are Partners and/or lineal descendants of both SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN; or (iv) to another partnership or corporation provided that a majority of the voting stock of the corporation or the general partnership interest in the case of a limited partnership or the interest in capital in a general partnership are owned and controlled by SIMON L. BERNSTEIN and/or lineal descendants of SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN.

14.3 Right of First Refusal. Notwithstanding the above restrictions on Transfer of Interest, a Limited Partner may Transfer all or any part of his Interest, other than by gift or devise, pursuant to a Bona Fide offer as defined in Section 14.3.2, and in such instance the Partnership shall have a right of first refusal to purchase any Interest which any Limited Partner may wish to Transfer, on the terms and subject to the conditions set forth in Section 14.3.1 through 14.3.3:

14.3.1 In the event that any Limited Partner receives a Bona Fide Offer, as herein defined, from a third party (the "Proposed Assignee") to purchase all or any portion of his Interest and he is willing to accept such Bona Fide offer, that Limited Partner (the "Offeror-Limited Partner") shall promptly send written notice (the "Notice") to the General Partner, offering to sell his Interest to the Partnership at the same price and upon the same terms and conditions that are contained in the Bona Fide Offer. The Notice shall contain a true and complete copy of the Bona Fide Offer, the price, the portion of the Interest to be sold, and all terms and conditions and the name and addresses, both home and office, and businesses or other occupations of the Proposed Assignee.

14.3.2 As used in this Agreement, "Bona Fide Offer" means an offer in writing, signed by the Proposed Assignee, who must be a Person financially capable of carrying out the terms of the Bona Fide Offer, in a form legally enforceable against the Proposed Assignee.

14.3.3 Whenever an Offeror-Limited Partner gives the Partnership notice of a Bona Fide Offer to purchase his Interest, the following procedure shall be complied with:

14.3.3.1 For a period of ten days from its receipt of the Notice, the Partnership shall have the option to notify the Offeror-Limited Partner that it intends to purchase the Interest.

14.3.3.2 If the Partnership does not give the Offeror-Limited Partner notice within the prescribed time period that it will purchase the Interest covered by the Bona Fide Offer, the Offeror-Limited Partner shall have the right to accept the Bona Fide Offer and sell the Interest subject to the provisions and restrictions of this Agreement, but only in strict accordance with all of the terms of the Bona Fide Offer and only if the sale is fully consummated within 45 days after the mailing of the Notice. If the Interest is not sold to the Proposed Assignee pursuant to the Bona Fide Offer within that 45 day period, then, before disposing of the Interest the Offeror-Limited Partner shall again be obligated to reoffer the Interest to the Partnership pursuant to the terms of this Section.

14.3.3.3 If the Partnership exercises its option to purchase the Interest a closing shall be held within 15 days after the Partnership gives notice of its election to exercise the option to purchase. The closing shall be on the basis of the terms and other provisions of the Bona Fide Offer.

14.4 Rights of Transferees. No transferee of the Interest of any Limited Partner, including transferees described in Sections 14.2 or 14.3, shall have the right to become a Substitute Limited Partner, unless:

14.4.1 His transferor has stated such intention in the instrument of assignment.

14.4.2 The transferee has executed an instrument reasonably satisfactory to the General Partner accepting and adopting the terms and provisions of this Agreement.

14.4.3 The transferor or transferee pays to the Partnership any reasonable expenses in connection with the admission of the transferee as a Limited Partner.

14.4.4 The transferor and transferee furnish the Partnership with the transferee's tax identification number, sufficient information to determine the transferee's initial tax basis in the Interest transferred, and any other information reasonably necessary to permit the Partnership to file all required federal and state tax returns and other legally required information statements or returns. Without limiting the generality of the foregoing, the Partnership shall not be required to make any distribution otherwise provided for in this Agreement with respect to any transferred Partnership Interest (without regard to whether the transferee is admitted as a Substitute Limited Partner) until it has received such information.

14.4.5 In the case of an assignee or transferee who is not otherwise a Partner, the General Partner, in its sole, absolute and unfettered discretion, consents to such person becoming a

Substitute Limited Partner, including assignees of Partnership Interests whose interest arises by reason of the death of a Partner.

The assignor of a Limited Partnership Interest shall not act for or on behalf of the assignee of the Limited Partnership Interest who does not become a Substitute Limited Partner, and until an assignee of a Limited Partnership Interest is admitted as a Substitute Limited Partner, both the Partnership and the Partners shall be entitled, but not required, to treat the transferor of the Partnership Interest as the absolute owner thereof in all respects. An assignee of a Limited Partnership Interest who does not become a Substitute Limited Partner, unless otherwise a Partner, does not become a Partner and is not entitled to exercise the rights of a Partner.

14.5 General Partner's Acquisition of Limited Partner Interest. If a General Partner should acquire any Limited Partner Interest, that General Partner with respect to that Interest shall become a Limited Partner and enjoy all of the rights and be subject to all of the obligations and duties of a Limited Partner to the extent of such Interest.

14.6 Income/Loss Allocations Upon Transfer. Unless otherwise agreed between the transferor and the transferee, upon the Transfer of an Interest the Profits and Losses attributable to the Interest transferred shall be allocated between the transferor and the transferee as of the date set forth in the instrument of Transfer, and such allocation shall be based upon the number of days during the applicable fiscal year of the Partnership that the Interest transferred was held by each of them, without regard to the results of Partnership activities during the period in which each was the holder. All distributions with respect to such Interest shall be made only to the holder of record of the Interest on the date of distribution.

15. Death, Incompetency, Bankruptcy or Dissolution of a Limited Partner.

15.1 Individual Limited Partner. Upon the death, adjudication of bankruptcy, insolvency or legal incompetency of an individual Limited Partner, his personal representative shall have all the rights of a Limited Partner for the purposes of settling or managing his estate and such power as the decedent, bankrupt or incompetent possessed to constitute a successor as an assignee of his Interest in the Partnership and to join with such assignee in making application to the General Partner to have such assignee become a Substitute Limited Partner.

15.2 Other Limited Partners. Upon the adjudication of bankruptcy, insolvency, dissolution or other cessation to exist as a legal entity of a Limited Partner not an individual, the authorized representative of such entity shall have all of the rights of a Limited Partner for the purpose of effecting the orderly winding up and dissolution of the business of such entity and such power as such entity possessed to constitute a successor as an assignee of its Interest in the Partnership and to join with such assignee in making application to the General Partner to have such assignee become a Substitute Limited Partner.

16. Resignation, Removal and Election of a General Partner; Assignment; Transfer.

16.1 Substitution for a General Partner. The General Partner may not admit any Person as a substitute General Partner.

16.2 Resignation of a General Partner. A General Partner may resign as such by delivering thirty (30) days advance written notice of its resignation to all Partners.

16.3 Removal of a General Partner. A General Partner shall be removed and cease to be a General Partner of the Partnership:

16.3.1 If (a) the General Partner being removed is in default of a material provision of this Agreement and (b) has not cured such default within 30 days after written notice of such fact is given to the General Partner sought to be removed and to all other Partners by Limited Partners owning at least 75% of the Interests owned by the Limited Partners. Written notice pursuant to this section shall set forth the day upon which the removal is to become effective if the default is not cured. However, the removal of a General Partner shall not take effect unless and until that General Partner is released from all liability by all lenders who have made loans to the Partnership, including loans made to the General Partner, on behalf of the Partnership. Such release shall be evidenced by written instruments executed by the lenders and any releases of liability shall extend to such General Partner in his capacity as such and individually. The removal of a General Partner shall be effective on the later of the date set forth in the notice or the date of delivery of the releases to the General Partner.

16.3.2 The occurrence of an Event of Withdrawal.

16.4 Liability of General Partner After Resignation or Removal. If a General Partner resigns or is removed in accordance with the provisions of this Agreement, his liability as a General Partner shall cease upon resignation or removal as provided in the Act, and the Partnership shall promptly take all actions reasonably necessary under the Act to cause such cessation of liability. The Partnership shall indemnify the General Partner with respect to any such liability. However, claims, demands, liabilities, costs and damages held against or incurred by the General Partner in violation of the terms of this Agreement shall be held as an offset against the General Partner's Interest.

16.5 Interest of a General Partner After Resignation or Removal.

16.5.1 The resignation or removal of a General Partner shall not affect its rights as the owner of any Limited Partnership Interest.

16.5.2 Subject to the provisions of Section 16.5.3, upon the resignation or removal of a General Partner, the Interest which he had as a General Partner in Profits and Losses and distributions of Net Cash from Operations and Net Cash From Sales or Refinancings shall be retained by him and be converted into a "Special Limited Partner's" Interest and the Partnership shall take all actions necessary to admit such General Partner as a Special Limited Partner with respect to such converted Interest. Such conversion shall not, however, result in the General Partner becoming a Substituted Limited Partner with respect to such Interest. As a Special Limited Partner, the former General Partner shall be sent copies

of all notices, reports and other information furnished to Limited Partners by the General Partner or the Partnership.

16.5.3 Upon the resignation or removal of:

16.5.3.1 A General Partner leaving the Partnership with one or more General Partners whose total Interest in the Profits and Losses of the Partnership would be less than 1%, the Interest of the resigned or removed General Partner in such portion of the Partnership's Profits and Losses which is necessary to bring the total Interest of the remaining General Partners in the Profits and Losses of the Partnership up to 1% shall be automatically transferred to the remaining General Partner without any payment.

16.5.3.2 One or more General Partners leaving the Partnership without a General Partner and the election of a successor General Partner pursuant to Section 16.6, the rights and interest in 1% of the Partnership's Profits and Losses of the last General Partner who has resigned or been removed, shall be sold to and purchased by his successor as of the date of such resignation or removal at such price as shall be agreed upon between them; provided, however, that if no such agreement is reached within 30 days of the election of a successor then such price shall be determined by arbitration in the State of Florida under the rules of the American Arbitration Association. Within 60 days after the determination of such price it shall be paid in cash together with interest at the then prevailing short-term applicable federal rate under Internal Revenue Code Section 1274. The cost of arbitration shall be paid equally by the successor and the departing General Partner. If any sums payable under this Section to the resigned or removed General Partner are not paid to him when due, then such sums shall be paid to him by the Partnership.

16.6 Election of a Substitute General Partner. If there is only one General Partner and he resigns, or is removed in accordance with this Agreement, and if, pursuant to Section 18.1.2, the Limited Partners unanimously elect to continue the business of the Partnership, then a substitute General Partner shall be elected by an Eighty (80%) percent vote of the Limited Partners, and he shall take all actions necessary to continue the business of the Partnership. Notwithstanding the foregoing, if in the written opinion of counsel for the Partnership it is more likely than not that all Limited Partners must agree on a substitute General Partner to avoid a dissolution under the Act, then in lieu of the foregoing Eighty (80%) percent vote, all Limited Partners shall agree to the election of each substitute General Partner. Such election shall be accomplished in the following manner: Any one or more of the Limited Partners shall, promptly after the election to continue, nominate a person or entity for election as the substitute General Partner. Such nominee shall not become the General Partner unless elected by a vote of Eighty (80%) percent (or, One Hundred (100%) percent, as provided above) of the Interests owned by the Limited Partners. In the event that such nominee is not elected, then any one or more of the Limited Partners shall as soon as practicable nominate another substitute General Partner and such procedure shall continue until a substitute General Partner is elected or the Partnership is dissolved pursuant to Section 18.1.

16.7 Transfer of Interest of a General Partner. No General Partner may transfer, assign, encumber or otherwise dispose of his Interest as a General Partner in the Partnership except as provided for in this Section 16. All General Partners' Interests in the Partnership pursuant to Section 9 transferred pursuant to Section 16, including for this purpose, but not limited to, conversions to a Special Limited Partner's Interest, are included in the allocations to and distributive shares of the Partners in Section 9 as a Partner's Interest and shall be allocated and distributed to the transferees of such Interest.

17. Involuntary Transfers of Partnership Interests. In the event of any Involuntary Transfer, which for this purpose shall include a charging order, by any Partner or assignee of any Partnership Interest, the following procedures shall apply:

17.1 The Partner or assignee deprived or divested of any Partnership Interest by the Involuntary Transfer (the "Transferor") promptly shall give written notice of such Involuntary Transfer in reasonable detail to the Partnership and all Partners other than the Transferor, and the Person(s) who take or propose to take any interest in such Partnership Interest (for purposes of this Section 17, such Person(s) are referred to hereinafter as the "Transferee" and such Partnership Interest referred to hereinafter as the "Subject Partnership Interest") as a result of such Involuntary Transfer shall hold such interest subject to the rights of the Partnership as set forth in this Section 17.

17.2 Upon receipt of the notice referred to in the preceding subparagraph or upon discovery by the General Partner of such Involuntary Transfer by the General Partner, the Partnership shall have the irrevocable option, exercisable at the sole discretion of the General Partner, but not the obligation, for a period of sixty (60) days following receipt of such notice or such discovery, to purchase all or any part of the Subject Partnership Interest, pursuant to the terms set forth in this Section 17. All exercises of such option shall be in writing, shall specify the portion of the Subject Partnership Interest to be purchased, and shall be effective upon receipt thereof by the Transferee.

17.3 The closing for any such sale of the Subject Partnership Interest to the Partnership shall be held at the offices of the Partnership no later than forty-five (45) days after the receipt by the Transferee of the notice exercising the Partnership's irrevocable option to purchase such Subject Partnership Interest. The purchase price of any Subject Partnership Interest purchased pursuant to this Section 17 shall be the fair market value of the Subject Partnership Interest, taking into account all potential discounts for lack of control, lack of marketability and other relevant valuation factors that would be applicable to a sale of the Subject Partnership Interest to a party unrelated and unaffiliated with any existing Partner or assignee, as determined by a reasonably qualified appraiser selected by the Partnership.

17.4 The valuation date for the determination of the purchase price shall be the first day of the month following the month in which notice is given pursuant to Section 17.2 above.

17.5 The purchase price shall be paid by the Partnership by making and delivering to the Transferor or the Transferee, as the case may be, of an unsecured ten (10) year nonrecourse promissory note. Interest on such note shall be payable at the long-term applicable federal rate under Internal

Revenue Code Section 1274. The first installment will be due and payable on the first day of the calendar year following the closing, and subsequent annual installments, with accrued interest, will be due and payable on the first day of each succeeding calendar year until the entire amount of the obligation is paid. The Partnership shall have the right to prepay all or any part of the note at any time without penalty.

17.6 If the Partnership does not exercise its option to purchase all or part of the Subject Partnership Interest under this Section 17, the remaining Partners within the same sixty day exercise period shall have the right but not the obligation to purchase as set forth in this Section 17 in proportion to their Partnership Interests in the manner so set forth. However, to the extent that one or more of the Partners declines to exercise such Partner's right, the remaining Partners shall be offered the right but not the obligation, on a pro-rata basis, to purchase the remaining portion of the Subject Partnership Interest. Such Partners may provide written notice of exercise prior to the expiration of the period notwithstanding that the Partnership may still exercise its option, and such notice may provide that the portion sought to be purchased is the maximum portion available to be purchased by such Partner, with such notice to be effective only if and to the extent that the Partnership does not preempt such Partner by exercising its option.

17.7 In the event the Partnership and the Partners do not purchase all of the Subject Partnership Interest involved in an Involuntary Transfer, the Transferee shall become an assignee of the Subject Partnership Interest, except as admitted as a Substitute Limited Partner in accordance with the terms of this Agreement, provided, however, if a third party obtains a charging order, its rights shall be limited accordingly.

17.8 For purposes of this Section 17, the term "Partner or Assignee" shall include the beneficiaries of a trust that is a Partner or assignee of a Partnership Interest, and the term "Partnership Interest" shall include the beneficial interests of the beneficiaries of a trust that is a Partner or assignee of a Partnership Interest.

17.9 Neither the Transferee of an Involuntary Transfer nor the Transferor will have the right to vote on Partnership matters during the period when the option to purchase granted under this Section 17 may be exercised nor during the period subsequent to exercise and prior to the closing thereunder, and in regard to such voting and any particular voting threshold percentages described in this Agreement such Partnership Interest shall be deemed not to exist.

18. Dissolution and Winding up of Partnership.

18.1 Dissolution of Partnership. The Partnership shall be dissolved upon the first to occur of any of the following events:

18.1.1 December 31, 2058.

18.1.2 The happening of an Event of Withdrawal of a General Partner authorized hereunder to carry on the business of the Partnership, unless

18.1.2.1 at the time there is at least one other General Partner authorized hereunder to carry on the business of the Partnership and such General Partner does carry on the business of the Partnership; or

18.1.2.2 within ninety (90) days of the Event of Withdrawal, (a) all of the then Partners agree in writing to continue the business of the Partnership and to elect one or more additional General Partners under the procedures of Section 16.6, and (b) one or more additional General Partners are elected under the procedures of Section 16.6.

18.1.3 The Partnership becoming insolvent or bankrupt.

18.1.4 The unanimous vote to dissolve of all Partners.

18.2 Winding Up of Partnership. Upon the dissolution of the Partnership pursuant to Section 18.1, the General Partner, or if there is no General Partner, a substitute General Partner elected by vote of 51% of the Interests owned by the Limited Partners, shall take full account of the Partnership's assets and liabilities and the assets shall be liquidated as promptly as is consistent with obtaining their fair value, and the proceeds of such liquidation therefor shall be applied and distributed as provided in Section 10.3.

18.3 Survival of Obligations. Except as otherwise provided in this Agreement, no dissolution of the Partnership shall relieve, release or discharge any Partner or any of his successors, assigns, heirs or legal representatives, from any previous breach or default of, or any obligation previously incurred or accrued under, any provision of this Agreement, and any and all such liabilities, claims, demands or causes of action arising from any such breaches, defaults and obligations shall survive such dissolution and termination.

18.4 Termination. Upon compliance with Section 18.2, the General Partner shall file or cause to be filed a certificate of cancellation of the Certificate and the Partnership shall then be terminated.

19. Amendment of the Certificate and Agreement.

19.1 When Required. This Agreement and the Certificate shall be amended by the General Partner without any additional consent of the Limited Partners when required by law whenever:

19.1.1 There is a change in the name of the Partnership or the amount or character of the contribution of any Partner including, but not limited to, withdrawal or reduction, pursuant to this Agreement.

19.1.2 A person ceases to be, is substituted as, or becomes a General or Limited Partner.

19.1.3 There is a false or erroneous statement in the Certificate, provided the amendment does not adversely affect the interest of the Limited Partners and the General Partner has obtained an opinion of its counsel to that effect.

19.1.4 In the opinion of counsel for the Partnership, it is necessary or appropriate to satisfy a requirement of the Code with respect to partnerships, provided such amendments do not adversely affect the interests of the Limited Partners, and the General Partner has obtained an opinion of its counsel to that effect, and any amendment in this regard shall have retroactive effect to the date of this Agreement.

19.2 Limitation. Except as provided in Section 19.1, amendments shall only be made with the approval of Limited Partners as provided in Section 19.3. No amendment shall be made under Section 19 which would adversely affect the federal income tax treatment to be afforded Partners or adversely affect the liabilities of the Limited Partners or change the method of the allocation of Profits and Losses or preferences or distributive shares without full disclosure to the Partners and unless all of the Partners consent to such amendment.

19.3 Consent of Limited Partners. The General Partner shall obtain the written consent or approval or vote of Limited Partners owning in the aggregate at least Eighty (80%) percent of the Limited Partnership Interests with respect to any amendment other than an amendment allowed or permitted by Sections 19.1 and 19.2.

20. Conflict of Interest Waiver. The Partners and the Partnership acknowledge that the law firm of Tescher & Spallina, P.A. has represented the Partnership in connection with the drafting of this Agreement and the formation and structuring of the Partnership, and that said law firm also represents one or more of the Partners and owners of interests in entity Partners both in context of this Partnership and other matters (namely, SIMON L. BERNSTEIN, SHIRLEY BERNSTEIN, SHIRLEY BERNSTEIN FAMILY FOUNDATION, INC., and BERNSTEIN HOLDINGS, LLC). The Partnership and the Partners acknowledge that they have been advised that there are material income tax consequences and economic ramifications from being a Partner in the Partnership, that they fully understand the tax consequences and economic ramifications of a Partner's investment in the Partnership, and that they have been encouraged to consult with separate and independent counsel to advise them on Partnership and Partner issues including this Agreement and the formation of the Partnership. The Partnership and the Partners hereby waive any conflicts of interest with respect to the foregoing law firm's representation of the Partnership and the afore described Partners and owners of interests in entity Partners, in connection with the services set forth in this Section.

21. Miscellaneous.

21.1 Notices. Any notices, payments, demand, offer or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been delivered and given for all purposes (a) if the same is delivered personally, or (b) whether or not the same is actually received, if sent by registered or certified mail, postage and charges prepaid, addressed as follows:

21.1.1 If to a General Partner, at BERNSTEIN HOLDINGS, LLC, 950 Peninsula Corporate Circle, Suite 310, Boca Raton, Florida 33487, or such other address as the General Partner may from time to time specify by written notice to the other Partners.

21.1.2 If to a Limited Partner, at BERNSTEIN FAMILY INVESTMENTS, LLLP, 950 Peninsula Corporate Circle, Suite 310, Boca Raton, Florida 33487, or to such other address as such Partner may from time to time specify by written notice to the General Partner, which other address shall be noted by the General Partner on the records of the Partnership.

21.1.3 If to any other Person, at the address of such person as shown by the Partnership's records.

21.2 Captions. Captions contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.

21.3 Severability. Every provision of this Agreement is severable. If any term or provision is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the validity of the remainder of this Agreement or any other provision.

21.4 Right to Rely Upon the Authority of the General Partner. No person dealing with a General Partner shall be required to determine his authority to make any commitment or undertaking on behalf of the Partnership, nor to determine any fact or circumstance bearing upon the existence of his authority. In addition, no purchaser of any asset owned by the Partnership shall be required to determine the sole and exclusive authority of the General Partner to sign and deliver on behalf of the Partnership any such instrument of transfer, or to see to the application or distribution of revenues or proceeds paid or credited to the Partnership, unless such purchasers shall have received written notice from the Partnership affecting the same.

21.5 Litigation. The General Partner shall prosecute, defend and settle such actions at law or in equity as they may deem in their sole and absolute discretion to be necessary to enforce or protect the interest of the Partnership. The Partnership and the General Partner shall respond to any final decree, judgment or decision of a court of competent jurisdiction or board or authority having jurisdiction in the matter.

21.6 Applicable Law. The laws of the State of Florida shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties.

21.7 Counterpart Execution. This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document. All counterparts shall be construed together and shall constitute but one Agreement.

21.8 Binding Effect. Each and every covenant, term, provision and agreement contained in this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties.

21.9 Right to Rely Upon Authority of Person Signing Agreement. In the event that a Limited Partner is an estate, a trust with or without disclosed beneficiaries, partnership, limited partnership, joint venture, corporation, or any entity other than a natural person, the Partnership and the General Partner shall (a) not be required to determine the authority of the Person signing this Agreement or any amendment to make any commitment or undertaking on behalf of such entity, nor to determine any fact or circumstance bearing upon the existence of his authority; (b) not be required to see to the application or distribution of revenues or proceeds paid or credited to the Person signing the Agreement or any amendment on behalf of such entity; (c) be entitled to rely upon the authority of the Person signing this Agreement or any amendment with respect to voting of the Partnership Interests of such entity and with respect to the giving of consent on behalf of such entity or any other Person in connection with any matter for which consent is permissible or required under this Agreement; and (d) be entitled to rely upon the authority of any general partner, joint venturer, co-or successor trustee or president, vice president, or other officer, as the case may be of any such entity the same as though such Person were the Person originally executing this Agreement or any amendment on behalf of such entity.

21.10 Rights of Nonrecourse Creditors. A creditor who makes a nonrecourse loan to the Partnership shall not have or acquire, at any time as a result of making any loan or advance, any direct or indirect interest in the profits, capital, or property of the Partnership other than, if applicable, as a secured creditor.

21.11 Number and Gender. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

21.12 Entire Agreement. This Agreement constitutes the entire Agreement of the parties with respect to matters set forth in this Agreement and supersedes any prior understanding or agreement, oral or written, with respect thereto.

==========

IN WITNESS WHEREOF, this Agreement of Limited Partnership has been executed as of the date set forth in the preamble.

Witnessed by (as to all):

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

GENERAL PARTNER:

BERNSTEIN HOLDINGS, LLC, a Florida limited liability company

By: _____
SIMON L. BERNSTEIN, Manager

LIMITED PARTNERS:

SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008

By: _____
SIMON L. BERNSTEIN, Trustee

SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008

By: _____
SHIRLEY BERNSTEIN, Trustee

STATE OF FLORIDA :
: SS.
COUNTY OF PALM BEACH:

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SIMON L. BERNSTEIN, Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008, and as Manager of BERNSTEIN HOLDINGS, LLC.

NOTARY PUBLIC-STATE OF FLORIDA
Kimberly Moran
Commission #DD766470
Expires: APR. 28, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

Kimberly Moran
Signature - Notary Public

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification _____
Type of Identification Produced _____

STATE OF FLORIDA :
: SS.
COUNTY OF PALM BEACH:

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008.

NOTARY PUBLIC-STATE OF FLORIDA
Kimberly Moran
Commission #DD766470
Expires: APR. 28, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

Kimberly Moran
Signature - Notary Public

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification _____
Type of Identification Produced _____

F:\WPDATA\drt\Bernstein, Shirley & Simon\Bernstein Family Investments, LLLP\Bernstein Investments, LLLP Partnership Agreement.wpd

SCHEDULE "A"

Name:	% Interest	Cash
General Partner:		
BERNSTEIN HOLDINGS, LLC	1 %	$10.00
Limited Partners:		
SIMON L BERNSTEIN, Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008	49.5 %	$495.00
SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008	49.5 %	$495.00

NOTE: The foregoing valuations and percentage interests are subject to adjustment based on variations in value of contributed property from the values scheduled here and the actual fair market value of such contributed property on the date of transfer to the Partnership.

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION

SHIRLEY BERNSTEIN File No. 502011CP000653XXXX SB

Deceased.

INVENTORY

The undersigned personal representative of the estate of SHIRLEY BERNSTEIN, deceased, who died on December 8, 2010, and whose social security number is XXX-XX-9749, submits this inventory of all the property of the estate, that has come into the hands, possession, control, or knowledge of these personal representatives:

REAL ESTATE IN FLORIDA – Exempt (Protected) Homestead:

Description
NONE

REAL ESTATE IN FLORIDA – Non-Exempt Homestead:

Description	Estimated Fair Market Value
NONE	

(Whether homestead property is exempt from the claims of creditors, whether it is properly devised and whether it is a probate asset may have to be determined by appropriate proceedings.)

OTHER REAL ESTATE IN FLORIDA:

Description	Estimated Fair Market Value
NONE	$
Total Real Estate in Florida – Except Exempt (Protected) Homestead	$

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Reviewed October 1, 1998

PERSONAL PROPERTY WHEREVER LOCATED:

Description	Estimated Fair Market Value
Furniture, furnishings, household goods and personal effects	$ 25,000.00 (est.)

TOTAL OF ALL PERSONAL PROPERTY AND FLORIDA REAL ESTATE$ $ 25,000.00

All real estate located outside the State of Florida owned by the decedent of which the personal representative is aware, if any, is described on a schedule attached hereto. [If none, so indicate]

NONE

NOTICE: Each residuary beneficiary in a testate estate or heir in an intestate estate has the right to request a written explanation of how the inventory value of any asset was determined, including whether the personal representative obtained an independent appraisal for that asset and from whom the appraisal was obtained. Any other beneficiary may request this information regarding all assets distributed to or proposed to be distributed to that beneficiary.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

Signed on this 29th day of August, 2011.

ROBERT L. SPALLINA, Esq.
Attorney for Personal Representative
Florida Bar No. 497381
Tescher & Spallina, P.A.
4855 Technology Way, Suite 720
Boca Raton, FL 33431
Telephone: (561) 997-7008

SIMON BERNSTEIN, Personal Representative

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Inventory was furnished by U.S. certified mail to:

Florida Department of Revenue
5050 W. Tennessee St., Bldg. K
Tallahassee, FL 32399-0100

on this 1st day of Sep, 2011.

TESCHER & SPALLINA, P.A.
Attorneys for the Personal Representative
of the Estate of Shirley Bernstein
4855 Technology Way, Suite 720
Boca Raton, Florida 33431
Telephone: (561) 997-7008

BY: _____
ROBERT L. SPALLINA, ESQ.
Florida Bar No. 497381

Bar Form No P-3.0100
© Florida Lawyers Support Services, Inc
Reviewed October 1, 1998

LIMITED LIABILITY COMPANY

OPERATING AGREEMENT

of

BERNSTEIN HOLDINGS, LLC

a Florida limited liability company

OPERATING AGREEMENT OF BERNSTEIN HOLDINGS, LLC

This Limited Liability Company Agreement (the "Agreement") is made and entered into as of the 20 day of May, 2008, by and among BERNSTEIN HOLDINGS, LLC (the "Company"); and SIMON L. BERNSTEIN, Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT datedMay 20, 2008, SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees and ROBERT L. SPALLINA, Independent Trustee of the ELIOT BERNSTEIN FAMILY TRUST dated May 20, 2008, SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees, and ROBERT L. SPALLINA, Independent Trustee of the JILL IANTONI FAMILY TRUST dated May 20, 2008, and SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees, and ROBERT L. SPALLINA, Independent Trustee of the LISA S. FRIEDSTEIN FAMILY TRUST dated May 20, 2008, and any subsequent transferee as the Members ("Members"). The Members are herein sometimes referred to individually as a "Member" and collectively as "Members.

WITNESSETH:

WHEREAS, Articles of Organization for ***BERNSTEIN HOLDINGS, LLC*** were filed with the Florida Department of State on February 6, 2008.

WHEREAS, the Members desire to reduce their agreements to writing, to set forth the rights and obligations of the Members and the Manager.

NOW, THEREFORE, the Members and the Company hereby agree as follows:

ARTICLE I

DEFINITIONS

The following terms used in this Agreement shall have the following meanings:

(a) "***Act***" shall mean the Florida Limited Liability Company Act at F.S § 608.401, *et seq* and all amendments to the Act.

(b) "***Articles of Organization***" shall mean the Articles of Organization of ***BERNSTEIN HOLDINGS, LLC,*** as filed with the Department of State of Florida on February 6, 2008, and as may be amended from time to time.

(c) ***"Capital Contribution***" shall mean any contribution to the capital of the Company in cash or the fair market value of property by a Member whenever made, net of any liabilities secured by such contributed property.

(d) "***Capital Account***" as of any given date shall mean the Capital Contribution to the Company by a Member as adjusted up to such date pursuant to Article VIII.

(e) "***Code***" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

(f) "***Company***" shall refer to ***BERNSTEIN HOLDINGS, LLC***, a limited liability company formed under the laws of the State of Florida.

(g) "***Distributable Cash***" shall mean all cash, revenues and funds received by the Company from Company operations, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred in the normal operation of the Company's business; and (iii) such Reserves as the Managers deem reasonably necessary for the proper operation of the Company's business.

(h) "***Entity***" shall mean any general partnership, limited liability partnership, limited partnership, limited liability limited partnerships, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization.

(i) "***Gifting Member***" shall mean any Member who gifts, bequeaths or otherwise transfers for no consideration (by operation of law or otherwise, except with respect to bankruptcy) all or any part of its Membership Interest.

(j) "***Initial Capital Contribution***" shall mean the initial contribution to the capital of the Company pursuant to this Agreement.

(k) ***"Interest"*** shall mean "Percentage Interest" unless otherwise specifically agreed or in the case of special allocations.

(l) "***Majority Interest***" shall mean the Interests of Members, which in the aggregate exceed 50% of all Interests.

(m) "***Manager***" shall mean one or more managers designated as such pursuant to this Agreement or by subsequent vote of the Members. References to the Manager in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be. Any Person may be named a Manager pursuant to this Agreement

(n) "***Member***" shall mean each of the parties who executes a counterpart of this Agreement as a Member and each of the parties who may hereafter become Members. To the extent a Manager has purchased a Membership Interest in the Company, he will have all the rights of a Member with respect to such Membership Interest, and the term "Member" as used herein shall include a Manager to the extent he has purchased such Membership Interest in the Company. If a Person is a Member immediately prior to the purchase or other acquisition by such Person of an Transferee Interest, such Person shall

have all the rights of a Member with respect to such purchased or otherwise acquired Membership Interest or Transferee Interest, as the case may be.

(o) "***Membership Interest***" shall mean a Member's entire interest in the Company including such Member's Transferee Interest and, the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Agreement and the Act.

(p) "***Net Income***" and "***Net Losses***" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with sound accounting principles employed under the cash method of accounting at the close of each fiscal year on the Company's tax return filed for federal income tax purposes.

(q) "***Operating Agreement" (or "Agreement")*** shall mean this Operating Agreement of ***BERNSTEIN HOLDINGS, LLC,*** as originally executed and as amended from time to time.

(r) "***Percentage Interest***" shall mean, for any Member, the percentage interest that the Capital Account of the Member bears to the total Capital Accounts of all of the Members of the Company, as set forth at Section 9.1 herein, and Exhibit A, as may be changed from time to time by the unanimous vote of the Members.

(s) "***Person***" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.

(t) "***Reserves***" shall mean funds set aside or amounts allocated to reserves which shall be maintained in amounts reasonably deemed sufficient by the Managers for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

(u) "***Selling Member***" shall mean any Member or Transferee which sells, assigns, pledges, hypothecates or otherwise transfers for consideration all or any portion of its Membership Interest or Transferee Interest.

(v) "***Transferee***" shall be person who has not been admitted by the Company as a Member Partner, but, by virtue of a Transfer of an Interest in the Company to said person, said person is entitled to a pro rata share of one or more of the Company's items of income, losses, credits, and distributions of the Company's assets pursuant to this Agreement and the Act, but said person shall not have, and is not entitled to any right to participate in the management or affairs of the Company, including, the right to vote on, consent to or otherwise participate in any decision of the Members or Manager.

(w) "***Transferring Member***" shall collectively mean a Selling Member and a Gifting Member.

(x) "***Treasury Regulations***" shall include proposed, temporary and final regulations promulgated under the Code.

ARTICLE II

FORMATION OF COMPANY

2.1 ***Organization.***

BERNSTEIN HOLDINGS, LLC, has been organized as a Florida limited liability company by executing and delivering the Articles of Organization to the Florida Department of State in accordance with and pursuant to the Act.

2.2 *Name.*

The name of the Company is ***BERNSTEIN HOLDINGS, LLC***, and all business of the Company shall be conducted under that name unless a majority of the Members agree to the filing and use of a fictitious name.

2.3 ***Principal Place of Business.***

The initial principal place of business of the Company shall be 950 Peninsula Corporate Circle, Suite 310, Boca Raton, Florida 33487. The Company may locate its places of business and registered office at any other place or places as the Manager may deem advisable.

2.4 ***Registered Office and Registered Agent.***

The Company's initial registered office shall be at the office of its registered agent in Florida, and the name of its initial registered agent shall be Donald R. Tescher, Esq. 2101 Corporate Blvd., Suite 107, Boca Raton, Florida, 33431. The registered office and registered agent may be changed by filing the address of the new registered office and/or the name of the new registered agent with the Florida Department of State pursuant to the Act.

2.5 *Term.*

The term of the Company has filed Articles of Organization with the Florida Department of State, and shall have perpetual existence, unless the Company is earlier dissolved in accordance with either the provisions of this Agreement or the Act.

ARTICLE III

BUSINESS OF COMPANY

The business of the Company shall be to engage in management of investments, and closely-held business or real estate ventures, and such lawful activities as are reasonably necessary or useful to the furtherance of the forgoing purpose (the "Business").

ARTICLE IV

NAMES AND ADDRESSES OF MEMBERS

The names of the Members are listed on Exhibit A attached hereto and incorporated herein, and the addresses of the members are 950 Peninsula Corporate Circle, Suite 310, Boca Raton, Florida 33487, as amended from time to time.

ARTICLE V

RIGHTS AND DUTIES OF MANAGERS

5.1 ***Management.***

5.1.1 ***General.*** The business and affairs of the Company shall be managed by its Managers. The Managers shall direct, manage, and control the business of the Company. Except for situations in which the approval of the Members is expressly required by this Agreement or by nonwaivable provisions of the Act, the Managers shall have exclusive, sole, full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company's business. At any time when there is more than one Manager, any one Manager may take any action permitted to be taken by the Managers, unless the approval of more than one of the Managers is expressly required pursuant to this Agreement or the Act. The Managers may create a Board of Directors, and may also appoint individuals with or without titles, including the titles of General Manager, Executive Director, President, Vice President, Treasurer, Secretary, and Assistant Secretary, to act on behalf of the Company with such power and authority as the Managers or Board of Directors may delegate to any such Person.

5.1.2 ***Initial Managers/Designation of Managers/Voting.*** The Members agree that the initial Manager of the Company is SIMON L. BERNSTEIN. Unless otherwise specifically agreed herein, business decisions of the Company shall be made by said Manager. The Members shall vote their Interests such that only the aforementioned person is Manager of the Company. In all events, an individual shall be a Manager only while she or he is a Member who owns voting Interests (and is not a mere Transferee), either directly or indirectly. After proper notice, in the event of death or mental disability or incompetence of the Manager, the Members shall vote on and elect a new Manager.

5.2 ***Certain Powers of Managers.***

Without limiting the generality of Section 5.01, the Manager (or, if more than one Manager, then the Managers) shall have power and authority, on behalf of the Company to do the following:

(a) To acquire or lease property from any Person as the Managers may determine, whether or not such Person is directly or indirectly affiliated or connected with any Manager or Member;

(b) To borrow money for the Company from banks, other lending institutions, the Managers, Members, or affiliates of the Managers or Members on such terms as the Managers deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Managers, or to the extent permitted under the Act, by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Managers;

(c) To purchase liability and other insurance to protect the Company's property and business;

(d) To hold and own Company real and personal properties in the name of the Company;

(e) To invest Company funds in time deposits, short-term governmental obligations, commercial paper or other investments;

(f) To sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan as long as such disposition is not in violation of or a cause of a default under any other agreement to which the Company may be bound;

(g) To execute on behalf of the Company all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments, bills of sale; leases; and any other instruments or documents necessary to the business of the Company;

(h) To employ accountants, legal counsel, managing agents or other experts to perform services for the Company;

(i) To enter into any and all other agreements on behalf of the Company, in such forms as the Managers may approve; and

(j) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

Unless authorized to do so by this Agreement or by the Manager of the Company, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Manager to act as an agent of the Company in accordance with the previous sentence.

5.3 ***Liability for Certain Acts.***

Each Manager shall perform his duties as Manager in good faith, in a manner he or she reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, unlawful acts, or a wrongful taking by the Manager.

5.4 ***No Exclusive Duty to Company.***

A Member or Manager shall not be required to manage the Company as his or her sole and exclusive function and may have other business interests and engage in activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this

Agreement, to share or participate in such other investments or activities of a Manager or to the income or proceeds derived therefrom.

5.5 ***Bank Accounts.***

The Manager may from time to time open bank accounts in, the name of the Company, and the Manager shall be the sole signatory thereon, unless Members owning a Majority Interest determine otherwise.

5.6 ***Indemnity of the Managers, Employees and Other Agents.***

The Company shall, to the maximum extent permitted under the Act, indemnify and make advances for expenses to Managers, its employees, and other agents.

5.7 ***Resignation.***

Any Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later date specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

5.8 ***Removal.***

A Manager shall not be subject to removal by vote of the Members except, if at all, pursuant to the provisions of this Agreement, as it may be amended by agreement of all of the Members.

5.9 ***Vacancies.***

To the extent not expressly provided for in Section 5.1.2 "Voting Agreement of Members," and only to said extent, if any: Any vacancy occurring for any reason in the number of Managers of the Company may be filled by the affirmative vote of Members holding a majority of the Percentage Interests present at an election at a meeting of Members called for that purpose or by the Members' unanimous written consent. A Manager elected to fill a vacancy shall be elected for the unexpired term of their predecessor in office and shall hold office until the expiration of such term and until their successor shall be elected and qualified or until the Manager's earlier death, resignation or removal. A Manager chosen to fill a position resulting from an increase in the number of Managers shall hold office until his successor shall be elected and qualified, or until his earlier death, resignation or removal.

5.10 ***Salaries.***

Each Manager shall receive annual compensation (the "Management Fee") if such compensation is agreed to by a majority of the Percentage Interest of the Members in writing, and and shall be entitled to reimbursement of reasonable and necessary expenses advanced on behalf of the Company.

ARTICLE VI

RIGHTS AND OBLIGATIONS OF MEMBERS

6.1 ***Limitation of Liability.***

Each Member's liability to the Company shall be limited as set forth in this Agreement, the Act and other applicable law.

6.2 ***Company Liability.*** A Member will not be personally liable for any debts, obligations, liabilities or losses of the Company, whether arising in contract, tort, or otherwise, solely by reason of being a Member, beyond his respective Capital Contributions or any obligation of the Member under Sections 8.1 and 8.2 hereunder, except as provided in Section 6.7 or as otherwise required by law.

6.3 ***List of Members.***

Upon the written request of any Member, the Managers shall provide a list showing all of the names, addresses and Membership Interests and Transferee Interests in the Company.

6.4 ***Approval of Sale of All Assets.*** The Managers shall have the right, to approve the sale, exchange or other disposition of all, or substantially all, of the Company's assets which is to occur as part of a single transaction or plan.

6.5 ***Company Books.***

The Managers shall maintain and preserve, during the term of the Company, the accounts, books, and other relevant Company documents described in Section 9.9. Upon reasonable written request, each Member and Transferee shall have the right, at any time during ordinary business hours, as reasonably determined by the Manager, to inspect and copy, at the requesting Member's or Transferee's expense, the Company documents required to be maintained under Section 608.4101 of the Act, and such other documents which the Managers, in their reasonable discretion, deem appropriate.

6.6 ***Priority and Return of Capital.***

Except as may be expressly provided in Article IX, no Member or Transferee shall have priority over any other Member or Transferee, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section shall not apply to loans which a Member has made to the Company.

6.7 ***Liability of a Member to the Company.***

A Member who receives a distribution or return in whole or in part of its contribution is liable to the Company only to the extent provided by the Act.

ARTICLE VII

MEETINGS OF MANAGERS AND MEMBERS

7.1 ***Meetings.***

Meetings of the Managers, for any purpose or purposes, may be called by any Manager. Meetings of the Members for any purpose or purposes, may be called by any Members holding at least 51% of the Percentage Interests of the Members.

7.2 ***Place of Meetings.***

The Managers may designate any location within the U.S., either within or outside the State of Florida, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal place of business of the Company.

7.3 ***Notice of Meetings.***

Except as provided in Section 7.04, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the Managers or Member or Members calling the meeting, to each Member or Manager entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, certified mail return receipt requested, addressed to the Member or to the Manager at its address as it appears on the books of the Company, with postage therein prepaid. Notice may also be given by telegram, teletype or facsimile, or other form of electronic communication. Managers and Members may participate in and hold meetings whereby all conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other. Participation by communications equipment shall constitute presence as the meeting, unless a Member or Manager is participating in the meeting for the express purpose of objecting to the transaction of any business on the ground the meeting is not lawfully called or convened.

7.4 ***Meeting of All Members and Meetings of All Managers.*** If all of the Members or all of the Managers shall meet at any time and place, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

7.5 ***Record Date.***

For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declared such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

7.6 ***Quorum.***

Members holding at least fifty percent (50%) of all Percentage Interests, represented in person or by proxy, shall constitute a quorum at any meeting of Members, and if there is more than one Manager then serving, then a majority of the number of the then-serving Managers shall constitute a

quorum at a meeting of the Managers, who shall be represented in person, and shall constitute a quorum at any meeting.

7.7 ***Manner of Acting.***

If a quorum is present, the affirmative vote of a majority of all of the Members represented at the meeting, who must hold a majority Percentage Interest in the Company, shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, or by this Agreement. Unless otherwise expressly provided herein or required under applicable law, only Members who have a Membership Interest may vote or consent upon any matter and their vote or consent, as the case may be, shall be counted in the determination of whether the matter was approved by the Members.

7.8 ***Proxies.***

At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Managers of the Company before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Managers shall not be able to vote by Proxies.

7.9 ***Action by Members Without a Meeting.***

Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote and delivered to the Managers of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date.

7.10 ***Waiver of Notice.***

When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

ARTICLE VIII

CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS

8.1 ***Members' Initial Capital Contributions.***

Each Member shall contribute such amount as is set forth on the books and records of the Company. No interest shall accrue on any Capital Contribution and the Member shall not have the right to withdraw or be repaid any Capital Contribution except as provided in this Agreement.

8.2 ***Additional Contributions.***

A Member may, but shall not be obligated to, make such additional Capital Contributions as shall be determined by the Managers. Such additional Capital Contributions shall be reflected in the Account of the Contributing Member and shall not be a part of any other Member's Capital Account absent written agreement of the Members. After the making of any such determination, the Managers shall give written notice to each Member of the amount of required additional contribution, if any, and each Member may deliver to the Company its pro rata share thereof (in proportion to the *respective* Percentage Interest of the Member on the date such notice is given) no later than thirty (30) days following the date such notice is given. None of the terms, covenants, obligations or rights contained in this Section 8.2 is or shall be deemed to be for the benefit of any person or entity other than the Members and the Company, and no such third person shall under any circumstances have any right to compel any actions or payments by the Managers and/or the Members.

8.3 ***Capital Accounts.***

(a) A separate Capital Account will be maintained for each Member. Each Member's Capital Account will be increased by (1) the amount of money contributed by such Member to the Company; (2) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Code Section 752); (3) allocations to such Member of Net Profits and Net Losses; and (4) allocations to such Member of income described in Code Section 705(a)(1)(B). Each Member's Capital Account will be decreased by (1) the amount of money distributed to such Member by the Company; (2) the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752); (3) allocations to such Member of expenditures described in Code Section 705(a)(2)(B); and (4) allocations to the account of such Member of Company loss and deduction as set forth in such Regulations, taking into account adjustments to reflect book value.

(b) In the event of a permitted sale or exchange of a Membership Interest or a Transferee Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the Transferee to the extent it relates to the transferred Membership Interest or Transferee Interest in accordance with Section 1.704-1(b) (2) (iv) of the Treasury Regulations.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 8.3 is intended to comply with the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder. If the Company determines that the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 8.3 should be modified in order to comply with Code Section 704(b) and the Treasury Regulations, then notwithstanding anything to the contrary contained in the preceding provisions of this Section 8.3, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members as set forth in this Agreement.

(d) Except as otherwise required in the Act (and subject to Sections 8.1 and 8.2), no Member or Transferee shall have any liability to restore all or any portion of a deficit balance in such Member's or Transferee's Capital Account.

8.4 ***Withdrawal or Reduction of Members' Contributions to Capital.***

(a) A Member or Transferee Interest Holder shall not receive out of the Company's property any part of its Capital Contribution until all liabilities of the Company, except liabilities to Members on account of their Capital Contributions, have been paid or there remains property of the Company sufficient to pay them.

(b) A Member or Transferee Interest Holder, irrespective of the nature of its Capital Contribution, has only the right to demand and receive cash in return for its Capital Contribution.

(c) Notwithstanding anything to the contrary in this Agreement, a Member may withdraw from the Company only at the time or upon the occurrence of an event specified in this Agreement or in the Articles of Organization. No such event is specified in either the Articles of Organization or in this Agreement at the date hereof. A Member which violates the withdrawal prohibition in this Section shall be liable for breach of this Agreement and shall become a Transferee. A withdrawing Member shall not have a right to receive the fair value of receive the withdrawing member's Interest in the Company as of the date of the resignation but rather, shall have only such rights as a Transferee would have to receive distributions as are made by the Company in the discretion of the Managers.

ARTICLE IX

ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS AND REPORTS

9.1 ***Allocations of Income and Losses from Operations.***

The Net Income and Net Losses of the Company for each fiscal year, and each Member or Transferee's share of Cash Flow, will be allocated in accordance with the Percentage Interests schedule set forth in Exhibit A attached hereto, and, except as provided therein, the Percentage Interests of Members shall be proportionate to the amount of their Capital Accounts as determined hereinabove.

9.2 ***Special Tax Provisions As to Extraordinary Allocations, if Any, to Capital***

Allocations of Net Income and Net Losses other than those set forth above shall be made based upon the determinations of the tax accountants and attorneys employed by the Company, giving regard to the intention expressed hereinabove and otherwise herein, with respect to special or priority allocations if any, and with regard to federal partnership tax and capital accounting principles described in Section 8.3 hereinabove.

9.3 ***Distributions.***

Within the discretion of the Managers as to amounts, if any, and as to timing, the Managers may distribute Cash Flow to the Members, in accordance with their Percentage Interests .

9.4 ***Limitation upon Distributions.***

(a) No distributions or return of contributions shall be made and paid if, after the distribution or return of distribution is made either

(1) the Company would be insolvent; or

(2) the net assets of the Company would be less than zero.

(b) The Managers may base a determination that a distribution or return of contribution may be made under Section 9.4(a) in good faith reliance upon a balance sheet and profit and loss statement of the Company represented to be correct by the person having charge of its books of account or certified by an independent public or certified public accountant or firm of accountants to fairly reflect the financial condition of the Company.

9.5 ***Tax Accounting Principles.***

The income and losses of the Company shall be determined in accordance with sound tax accounting principles applied on a consistent basis using generally accepted tax accounting principles as applied consistent with the Code.

9.6 ***Interest on and Return of Capital Contributions.***

No Member shall be entitled to interest on its Capital Contribution or to a return of its Capital Contribution, except as otherwise provided in this Agreement.

9.7 ***Loans to Company.***

Nothing in this Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company, provided that such loans are arms-length transactions, containing terms customary in the lending industry at the time such loans were made.

9.8 ***Accounting Period.***

The Company's accounting period shall be the calendar year ("Fiscal Year").

9.9 ***Records, Audits and Reports.***

At the expense of the Company, the Managers shall maintain records and accounts of the operations and expenditures of the Company. At a minimum, the Company shall keep at its principal place of business the following records:

(a) A current list of the full name and last known address of each Member and Transferee setting forth the amount of cash each Member and Transferee has contributed, a description and statement of the agreed value of the other property or services, each Member and Transferee has contributed or has agreed to contribute in the future, and the date on which each became a Member or Transferee, and their respective Percentage Interest in the Company;

(b) A copy of the Articles of Organization of the Company and all amendments thereto together with executed copies of any powers of attorney pursuant to which any amendment has be executed;

(c) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(d) Copies of the Company's currently effective written Agreement, all amendments thereto, and copies of any financial statements of the Company for the three most recent years;

(e) Notices of and minutes of every Member and Managers meeting,

(f) Any written consents obtained from Members for actions taken by Members without a meeting; and

(g) Unless contained in the Articles of Organization or the Agreement, a writing prepared by the Managers setting out the following:

(1) The times at which or events on the happening of which any additional contributions agreed to be made by each Member and Transferee are to be made.

(2) Any right of a Member or Transferee to receive distributions of include a return on all or any part of the Member or Transferee's contributions.

(3) Any power of a Member or Transferee to grant the right to become an assignee of any part of the Member's or Transferee's interest, and the terms and condition of the power.

9.10 ***Returns and Other Elections.***

The Managers shall cause the preparation and timely filing of tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, and pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year upon the Members' written request. All elections permitted to be made by the Company under federal or state laws shall be made by the Managers in their sole discretion. It is the intention of the Members that the Company shall be taxed as a "Partnership" for federal, state, and local income tax purposes.

9.11 ***Tax Matters Partner.***

SIMON L. BERNSTEIN is designated the "Tax Matters Partner" (as defined in Code Section 6231), and is authorized and required to represent the Company (at the Company's expense), either directly, or through accounting or tax representatives, in connection with all examinations for the Company's affairs by tax authorities, including, without limitation administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The

Members agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings.

ARTICLE X

TRANSFERABILITY

10.1 ***General.***

10.1.1. ***Transferees Not Members, Generally.*** Except as otherwise set forth in Section 10.1.2, or with the consent of all of the Members, neither a Member nor a Transferee shall have the right, as to all or any part of its Membership Interest or Transferee Interest to:

(a) sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration (collectively, "sell" or, as context requires "selling"); or

(b) gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy) (collectively, "gift").

Absent the written consent of all Members to the contrary or otherwise provided by law, the Interest of the Transferee shall be a Non-Voting Interest.

10.1.2 ***Transferees Who are Lineal Descendants of a Member.*** Any Transferees who are lineal descendants of both SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, either directly, or indirectly, as beneficiaries of a Trust, or other entity beneficially owned solely for or by that Member (including, but not limited to a revocable trust established by a Member for the sole lifetime benefit of the Member or the Member's descendants) shall be Members upon their written agreement to be bound by the terms of this Agreement and shall be subject to the voting agreements described in Article V, hereinabove.

10.2 ***Right of First Refusal.***

(a) If a Selling Member desires to sell all or any portion of its Membership Interest in the Company to a third party purchaser, the Selling Member shall obtain from such third party purchaser a bona fide written offer to purchase such Interest, stating the terms and conditions upon which the purchase is to be made and the consideration offered; provided, however, the offer shall include a "tag along" or "take along" provision, pursuant to which, all Members have the right to sell a pro-rata portion (determined in accordance with the Percentage Interests of all of the Members) of their Interests to the third party. The Selling Member or Transferee shall give written notification to the remaining Members, by certified mail or personal delivery, of its intention to so transfer such Interest, furnishing to the remaining Members a copy of the written offer to purchase such Interest.

(b) Each of the remaining Members, on a basis pro rata to their Percentage Interests or on a basis pro rata to the Percentage Interests of those remaining Members exercising their rights of first refusal, shall have the right to exercise a right of first refusal to purchase all (but not less than all) of the Interest proposed to be purchased by the third party and sold by the Selling Member and the "tag along Members"upon the same terms and conditions as stated in the aforesaid written offer to purchase

by giving written notification to the Selling Member and the "tag along Members", by certified mail or personal delivery, of the intention to do so within thirty (30) days after receiving written notice from the Selling Member. Subject to the following paragraph, the failure of the remaining Members to so notify the Selling Member and the "tag along Members" of their desire to exercise this right of first refusal within said thirty (30) day period shall result in the termination of the right of the first refusal and the Selling Member and the "tag along Members" shall be entitled to consummate the sale of its Interest in the Company to such third party purchaser, provided that the sale shall be consummated within sixty (60) days following the expiration of the aforesaid thirty (30) day period. In the event the remaining Members (or any one or more of the remaining Members) give written notice to the Selling Member and the "tag along Members" of their desire to exercise this right of first refusal and to purchase all of the Interests of the Selling Member and the "tag along Members" offered upon the same terms and conditions as are stated in the aforesaid written offer to purchase, the remaining Members shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within sixty (60) days after written notification to the Selling Member of the remaining Member or Members' election to exercise their right of the first refusal. In the event that two (2) or more Members give written notice of their desire to exercise their right of first refusal, absent an agreement between all the Members so exercising such right, each such Member exercising their right of first refusal shall be entitled to purchase that percentage of the selling Member's share according to the proportion that their Percentage Interests bears to the total Percentage Interests exercising such right of first refusal. The Members shall communicate with each other during the pendency of any offer made in accordance with the terms of this Section 10.2 in order to effectuate the intent of this Section.

(c) As a condition to the Company recognizing the effectiveness of either the sale or gift of an Interest in the Company (including, in both cases, a Transferee Interest), the remaining Members may require the Selling Member, Gifting Member and/or the proposed purchaser, donee or successor-in-interest, as the case may be, to execute, acknowledge and deliver to the remaining Members such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the remaining Members' may deem necessary or desirable to:

(1) verify the purchase, gift or transfer, as the case may be;

(2) confirm that the person desiring, to acquire an Interest in the Company, or to be admitted as a Member, has accepted, assumed and agreed to be subject and bound by all of the terms, obligations and conditions of the Agreement (whether such Person is to be admitted as a new Member or as a Transferee);

(3) maintain the status of the Company as a partnership for federal tax purposes; and

(4) assure compliance with any applicable state and federal laws including securities laws and regulations.

(d) Any sale or gift of a Membership Interest or Transferee Interest in compliance with this Article X shall be deemed effective upon the last day of the calendar month in which all the terms and conditions hereof relating thereto have been satisfied. The admission of a Member in compliance with this Article X shall be deemed effective as of the last day of the calendar month in

which the remaining Members' consent thereto was given. The Selling Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article X.

10.3 ***Permitted Transfer to Descendants/Mandatory Offer at Death.***

10.3.1 ***No Mandatory Offer At Death.*** If a Member's Interest is Transferred to a lineal descendant of the Member, to a Trust or other entity beneficially owned solely for or by that Member or the lineal descendant of that Member, the Transferee shall not be required to sell or offer to sell his or her Interest, shall be eligible to become a Member pursuant to Sections 10.1.1 and 10.1.2 above, and shall be subject to the voting agreements described in Article V, above. If Members of the Company are trusts for the lifetime benefit of the lineal descendants of a Member either directly or indirectly, then the successors in interest to the Interests in the Company pursuant to the terms of such trusts shall be considered as Members hereof (regardless of indirect ownership as trust beneficiaries) as long as the beneficial interests are owned by the lineal descendants of the Member, and said persons shall be subject to the voting agreements described in Article V, above.

10.3.2 ***Mandatory Offer At Death.*** Except with transfers described in 10.3.1., above, the death of any Member or Transferee who owns an Interest shall constitute an offer by the Member's Estate, Trust, or other legal successor in interest, to sell all of the Member's Interest to the Company (the "Offer") at its fair market value (determined as of the date of death). The Company shall have one hundred eighty (180) days in which to accept the Offer at an agreed price, which acceptance shall be made by delivery of written notice thereof to the legal representative of the estate of the Member or Transferee, by certified mail or personal delivery, within said one hundred eighty (180) day period. If the Company does not elect to purchase the Interest within said one hundred eighty (180) day period, the remaining Members shall have the right, but are not required to, purchase the remaining part, or all, as the case may be, of the Interest at its fair market value (as determined herein) determined as of the date of death, in proportion to their existing Interests. Such right to purchase shall be exercised by delivery of written notice thereof, by certified mail or personal delivery, during the thirty (30) days immediately after the one hundred eighty (180) day period (the "30 Day Period"). If any such Member does not desire to purchase his/her or its full proportionate part of the Interest offered for sale, but the remaining Members desire to purchase all of the Interest offered for sale, said Members shall then have the right to purchase said Interest proportionally in accordance with their respective Interests and the Members shall communicate with each other during the 30 Day Period in order to effectuate the intent of this Section 10.3. Except as provided in Section 10.1.2 and 10.1.3, to the extent that any part, or all, of an Interest is not purchased under the provisions of this Section 10.3, the deceased's Member's Interest shall become a Transferee's Interest, if not owned beneficially or directly by another Member hereof. The purchase price shall be as agreed by the parties, and, unless otherwise agreed, shall be paid in cash at the closing, which shall occur no later than thirty (30) days after the end of the 30 Day Period. For purposes of this Agreement, the "fair market value" of an Interest is equal to its Percentage Interest multiplied by the value of the Company (as agreed by the parties). If the value of the Company is not agreed to by the parties, then for purposes of this Agreement "fair market value" of a Member's Interest shall be determined without reduction for minority, lack of marketability or other entity/Company level discounts, based upon a reasonable appraisal procedure to determine the fair market value of the Company's assets. The appraisal procedure shall be agreed upon by the Member and Company. If the

parties cannot agree to an appraisal procedure, then an MAI appraiser shall be selected by the Personal Representative of the deceased Member's estate, and if the Company does not agree as to that appraiser, then the Company shall select its own appraiser and each MAI appraiser then shall select a third MAI appraiser and the average of all three (3) appraisals shall be the fair market value of the Interest. As set forth hereinabove, fair market value" of a Member's Interest shall be determined without reduction for minority, lack of marketability or other entity/Company level discounts.

10.4 ***Transferee Not Member in Absence of Unanimous Consent.***

(a) Except as provided in Section 10.1.2 and 10.1.3, if all of the remaining Members do not approve by unanimous written consent of the proposed, sale or gift of the Transferring Member's Membership Interest to a transferee or donee which is not a Member immediately prior to the sale or gift, then the proposed transferee or donee shall have no right to participate in the management of the business and affairs of the Company or to become a Member. The transferee or donee shall be merely a Transferee entitled solely to economic rights to profits, losses and distributions and shall have no voting rights under this Agreement or in matters relating to the Company and its business; provided, however, any sale of a Transferee's interest in the Company should be subject to Section 10.2. No transfer of a Member's Interest in the Company (including any transfer of the Transferee Interest or any other transfer which has not been approved by unanimous written consent of the Members) shall be effective unless and until written notice (including the name and address of the proposed transferee or donee and the date of such transfer) has been provided to the Company and the nontransferring Member(s).

(b) Upon and contemporaneously with any sale or gift of a Transferring Member's Interest in the Company which does not at the same time transfer the balance of the rights associated with the Transferee Interest transferred by the Transferring Member (including, without limitation, the rights of the Transferring Member to participate in the management of the business and affairs of the Company), all remaining rights and interest which were owned by the Transferring Member immediately prior to such sale or gift or which were associated with the transferred Interest shall immediately lapse until the remaining Members, by unanimous written consent, reinstate such rights to the Transferee who did not previously obtain the unanimous written consent, reinstating such rights to a successor or transferee of such Transferee.

ARTICLE XI

ADDITIONAL MEMBERS

From the date of the formation of the Company, any Person or Entity acceptable to the Members by their unanimous vote thereof may become a Member in this Company for such consideration as the Members by their unanimous votes shall determine, subject to the terms and conditions of this Agreement. No new Members shall be entitled to any retroactive allocation of profits losses, income or expense deductions incurred by the Company. The Manager(s) may, at their option, at the time a Member is admitted, close the Company books (as though the Company's tax year has ended) or make pro rata allocations of income, loss, and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Code Section 706(d) and the Treasury Regulations promulgated thereunder.

ARTICLE XII

DISSOLUTION AND TERMINATION

12.1 ***Dissolution.***

(a) The Company shall be dissolved upon the occurrence of any of the following events:

(i) by the unanimous written consent of all Members; or

(ii) the sale, transfer or assignment of substantially all of the assets of the Company; or

(iii) as otherwise required by law.

12.2 ***Winding Up, Liquidation and Distribution of Assets.***

(a) Upon dissolution, an accounting shall be made by the Company's independent accountant of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Managers shall immediately proceed to wind up the affairs of the Company.

(b) If the Company is dissolved and its affairs are to be wound up, the Managers shall:

(1) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Managers may determine to distribute any assets to the Members in kind),

(2) Allocate any profit or loss resulting from such sales to the Member's and Transferees' Capital Accounts in accordance with Article IX hereof.

(3) Discharge all liabilities of the Company, including liabilities to Members and Transferees who are creditors, to the extent other-wise permitted by law, other than liabilities to Members and Transferees for Distributions, and establish such Reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Members and Transferees, the amounts of such Reserves shall be deemed to be an expense of the Company),

(4) Distribute the remaining assets in the following order:

(i) If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of all of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and

the Capital Accounts of the Members and Transferees shall be adjusted pursuant to the provisions of Article IX and Section 8.3 of this Agreement to reflect such deemed sale.

(ii) To the Members and Transferees, pro rata, in accordance with the positive balance (if any) of each Member's and Transferee's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's taxable year during, which the liquidation occurs) shall be distributed to the Members and Transferee either in cash or in kind, as determined by the Managers, with any assets distributed in kind being valued for: this purpose at their fair market value as determined pursuant to Section 12.2(b)(i).

(iii) Thereafter, to the Members and Transferee's pro rata, in accordance with their respective Percentage Interests.

(c) Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

(d) Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

(e) The Manager(s) shall comply with all requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

12.3 ***Articles of Dissolution.***

When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets of the Company have been distributed among its members in accordance with their respective rights and interests, a Articles of Dissolution of the Company shall be filed with the Florida Department of State.

12.4 ***Effect of Filing Articles of Dissolution.***

Upon the filing of Articles of Dissolution with the Florida Department of State, and upon issuance of the Certificate of Dissolution by the Department of the State, the existence of the Company shall cease, except for the purpose of suits, of the proceedings and appropriate action as provided in the Act. The Managers shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

12.5 ***Return of Contribution Nonrecourse to Other Members.***

Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member and Transferee shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members or Transferees, such Member(s) or Transferee(s) shall have no recourse against any other Member or Transferee, except as otherwise provided by law.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 *Notices.*

Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally or by express mail or courier service (with receipt acknowledged) to the party or to an executive officer of the party to whom the same is directed, if telecopied (with receipt acknowledged) to the party or an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Agreement. Except as otherwise provided herein any such notice shall be deemed to be given two (2) business days after the date on which the same was deposited in the United States mail, addressed and sent as aforesaid, if sent by mail or upon confirmation of receipt if delivered by telecopier, personal delivery or courier service.

13.2 ***Books of Account and Records.***

Proper and complete records and books of account shall be kept or shall be caused to be kept by the Managers in which shall be entered fully and accurately all transactions relating. to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such books and records shall be maintained as provided in Section 9.9. The books and records shall at all times be maintained at the principal place of business of the Company. Additionally, the Managers shall promptly distribute to all Members, copies of the Company' financial statements on an annual basis.

13.3 ***Application of Florida Law.***

This Agreement and its interpretation shall be governed exclusively by its terms and by the laws of the State of Florida, and specifically the Act.

13.4 ***Waiver of Action for Partition.***

Each Member and Transferee irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

13.5 ***Amendments.***

This Agreement may not be amended except in writing by the affirmative vote of a majority of the Members of the Company which vote must include the affirmative vote of the Manager. Any amendment changing either the Percentage Interests of the Members or any provision within Article V requires the unanimous vote of the Members.

13.6 ***Execution of Additional Instruments.***

Each Member hereby agrees to execute such other and further statements of interest and holdings, designations and other instruments necessary to comply with an laws, rules or regulations.

13.7 ***Construction.***

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

13.8 ***Headings.***

The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision thereof

13.9 ***Waivers.***

The failure of any party to seek redress for default of or to insist upon the strict performance of any covenant of condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default, from having the effect of an original default.

13.10 ***Rights and Remedies Cumulative.***

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any other remedy. Said rights and remedies are given in addition to any other legal rights that parties may have.

13.11 ***Severability.***

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

13.12 ***Heirs, Successors and Assigns.***

Each and all of the covenants, terms, provisions and agreement herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

13.13 ***Creditors.***

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

13.14 ***Counterparts.***

This Agreement may be executed in counterparts, each of shall be deemed an original but all of which shall constitute one and the same instrument.

13.15 ***Conflict of Interest Waiver.*** The Members and the Company acknowledge that the law firm of Tescher & Spallina, P.A. has represented the Company in connection with the drafting of this Agreement and the formation and structuring of the Company, and that said law firm also represents one or more of the Members (namely, SIMON L. BERNSTEIN, SHIRLEY BERNSTEIN, SHIRLEY BERNSTEIN FAMILY FOUNDATION, INC., and BERNSTEIN FAMILY INVESTMENTS, LLLP). The Company and its Members acknowledge that they have been advised that there are material income tax consequences and economic ramifications from being a Member in the Company, that they fully understand the tax consequences and economic ramifications of a Member's investment in the Company, and that they have been encouraged to consult with separate and independent counsel to advise them on Company and Member issues including this Agreement and the formation of the Company. The Company and the Members hereby waive any conflicts of interest with respect to the foregoing law firm's representation of the Company and the afore described Members and owners of interests in entity Members, in connection with the services set forth in this Section.

==========

IN WITNESS WHEREOF, the parties hereto have caused their signatures, or the signatures of their duly authorized representatives, to be set forth below on the day and year first above written.

Witnesses:

MEMBERS:

SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008

By: _____
SIMON L. BERNSTEIN, Trustee

SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008

By: _____
SHIRLEY BERNSTEIN, Trustee

ELIOT BERNSTEIN FAMILY TRUST dated May 20, 2008

By: _____
SIMON L. BERNSTEIN, Co-Trustee

By: _____
SHIRLEY BERNSTEIN, Co-Trustee

By: _____
ROBERT L. SPALLINA, Independent Trustee

JILL IANTONI FAMILY TRUST dated May 20, 2008

By: _____
SIMON L. BERNSTEIN, Co-Trustee

By: _____
SHIRLEY BERNSTEIN, Co-Trustee

By: _____
ROBERT L. SPALLINA, Independent Trustee

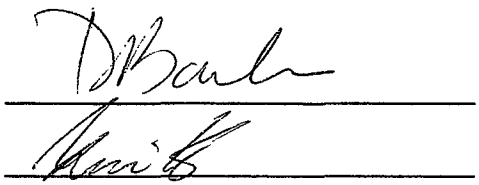
LISA S. FRIEDSTEIN FAMILY TRUST dated May 20, 2008

By: _____
SIMON L. BERNSTEIN, Co-Trustee

By: _____
SHIRLEY BERNSTEIN, Co-Trustee

By: _____
ROBERT L. SPALLINA, Independent Trustee

COMPANY:
BERNSTEIN HOLDINGS, LLC, a Florida limited liability company



By: _____
SIMON L. BERNSTEIN, Manager

F:\WPDATA\drt\Bernstein, Shirley & Simon\Bernstein Family Investments, LLLP\Bernstein Holdings, LLC\Bernstein Holdings, LLC Operating Agreement.wpd

BERNSTEIN HOLDINGS, LLC
LIMITED LIABILITY COMPANY
OPERATING AGREEMENT

EXHIBIT A

Member(s)	Percentage Interest*	Capital Contributions
SIMON L. BERNSTEIN, Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT u/t/d May 20, 2008	48.5%	$48.50
SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT u/t/d May 20, 2008	48.5%	$48.50
SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees ROBERT L. SPALLINA, Independent Trustee of the ELIOT BERNSTEIN Family Trust dated May 20, 2008	1%	$1.00
SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees ROBERT L. SPALLINA, Independent Trustee of the JILL IANTONI Family Trust dated May 20, 2008	1%	$1.00
SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees ROBERT L. SPALLINA, Independent Trustee of the LISA S. FRIEDSTEIN Family Trust dated May 20, 2008	1%	$1.00

*proportionate to capital accounts of Members

APPENDIX 18

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

CASE NO. 502012CP004391XXXXSB

IN RE: **THE ESTATE OF SIMON BERNSTEIN,**
Deceased.
_____/

AMENDED ORDER DENYING 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

(This Amended Order replaces the original order entered by this court on May 8, 2013)

UPON CONSIDERATION of the Emergency Petition to: Freeze Estate Assets, Appoint New Personal Representatives, Investigate Forged and Fraudulent Documents Submitted to the Court and other Interested Parties, Rescind Signature of Eliot Bernstein in Estate of Shirley Bernstein and More, it is hereby

ORDERED AND ADJUDGED that the Emergency Petition is hereby **Denied** as an emergency. The Respondent, Eliot Bernstein, is required to serve his petition properly and in accordance with the Rules of Procedure on all interested parties/persons to whom his petition is directed. No further action will be taken on this matter until the foregoing is complied with.

DONE AND ORDERED in chambers, at Delray Beach, Palm Beach County, Florida this 8th day of May, 2013.

_____
MARTIN H. COLIN
Circuit Court Judge

Copies furnished:
Robert L. Spallina, Esquire
4855 Technology Way, Suite 720
Boca Raton, Fl. 33431

Eliot Bernstein, Pro Se
2753 NW 34th Street
Boca Raton, Fl. 33434

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

CASE NO. 502011CP000653XXXXSB

IN RE: **THE ESTATE OF**
SHIRLEY BERNSTEIN,
Deceased.
_____/

ORDER DENYING 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

UPON CONSIDERATION of the Emergency Petition to: Freeze Estate Assets, Appoint New Personal Representatives, Investigate Forged and Fraudulent Documents Submitted to the Court and other Interested Parties, Rescind Signature of Eliot Bernstein in Estate of Shirley Bernstein and More, it is hereby

ORDERED AND ADJUDGED that the Emergency Petition is hereby **Denied** as an emergency. The Respondent, Eliot Bernstein, is required to serve his petition properly and in accordance with the Rules of Procedure on all interested parties/persons to whom his petition is directed. No further action will be taken on this matter until the foregoing is complied with.

DONE AND ORDERED in chambers, at Delray Beach, Palm Beach County, Florida this 8th day of May, 2013.

_____
MARTIN H. COLIN
Circuit Court Judge

Copies furnished:
Robert L. Spallina, Esquire
Attorney for Simon L. Berstein
4855 Technology Way, Suite 720
Boca Raton, Fl. 33431

Eliot Bernstein, Pro Se
2753 NW 34th Street
Boca Raton, Fl. 33434

APPENDIX 19

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF

SIMON L. BERNSTEIN,

Deceased.

PROBATE DIVISION

File No. 502012CP004391 XXXXSB
IZ

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CTY BRANCH-FILED
2012 OCT -2 AM 9:32

ORDER ADMITTING WILL TO PROBATE AND APPOINTING PERSONAL REPRESENTATIVE

The instrument presented to this court as the Last Will of Simon L. Bernstein, deceased, having been executed in conformity with law, and made self-proved by the acknowledgment of the decedent and the affidavits of the witnesses, each made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will in the form required by law, and no objection having been made to its probate, and the court finding that the decedent died on September 13, 2012, and that Robert L. Spallina and Donald R. Tescher are qualified under the laws of the State of Florida to serve as co-personal representatives, it is

ADJUDGED that the Will dated July 25, 2012, and attested by Robert L. Spallina and Kimberly Moran as subscribing and attesting witnesses, is admitted to probate according to law as the Last Will of the decedent, and it is further

ADJUDGED that Robert L. Spallina and Donald R. Tescher are appointed as co-personal representatives of the estate of the decedent, and that upon taking the prescribed oath, filing designation of resident agent and acceptance, and entering into bond in the sum of $ ∅, Letters of Administration shall be issued.

ORDERED on Oct 2 2012.

Estate must be closed 12 **months from the date of order**

Circuit Judge

cc: Robert L. Spallina, Esquire

Bar Form No. P-3.0420
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Text Revised October 1, 1998

APPENDIX 20

P A L M B E A C H C O U N T Y S H E R I F F' S O F F I C E PAGE 1
CASE NO. 14029489 SUPPLEMENT 14 O F F E N S E R E P O R T CASE NO. 14029489
DISPOSITION: ZULU
DIVISION: DETECTIVE

911:
ECONOMIC CRIMES * * *
SIGNAL CODE: 14 CRIME CODE: NON CRIME CODE: OT CODE: 9546 03/20/15 THURSDAY
ZONE: BR GRID: DEPUTY I.D.: 6685 NAME: PANZER ASSIST: TIME D 1020 A 1020 C 1021
OCCURRED BETWEEN DATE: 12/01/12 , 0000 HOURS AND DATE: 01/31/13 , 0000 HOURS
EXCEPTION TYPE:
INCIDENT LOCATION: 4855 TECHNOLOGY WY APT. NO.: 700
CITY: BOCA RATON STATE: FL ZIP: 33431

NO. OFFENSES: 00 NO. OFFENDERS: UK NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0
LOCATION: OTHER
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

..

UPON COMPLETING MY REVIEW OF THE DOCUMENTATION BERNSTEIN SUBMITTED IN HIS EMAIL OF 01/08/15, IT WAS DETERMINED THE NEW INFORMATION HE BROUGHT FORTH WAS IN REGARD TO THE DOCUMENTS RELATING TO THE TRUSTS OF HIS 3 MINOR CHILDREN, JOSHUA, JACOB, AND DANIEL BERNSTEIN. IN ITEM 52 OF THE STATEMENT OF FACTS BERNSTEIN WROTE:

"THAT IMMEDIATELY AFTER THE INITIAL COURT HEARING ON OCTOBER 20, 2014 ELIOT, CANDICE AND WILLIAM STANSBURY CONTACTED AND THEN MET WITH TRACI KRATISH, ESQ. WHEREBY TRACI STATED;

A. SHE HAD NEVER SEEN THE TRUST DOCUMENTS EXHIBITED HEREIN BEFORE NAMING HER AS THE INITIAL TRUSTEE,
B. THAT SHE DID NOT WORK FOR THE BERNSTEIN FAMILY AT THE TIME THE TRUST DOCUMENT IS ALLEGEDLY SIGNED BY HER AS TRUSTEE,
C. THAT SHE WAS NOT THE ORIGINAL TRUSTEE IN THE DOCUMENT AND WAS ONLY ASKED TO BE A TRUSTEE WHEN THE STANFORD TRUST COMPANY WAS SEIZED AND ONLY FOR A FEW DAYS, DUE TO THE SIR ALLEN STANFORD PONZI SCHEME AND NEED TO TRANSFER FUNDS.
D. TRACI CLAIMS TO HAVE SIGNED AN ACCEPTANCE LETTER AT THAT TIME WHICH IS MISSING FROM THE DOCUMENT PRODUCTION OF TESCHER AND SPALLINA AND THEN SHORTLY THEREAFTER SIGNED A RESIGNATION TRANSFERRING TRUSTEESHIP TO OPPENHEIMER.
E. THAT SHE NEVER SIGNED THE TRUST DOCUMENTS AS ALLEGED IN THE DOCUMENTS AND THAT THE APPEARED FORGED AND FRAUDULENT.

UPON EXAMINING THE SIGNATURE AREAS OF THE TRUST AGREEMENTS DATED SEPTEMBER 07, 2006 PROVIDED BY BERNSTEIN, I NOTED THE TRUSTEE SECTION LISTS

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TRACI KRATISH, PA AS TRUSTEE. BELOW THIS IS A SIGNATURE, FOLLOWED BY FOR TRACI KRATISH, PA. ON 01/31/15, I SEARCHED TRACI KRATISH, PA THROUGH THE FLORIDA DIVISION OF CORPORATION SUNBIZ WEBSITE AND DISCOVERED THE CORPORATION HAD BEEN DISSOLVED PER THE APPROVAL OF ITS SHAREHOLDERS ON 12/31/13. I WAS ABLE TO LOCATE A POSSIBLE PHONE NUMBER FOR THE ADDRESS LISTED IN THE CORPORATE PAPERWORK AND SUBSEQUENTLY MADE CONTACT WITH KRATISH. IN SPEAKING WITH KRATISH, SHE ADVISED SHE WAS CURRENTLY WORKING FOR ERNST & YOUNG IN BOCA RATON. I EXPLAINED MY INVOLVEMENT WITH BERNSTEIN IN REGARD TO HIS ALLEGATIONS AND ASKED IF SHE WOULD BE WILLING TO MEET WITH ME. KRATISH AGREED AND A MEETING WAS ARRANGED FOR 02/03/15 AT HER OFFICE IN BOCA RATON. ON 02/02/15, I RECEIVED A PHONE MESSAGE FROM KRATISH REQUESTING THE MEETING BE RESCHEDULED. I MADE CONTACT WITH KRATISH AND THE MEETING WAS RESCHEDULED FOR 02/05/15 AT 10 AM, BUT THIS MEETING HAD TO BE CANCELLED AS WELL DUE TO A PRIOR COMMITMENT ON MY PART THAT HAD ALREADY BEEN SCHEDULED.

ON 03/06/15, I MADE CONTACT WITH KRATISH BY PHONE AND ATTEMPTED TO SCHEDULE AN INTERVIEW. KRATISH REQUESTED THE MEETING BE SCHEDULED AFTER 04/15/15, AS THIS WAS A VERY BUSY TIME FOR HER AS SHE WAS ALSO A CERTIFIED PUBLIC ACCOUNTANT. I TOLD HER I WOULD CONTACT HER AFTER TAX SEASON BUT ASKED HER TO CONTACT ME IN THE EVENT AN OPENING IN HER SCHEDULE PRESENTED ITSELF PRIOR TO THEN.

ON 03/20/15, I SPOKE AT LENGTH WITH BERNSTEIN AND ADVISED HIM OF MY ATTEMPT TO MEET WITH KRATISH AND WHEN THE MEETING MIGHT TAKE PLACE. I ASKED IF THE DATE ON THE TRUST AGREEMENTS, WHICH HE PROVIDED AS EXHIBITS WERE THE ACTUAL DATES OF WHEN THE FORGERY MAY HAVE OCCURRED AND BERNSTEIN STATED HE DIDN'T KNOW WHEN THESE DOCUMENTS WERE SIGNED OR IF THEY WERE EVEN ACTUAL LEGAL DOCUMENTS. BERNSTEIN HAD SOME QUESTIONS AS TO ISSUES WHICH AROSE DURING THE TIME THIS CASE WAS ASSIGNED TO DETECTIVE MILLER AND I TOLD HIM I WOULD ATTEMPT TO FIND OUT THE ANSWERS TO HIS QUESTIONS. IT SHOULD BE NOTED, BERNSTEIN IS INVOLVED IN A NUMBER OF CIVIL LITIGATIONS IN MULTIPLE JURISDICTIONS AND SOME THAT STEM FROM ISSUES HE BELIEVES ARE RELATED TO THIS CASE. AS HE BEGAN TO SPEAK OF SOME OF THESE, I LISTENED TO WHAT HE HAD TO SAY BUT ENSURED HE UNDERSTOOD THE PURPOSE OF MY CALL WAS TO UPDATE HIM ON THE PROGRESS OF THE ATTEMPT TO INTERVIEW KRATISH. BERNSTEIN ADVISED ME HE HAD A SIGNIFICANT AMOUNT OF DOCUMENTS YET TO PROVIDE ME. I ADVISED BERNSTEIN I WOULD CONTACT HIM ONCE I HAD INTERVIEWED KRATISH.

THIS CASE REMAINS OPEN PENDING THE INTERVIEW OF KRATISH.

DETECTIVE ANDREW PANZER #6685
03/20/15
TRANS. VIA EMAIL/COPY/PASTE: 03/23/2015/MDR/#6405

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P A L M B E A C H C O U N T Y S H E R I F F' S O F F I C E PAGE 1
CASE NO. 14029489 SUPPLEMENT 15 O F F E N S E R E P O R T CASE NO. 14029489
DISPOSITION: ZULU
DIVISION: DETECTIVE

911:
ECONOMIC CRIMES * * *
SIGNAL CODE: 14 CRIME CODE: NON CRIME CODE: OT CODE: 9546 05/12/15 THURSDAY
ZONE: BR GRID: DEPUTY I.D.: 6685 NAME: PANZER ASSIST: TIME D 1020 A 1020 C 1021
OCCURRED BETWEEN DATE: 12/01/12 , 0000 HOURS AND DATE: 01/31/13 , 0000 HOURS
EXCEPTION TYPE:
INCIDENT LOCATION: 4855 TECHNOLOGY WY APT. NO.: 700
CITY: BOCA RATON STATE: FL ZIP: 33431

NO. OFFENSES: 00 NO. OFFENDERS: UK NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0
LOCATION: OTHER
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

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ON 05/06/15, I MADE CONTACT WITH TRACI KRATISH BY PHONE AND ATTEMPTED TO SCHEDULE AN INTERVIEW WITH HER REGARDING THE ALLEGED FORGED TRUST DOCUMENTS. IT WAS AGREED THE INTERVIEW WOULD TAKE PLACE AT THE PALM BEACH COUNTY SHERIFF'S OFFICE FINANCIAL CRIMES UNIT ON THURSDAY, 05/21/15 AT 1:00 PM. THIS CASE REMAINS OPEN PENDING THE RESULTS OF THE INTERVIEW WITH KRATISH.
DETECTIVE ANDREW PANZER #6685
05/12/15
TRANS. VIA EMAIL/COPY/PASTE: 05/18/2015/MDR/#6405

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printed by Employee Id #: 8105 on August 31, 2015 01:31:42PM

P A L M B E A C H C O U N T Y S H E R I F F ' S O F F I C E PAGE 1
CASE NO. 14029489 SUPPLEMENT 16 O F F E N S E R E P O R T CASE NO. 14029489
DISPOSITION: ZULU
DIVISION: DETECTIVE

911:
ECONOMIC CRIMES * * *
SIGNAL CODE: 14 CRIME CODE: NON CRIME CODE: OT CODE: 9546 06/30/15 THURSDAY
ZONE: BR GRID: DEPUTY I.D.: 6685 NAME: PANZER ASSIST: TIME D 1020 A 1020 C 1021
OCCURRED BETWEEN DATE: 12/01/12 , 0000 HOURS AND DATE: 01/31/13 , 0000 HOURS
EXCEPTION TYPE:
INCIDENT LOCATION: 4855 TECHNOLOGY WY APT. NO.: 700
CITY: BOCA RATON STATE: FL ZIP: 33431

NO. OFFENSES: 00 NO. OFFENDERS: UK NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0
LOCATION: OTHER
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

..

ON 05/21/15, I RESPONDED TO 250 S. AUSTRALIAN AVENUE - #1402, WEST PALM BEACH, FL AND MET WITH TRACI KRATISH IN THE OFFICE OF HER ATTORNEY JAMES CUNHA. I HAD BROUGHT WITH ME COPIES OF THE DOCUMENTS BERNSTEIN HAD PROVIDED AS ATTACHMENTS IN HIS 01/18/15 LETTER TO ME. IN SPEAKING WITH KRATISH SHE ADVISED ME SHE BEGAN HER EMPLOYMENT WITH SIMON BERNSTEIN ON 09/10/06 AS THE GENERAL COUNSEL AND CHIEF COMPLIANCE OFFICER FOR HIS FIRM LIC HOLDINGS INC. KRATISH STATED SHE WAS EMPLOYED UNTIL FEBRUARY 2010 AND HER LAST PAYCHECK WAS FOR PAY DATE ENDING 02/18/10. KRATISH PROVIDED ME A CHART DETAILING THAT LIC HOLDINGS INC. (FL S CORP) WAS THE PARENT COMPANY OF THE FOLLOWING ENTITIES; ARBITRAGE INTERNATIONAL MANAGEMENT LLC F/K/A ARBITRAGE INTERNATIONAL HOLDINGS LLC (FL), CAMBRIDGE FINANCING COMPANY (FL) AND ITS SUBSIDIARY CFC OF DELAWARE LLC (DE), CAMBRIDGE PREMIUM COMPANY, INC. (NY), ARBITRAGE INTERNATIONAL MARKETING, INC. D/B/A LIFE INSURANCE CONCEPTS (FL S CORP) AND NATIONAL SERVICE ASSOCIATION, INC. (FL). SIMON AND TED BERNSTEIN WERE THE MAJORITY SHAREHOLDERS AND WILLIAM STANSBURY WAS AN ADDITIONAL SHAREHOLDER.

I ASKED KRATISH WHEN SHE FIRST MET ELIOT BERNSTEIN. SHE STATED IT WAS IN OCTOBER OF 2014 AND SHE WAS INTRODUCED TO HIM BY WILLIAM STANSBURY, WHO WAS INVOLVED IN SOME LITIGATION REGARDING THE ESTATES OF SIMON AND SHIRLEY BERNSTEIN. THE MEETING WAS HELD AT THE BOCA MARRIOT. IT SHOULD BE NOTED THAT BERNSTEIN SAID THIS MEETING WITH KRATISH OCCURRED IMMEDIATELY AFTER A HEARING BEFORE JUDGE COLIN ON 10/02/14, IN WHICH THE TRUST AGREEMENTS WERE FRAUDULENTLY TENDERED TO THE COURT, BY LESSNE WHO IS AN ATTORNEY REPRESENTING OPPENHEIMER.

I SHOWED KRATISH THE DOCUMENTS BERNSTEIN SENT ME IN REGARD TO HIS

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ALLEGATION. KRATISH ACKNOWLEDGED SHE WAS THE TRUSTEE AT SOME POINT FOR THE TRUSTS OF BERNSTEIN'S MINOR CHILDREN. SHE ADDED THAT SHE DIDN'T REMEMBER BEING INVOLVED PRE-STAMFORD BUT DOES RECALL BEING INVOLVED IN THE TRANSFER TO OPPENHEIMER. KRATISH LOOKED AT THE SIGNATURES ON THE DOCUMENTS AND STATED THEY APPEARED TO BE HER SIGNATURE ALTHOUGH SHE DOESN'T HAVE INDEPENDENT RECOLLECTION OF SIGNING THE SPECIFIC DOCUMENTS. KRATISH SAID SHE SIGNED MANY DOCUMENTS IN HER ROLE AS GENERAL COUNSEL AND CHIEF COMPLIANCE OFFICER FOR SIMON BERNSTEIN'S BUSINESS CONCERNS. IT SHOULD BE NOTED UPON CHECKING THE DRIVER AND INFORMATION DATABASE (DAVID) SIGNATURE ARRAY FOR KRATISH, THE SIGNATURES SHE USED ON HER DRIVER LICENSES APPEARED TO MATCH THOSE ON THE DOCUMENTS BERNSTEIN PROVIDED IN HIS ATTACHMENTS. KRATISH ALSO RECOGNIZED THE NAME OF ONE OF THE WITNESSES, JOCELYN JOHNSON AS BEING AN EMPLOYEE OF SIMON BERNSTEIN. IT SHOULD BE NOTED THESE TRUST DOCUMENTS WERE EXECUTED ON 09/07/06, SHORTLY AFTER KRATISH STARTED HER EMPLOYMENT. IT SHOULD ALSO BE NOTED BERNSTEIN PROVIDED A DOCUMENT WHICH INDICATED KRATISH RESIGNED AS TRUSTEE ON 09/12/07.

I EXPLAINED TO KRATISH AND CUNHA THAT BERNSTEIN FELT THAT MANY OF THE DOCUMENTS PRESENTED IN COURT WERE FRAUDULENT AND/OR FORGED. I BROUGHT UP THE FACT KRATISH WAS REFERRED TO AS A MALE IN PARTS OF THE TRUST DOCUMENTS AND ONE OF THE TRUSTS LISTED A SEPARATE INDIVIDUAL AS TRUSTEE. ATTORNEY CUNHA SPOKE TO THE FACT THESE COULD BE SIMPLE MISTAKES (SCRIBNER'S ERROR) AND SHOULD NOT HAVE AN ADVERSE EFFECT ON THE DOCUMENT.

WHEN I BROUGHT UP BERNSTEIN'S CONTENTION THAT IN ADDITION TO THE SIGNATURES BEING FORGED, THERE WAS ANOTHER ISSUE AS EACH PAGE LACKED THE INITIALS OF THE MINOR CHILD WHO WAS THE GRANTEE, CUNHA EXPLAINED THIS INITIAL SECTION IS NOT FOR THE RECIPIENT OF THE TRUST, RATHER IT IS FOR THE GRANTOR. KRATISH ADVISED ME THAT EARLIER THAT MORNING, SHE HAD RECEIVED AN EMAIL FROM WILLIAM STANSBURY WITH THE SUBJECT LINE; ORIGINAL SIGNED "OPPENHEIMER" TRUSTS. SEE BELOW:

FROM: WILLIAM STANSBURY
DATE: MAY 21, 2015 AT 9:07:50 AM EDT
TO: "TRACI@KRATISH.COM"
SUBJECT: ORIGINAL SIGNED "OPPENHEIMER" TRUSTS

FROM: ALAN ROSE [MAILTO:AROSE@MRACHEK-LAW.COM]
SENT: WEDNESDAY, MAY 20, 2015 2:14 PM
TO: LESSNE, STEVEN; ELIOT IVAN BERNSTEIN; ELIOT IVAN BERNSTEIN
CC: TED BERNSTEIN; O'CONNELL, BRIAN M.; FOGLIETTA, JOY A

SUBJECT: ORIGINAL SIGNED "OPPENHEIMER" TRUSTS
MR. LESSNE AND MR. ELIOT BERNSTEIN:

I AM WRITING TO ADVISE THAT WE LOCATED SOME FILES IN DRAWERS IN SIMON'S PRIVATE OFFICE IN HIS HOME AT LIONS HEAD, AS WE WERE TRYING TO ASSESS THE COMPLEXITY OF THINGS THAT MUST HAPPEN BETWEEN NOW AND THE CLOSING OF LIONS HEAD. MY PRIMARY REASON WAS TO VISUALLY INSPECT THE THREE CHANDELIERS THAT HAVE BEEN THE SUBJECT OF PR EMAILS IN THE PAST FEW DAYS.

IN ANY EVENT, AND ALTHOUGH THESE FILES LIKELY WERE EXAMINED AND DISCOUNTED AS UNIMPORTANT BY THE PRS AFTER SIMON'S DEATH AND LIKELY MEANT NOTHING IF AND WHEN THEY WERE CATALOGED OR VIEWED DURING THE O'CONNELL AS PR RE-APPRAISAL/RE-INSPECTION, I NOTICED A FOLDER MARKED AS THE JAKE BERNSTEIN TRUST. LOOKING MORE CLOSELY, THERE WERE THREE GREEN FOLDERS LABELED WITH ELIOT'S CHILDRENS NAMES AND INSIDE ARE WHAT APPEAR TO THE ORIGINAL SIGNED IRREVOCABLE TRUST AGREEMENTS FOR THE TRUSTS WHICH OPPENHEIMER FORMAL SERVED. THESE MAY BE RELEVANT OR IMPORTANT TO THE ONGOING OPPENHEIMER CASE, SO I BRING THEM TO YOUR ATTENTION. THERE ARE ALSO WHAT APPEAR TO BE SOME TAX RETURNS AND STANFORD ACCOUNT STATEMENTS. SIMPLY BECAUSE I HAVE ATTENDED SOME OF THE OPPENHEIMER HEARINGS, I UNDERSTAND THAT ELIOT CLAIMS AT LEAST ONE OF THE TRUST DOES NOT EXIST. AS AN OFFICER OF THE COURT, AND BECAUSE THEY MAY BE RELEVANT, I HAVE TAKEN TEMPORARY CUSTODY OF THE DOCUMENTS. I WILL HOLD THEM PENDING JOINT INSTRUCTIONS OR A COURT ORDER, BUT WOULD PREFER TO DELIVER THEM TO STEVE LESSNE AS OPPENHEIMER'S COUNSEL. THESE HAVE NO ECONOMIC VALUE AND HAVE NO BEARING ON THE ESTATE, SO I DOUBT BRIAN O'CONNELL WOULD WANT THEM, BUT I DID NOT WANT TO SEE THEM LOST OR DISCARDED IN THE IMPENDING MOVE. TO FACILITATE YOUR REVIEW, I HAVE SCANNED THE FIRST AND LAST PAGE OF EACH TRUST, AND SCANNED THE FIRST PAGE OF THE ANCILLARY DOCUMENTS, AND ATTACH THAT IN .PDF FORMAT.

I AM SURE THAT PEOPLE HAVE LOOKED THROUGH THESE FILES BEFORE, AND THERE DID NOT APPEAR TO BE ANYTHING OF SIGNIFICANCE. (I DID NOTICE A FEW FOLDERS WITH THE OTHER GRANDCHILDRENS NAMES, NOT ELIOT'S KIDS, BUT LEFT THOSE PAPERS IN PLACE BECAUSE I UNDERSTAND THAT EVERYONE BUT ELIOT HAS FULLY COOPERATED WITH OPPENHEIMER IN RESOLVING THESE MATTERS.)

I ALSO HAVE HAD OCCASION TO RE-LOOK THROUGH A SMALL BOX OF TRUST DOCUMENTS WHICH I HAVE BEEN HOLDING, WHICH CAME FROM SIMON'S FORMER WORK OFFICE. INSIDE FILE FOLDER IN A DESK DRAWER, SIMON RETAINED DUPLICATE ORIGINALS OF THE TRUST AGREEMENTS RELEVANT TO MY CASES. WHEN I WAS LOOKING TO REEXAMINE THESE DOCUMENTS - DUPLICATE ORIGINALS OF THE 2008 TRUSTS AND THE 2012 TRUST (THE TRUE ORIGINALS REMAIN WITH TESCHER & SPALLINA WHO DRAFTED THE) - I NOTICED A COPY OF THE THREE SEPARATE IRREVOCABLE TRUST DOCUMENTS. AGAIN, THESE WOULD NOT HAVE CAUGHT MY EYE ORIGINALLY BECAUSE I NEVER WOULD HAVE GUESSED THAT ELIOT WOULD CLAIM THE TRUSTS WERE NOT VALID. I ONLY RECENTLY HAD OCCASION TO NOTICE THESE IN LOOKING FOR THE DUPLICATE TRUST ORIGINALS FOR SIMON AND

SHIRLEY. THE THREE IRREVOCABLE TRUSTS APPEAR TO BE SIGNED AND WITNESSED ON PAGE 17, BUT THE INDIVIDUAL PAGES ARE INITIALED. AGAIN, THESE WERE ONLY COPIES, BUT NOW HAVING LOOKED AT THE ORIGINALS INCLUDED IN THE ATTACHED SCAN, I NOTE (ALTHOUGH NOT A HANDWRITING EXPERT) THAT THE ATTACHED COPIES APPEAR TO BE ABSOLUTELY IDENTICAL TO THE ORIGINALS JUST FOUND IN SIMON'S PERSONAL OFFICE.

THESE COPIES INCLUDE IRS FORMS UNDER WHICH TRACI KRATISH PA, AS TRUSTEE APPEAR TO HAVE APPLIED FOR AND OBTAINED A TAXPAYER ID NUMBER FOR EACH TRUST, AND OBVIOUSLY SHE PROVIDED THESE TO SIMON. EACH OF THE TRUST DOCUMENTS IS SIGNED BY SIMON BERNSTEIN, AS SETTLOR, AND BY TRACI KRATISH PA AS THE INITIAL TRUSTEE, AND THE SIGNATURES ARE WITNESSED BY TWO PEOPLE. SIMON'S IS WITNESSED BY JOCELYN JOHNSON AND SOMEONE ELSE. I AM ADVISED THAT JOCELYN WAS AN EMPLOYEE OF SIMON'S, AS PRESUMABLY WAS THE SECOND WITNESS AND ALSO THE INITIAL TRUSTEE, TRACI KRATISH, WHO WAS IN HOUSE COUNSEL FOR THE COMPANIES SIMON OWNED PART OF.

ALTHOUGH THIS WAS LONG BEFORE ANY INVOLVEMENT ON MY PART, TRACI KRATISH APPEARS TO HAVE BEEN THE INITIAL TRUSTEE (THERE IS A TYPO SOMEWHERE NAMING STEVEN GREENWALD.) I DO NOT KNOW STEVEN GREENWALD, BUT I HAVE CONFIRMED THAT THESE TRUSTS WERE NOT CREATED BY TESCHER & SPALLINA. IF THEY HAD BEEN, I'M SURE THEY WOULD HAVE RETAINED THE ORIGINAL AND GIVEN SIMON DUPLICATE ORIGINALS AS THEY DID FOR ALL OF THE TRUST DOCUMENTS FOR THE 2008 AND 2012 TRUST THEY PREPARED. I DO NOT KNOW IF GREENWALD PREPARED THESE AND MADE A TYPO LEAVING HIS NAME ON A LATER SECTION, OR IF KRATISH PREPARED THESE FROM A BOILERPLATE GREENWALD FORM AND MADE THE TYPO. EITHER WAY, AND IT DOES NOT MATTER TO ME, THE FACT THAT THIS WAS A SIMPLE AND ORDINARY TYPO SHOULD BE OBVIOUS TO ALL.

EVENTUALLY, TRACI KRATISH LEFT THE EMPLOY AS THE IN-HOUSE COUNSEL FOR THE COMPANIES. SOMETIME BEFORE OR AT THAT TIME OF HER LEAVING, SHE RESIGNED AND APPOINTED SOMEONE ELSE, AND EVENTUALLY THESE TRUST ACCOUNTS ALONG WITH SIMILAR TRUSTS FOR SIMON'S OTHER SEVEN GRANDCHILDREN AND MUCH OF SIMON'S PERSONAL WEALTH, WERE MOVED TO STANFORD. AFTER STANFORD'S COLLAPSE AMID WORD THAT IT WAS A PONZI SCHEME - SIMON LOST UPWARDS OF $2 MILLION OF HIS OWN FUNDS IN THE PONZI SCHEME - SIMON DIRECTED THE TRANSFER OF THE HIS AND TRUST ACCOUNTS TO OPPENHEIMER. SIMON SELECTED OPPENHEIMER; PAID TESCHER'S FIRM TO DO THE NECESSARY DOCUMENTS TO APPOINT OPPENHEIMER AS SUCCESSOR TRUSTEE; TOOK THE DOCUMENTS FROM TESCHER AND HAD THEM SIGNED BY ALL CHILDREN, INCLUDING ELIOT AND CANDICE; AND RETURNED DOCUMENTS TO TESCHER FOR FILING. I PRESUME THAT SIMON PAID ALL OF THESE LEGAL FEES, BECAUSE THAT IS THE RIGHT THING TO DO FROM AN ESTATE PLANNING STRATEGY AND AS A FAVOR TO HIS GRANDCHILDREN. I KNOW HAVE SEVEN COPIES OF THE FILED PETITIONS, AND AGAIN WITHOUT BEING A HANDWRITING EXPERT, IT CERTAINLY LOOKS LIKE ELIOT'S AND CANDICE'S SIGNATURE ON THEM, REGARDLESS OF WHETHER THEY HAD EVER MET TESCHER OR SPALLINA BEFORE THEIR

PARENT'S DEATH.

ELIOT AND CANDICE REAPED THE BENEFITS OF OPPENHEIMER'S SERVICES, AND IN ANY EVENT THERE IS NO REASON TO BELIEVE THAT CANDICE AND ELIOT DID NOT SIGN THESE PETITIONS FOR THE BENEFIT OF THEIR CHILDREN. IF ELIOT NOW SUGGESTS THAT HIS AND HIS WIFE'S SIGNATURES DO NO APPEAR ON THE JUNE 2010 PETITIONS APPOINTING OPPENHEIMER 2010 ALLEGATION, WHICH IS HIGHLY DOUBTFUL JUST LOOKING AT THE THREE SETS OF SIGNATURES, THAT WOULD MEAN ELIOT IS ACCUSING SIMON OF BEING A FORGER. ELIOT IS ALREADY SUPPORTIVE OF BILL STANSBURY, WHO ACCUSES SIMON OF COMMITTING A FRAUD ON STANSBURY. I WOULD BE SHOCKED BY ANY ACCUSATION THAT SIMON DID NOT OBTAIN FROM ELIOT AND CANDICE THEIR GENUINE SIGNATURES ON THE JUNE 2010 PETITIONS, AND PARTICULARLY SHOCKED THAT ELIOT, WHO RECEIVED SO MUCH OF HIS FATHER'S (AND MOTHER'S) LARGESSE DURING THEIR LIFETIMES, WOULD NOW MALIGN SIMON'S NAME IN SUCH A MANNER.

ANYWAY, I'M NOT SURE IF EITHER OF YOU NEEDS THESE ANY LONGER, BUT IF YOU DO, HERE THEY ARE.

ALAN B. ROSE, ESQ.
AROSE@MRACHEK-LAW.COM
561.355.6991
505 SOUTH FLAGLER DRIVE
SUITE 600
WEST PALM BEACH, FLORIDA 33401
561.655.2250 PHONE

KRATISH FORWARDED ME THE EMAIL SHE HAD RECEIVED ALONG WITH ALL OF THE ATTACHMENTS. I ADVISED HER I WOULD BE ATTEMPTING TO SPEAK WITH ROSE AND VIEW THE ORIGINAL DOCUMENTS HE REFERS TO IN HIS LETTER. I TOLD HER I WOULD CONTACT HER IF I NEEDED ANYTHING FURTHER BUT THAT BASED UPON HER ACKNOWLEDGING THE SIGNATURE ON THE PAPERWORK WAS HERS, IT WAS UNLIKELY THAT WOULD BE NECESSARY.

ON 05/22/15, I ATTEMPTED TO REACH ROSE BY PHONE BUT THE CALL WENT TO VOICEMAIL. I LEFT MY CONTACT INFORMATION AND THE REASON FOR MY CALL AND ASKED THAT HE RETURN MY CALL AT HIS CONVENIENCE. LATER THAT DAY, I RECEIVED A CALL FROM ROSE. ROSE INQUIRED AS TO WHY THIS CASE WAS STILL BEING INVESTIGATED BY PBSO AS IT WAS A CIVIL MATTER. I EXPLAINED TO HIM I RECEIVED A COPY OF THE EMAIL HE HAD SENT TO BERNSTEIN AND STEVEN LESSNE. ROSE DESCRIBED THE CIRCUMSTANCES SURROUNDING THE DISCOVERY OF THE DOCUMENTS AND IT WAS CONSISTENT WITH WHAT WAS IN HIS EMAIL. HE AGAIN STATED THAT AS AN OFFICER OF THE COURT, HE FELT BOUND TO MAINTAIN THOSE DOCUMENTS. HE DID NOT SEEM SURPRISED THAT BERNSTEIN HAD MADE THE ALLEGATION AS HE HAS MADE A NUMBER OF OTHER ALLEGATIONS IN REFERENCE TO THE TRUSTS AND OTHER DOCUMENTS. DURING OUR CONVERSATION, ROSE TOLD ME JUDGE COLIN HAS RECUSED HIMSELF FROM BERNSTEIN'S CASE AND THE CASE WAS CURRENTLY AWAITING REASSIGNMENT.

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DURING OUR CONVERSATION THE TOPIC OF SPALLINA'S ACTIONS CAME UP AND ROSE ADVISED ME HE BELIEVED SPALLINA HAD RELINQUISHED HIS FLORIDA BAR LICENSE BECAUSE OF HIS INVOLVEMENT AND ACTIONS HE TOOK. IN REGARD TO BERNSTEIN'S RICO CASE IN NEW YORK, HE ADVISED ME JUDGE SHEINDLIN HAD DISMISSED THE CASE IN 2008. ROSE OFFERED TO ALLOW ME TO VIEW THE DOCUMENTS HE HAD LOCATED IN SIMON BERNSTEIN'S OFFICE AND IT WAS AGREED THAT I COULD CONTACT HIM AND SET UP A MUTUALLY AGREEABLE DATE AND TIME.

ON 06/09/15, I RESPONDED TO THE LAW OFFICES OF ATTORNEY ALAN ROSE, LOCATED AT 505 SOUTH FLAGLER DRIVE - SUITE 600, WEST PALM BEACH, FL 33401. ROSE PROVIDED ME WITH A SEALED ENVELOPE AND ASKED THAT I SIGN, DATE AND TIME THE BACK OF THE FOLDER UPON BREAKING THE SEAL. I COMPLIED WITH THE REQUEST. I REVIEWED THE DOCUMENTATION IN THE THREE GREEN FOLDERS CONTAINED WITHIN THE SEALED ENVELOPE UPON CLOSE EXAMINATION; THEY APPEARED TO BE ORIGINALS OF THE TRUST AGREEMENTS FOR JOSHUA BERNSTEIN, JACOB BERNSTEIN, AND DANIEL BERNSTEIN IRREVOCABLE TRUSTS. I COMPARED THE SIGNATURES TO THE COPIES I HAD RECEIVED AND THOSE THAT ROSE HAD SENT TO BERNSTEIN AND LESSNE IN HIS EMAIL DATED 05/20/15. THEY WERE THE SAME. ROSE HAD PREPARED COPIES OF THE EXECUTED DOCUMENTS AS WELL AS IRS PAPERWORK IN REGARD TO EACH TRUST SHOWING TRACI KRATISH PA AS THE TRUSTEE. AFTER COMPLETING THE REVIEW OF THE DOCUMENTS, ROSE TOOK POSSESSION OF THEM AND RETURNED THEM TO THE ENVELOPE. THE COPIES OF THE DOCUMENTS PROVIDED BY ROSE DURING THIS EXAMINATION AS WELL AS ANY OTHERS ATTACHED TO THE ORIGINAL EMAIL WILL BE MADE PART OF THE CASE FILE.

ON 06/12/15, I RECEIVED AN EMAIL FROM BERNSTEIN REQUESTING A TIME FOR US TO SPEAK REGARDING SOME OLD ISSUES AND NEW ISSUES IN THE CASE. I ATTEMPTED TO REACH BERNSTEIN THE SAME DAY ON BOTH HIS OFFICE LINE AND HIS CELL NUMBER. ALL ATTEMPTS WERE NEGATIVE.

ON 06/16/15, I SENT BERNSTEIN AN EMAIL LETTING HIM KNOW I HAD ATTEMPTED TO REACH HIM ON BOTH HIS NUMBERS ON 06/12/15 AS WELL AS EARLIER THIS DATE. BERNSTEIN RESPONDED LATER IN THE DAY THANKING ME FOR MY ATTEMPTS TO REACH HIM AND ASKING WHAT TIME WOULD BE GOOD TO SPEAK ON 06/17/15. I ADVISED HIM THAT I WOULD TRY AND CONTACT HIM BETWEEN 0800 AND 0900 HOURS ON 06/17/15. BERNSTEIN REPLIED THAT THIS WOULD BE A GOOD TIME TO SPEAK AND OFFERED TO MOVE THE CALL FORWARD ONE DAY TO 06/18/15, IF THAT WORKED BETTER FOR ME. I EXPLAINED TO BERNSTEIN I WAS IN TRAINING ON 06/18 AND 06/19. BERNSTEIN REPLIED IN PART, "WE CAN START TOMORROW ON SOME THINGS AND PICK UP MORE THE FOLLOWING WEEK."

ON 06/17/15, I MADE CONTACT WITH BERNSTEIN AT APPROXIMATELY 0935 HOURS. I APOLOGIZED FOR NOT BEING ABLE TO CALL BETWEEN 0800 AND 0900. I EXPLAINED I WAS ON MY WAY TO A MEETING AND COULD ONLY SPEAK FOR A FEW MINUTES. BERNSTEIN WAS SPEAKING TO ME ON A SPEAKERPHONE AND SUBSEQUENTLY ADVISED ME THAT HE HAD HIS BUSINESS ADVISOR, KEVIN HALL, LISTENING TO THE CALL. I TOLD BERNSTEIN I WAS NOT COMFORTABLE SPEAKING WITH HIM ABOUT THE SPECIFICS OF HIS ALLEGATIONS

WITH HIM BEING ON A SPEAKER PHONE IN FRONT OF SOMEONE NOT INVOLVED IN THE CASE. DURING THE COURSE OF THE CALL, BERNSTEIN BROUGHT UP OLD ISSUES THAT WERE NOT PART OF MY INVESTIGATION. I TRIED TO EXPLAIN TO HIM AGAIN THAT I WAS NOT LOOKING INTO THE ALREADY INVESTIGATED ISSUES AND HE BECAME UPSET. WHEN ASKED WHAT NEW CRIMES HE WAS REFERRING TO, BERNSTEIN TOLD ME JUDGE COLIN SHOULD BE INVESTIGATED FOR "FRAUD UPON THE COURT". I EXPLAINED I WAS UNAWARE OF THAT PARTICULAR CHARGE AND ASKED IF HE COULD PROVIDE A STATUTE NUMBER SO I COULD LOOK INTO IT. BERNSTEIN THEN STATED IT WAS AN OBSTRUCTION CHARGE. BERNSTEIN SPOKE OF FRAUDULENT ACTS HE BELIEVED JUDGE COLIN HAD BEEN INVOLVED IN DURING THE TIME BERNSTEIN'S CASE WAS ASSIGNED TO HIS DOCKET.

BERNSTEIN MADE REFERENCE TO THE FACT THAT I WAS NOT DOING MY JOB AND ASKED IF HE NEEDED TO SPEAK WITH CAPTAIN GREGG AGAIN. I TOLD HIM BY DOING SO WOULD BYPASS MY ENTIRE CHAIN OF COMMAND AND I COULDN'T UNDERSTAND WHY HE WOULD FEEL THE NEED TO DO THAT. BERNSTEIN THEN ASKED IF HE SHOULD GO TO INTERNAL AFFAIRS. I EXPLAINED TO HIM THAT I WAS DOING MY JOB AND THE CASE WOULD PROBABLY COME BACK TO ME EVEN AFTER HE SPOKE WITH WHOMEVER HE WAS GOING TO SPEAK TO. DURING THIS CONVERSATION I COULD HEAR HALL IN THE BACKGROUND SPEAKING TO BERNSTEIN AS IF HE WAS GIVING HIM THINGS TO SAY OR RESPONDING TO THINGS I HAD SAID. IT WAS VERY DIFFICULT TO CONVERSE WITH BERNSTEIN DURING THIS CALL, AS HE WOULD SPEAK OVER ME AS I WAS TRYING TO ANSWER HIS QUESTION OR EXPLAIN THINGS TO HIM. I DID NOT ADDRESS THE EMAIL THAT HAD BEEN SENT TO HIM FROM ATTORNEY ROSE AND HE DID NOT BRING IT UP EITHER. UPON REACHING MY DESTINATION, I ADVISED BERNSTEIN THAT I WOULD HAVE TO END OUR CALL AND I WOULD ATTEMPT TO REACH HIM LATER IN THE DAY. I ATTEMPTED TO REACH BERNSTEIN ON BOTH HIS OFFICE AND CELL NUMBERS LATER IN THE AFTERNOON. BOTH ATTEMPTS WERE MET WITH NEGATIVE RESULTS.

ON 06/23/15, I RECEIVED AN EMAIL FROM BERNSTEIN INQUIRING IF I WOULD HAVE TIME TO SPEAK WITH HIM ON THE 23RD OR 24TH. I REPLIED TO THE EMAIL AND IT WAS AGREED WE WOULD SPEAK ON 06/24/15 BETWEEN 0800-1000 HOURS. LATER THAT AFTERNOON, BERNSTEIN NOTIFIED ME BY EMAIL THAT HE WAS GOING TO HAVE TO RESCHEDULE THE MEETING AS HE WOULD NEED TO BE IN MIAMI TESTIFYING AT ANOTHER COURT CORRUPTION HEARING FOR A PROBATE VICTIM. HE INQUIRED AS TO WHETHER THE FOLLOWING DAY AT THE SAME TIME WOULD BE OK. I ADVISED HIM I WOULD NOT KNOW UNTIL LATE IN THE AFTERNOON. I WAS UNABLE TO CALL BERNSTEIN DUE TO BEING CALLED OUT FOR AN IN PROGRESS CASE.

ON 06/25/15, BERNSTEIN SENT ME AN EMAIL REQUESTING A TIME WHEN WE COULD CONTINUE OUR DISCUSSION REGARDING THE NEW CRIMES AND OLD CRIMES THAT WERE DISCUSSED THE PRIOR WEEK. I RESPONDED TO BERNSTEIN IMMEDIATELY ADVISING HIM THAT I WAS DOING A SEARCH WARRANT THAT MORNING AND I WAS UNSURE HOW LONG IT WOULD TAKE. I ADVISED HIM I WOULD GAUGE THE REST OF THE DAY AND GIVE HIM A CALL LATER IN THE AFTERNOON. LATE IN THE AFTERNOON OF 06/25/15, I ATTEMPTED

CONTACT WITH BERNSTEIN AT HIS OFFICE NUMBER. THE CALL WAS ANSWERED BY HIS WIFE WHO TOLD ME BERNSTEIN WAS NOT THERE. I ASKED IF SHE THOUGHT I COULD REACH HIM ON HIS CELL PHONE AND AFTER A BRIEF HOLD, SHE CAME BACK ON THE LINE AND ADVISED BERNSTEIN WAS NOW PRESENT AND COULD TAKE MY CALL. UPON BERNSTEIN COMING ON THE LINE I REALIZED HE WAS ON A SPEAKERPHONE. I EXPLAINED THAT I COULD NOT HEAR HIM VERY WELL AND ASKED HIM TO TAKE THE SPEAKERPHONE OFF. BERNSTEIN ADVISED HIS BUSINESS ADVISOR, HALL, WAS PRESENT AND WOULD BE MONITORING THE CALL.

DURING THE COURSE OF THIS CONVERSATION, BERNSTEIN AGAIN SPOKE OF A NUMBER OF FRAUDS AGAINST THE COURT HE BELIEVED JUDGE COLIN HAD COMMITTED THAT HE WISHED HIM INVESTIGATED AND PROSECUTED FOR. BERNSTEIN ADVISED ME HE WAS AWARE THAT KRATISH HAD COME TO SEE ME AT MY OFFICE AND I HAD TURNED HER AWAY. I TRIED TO EXPLAIN THIS WAS NOT ACCURATE AND THAT I HAD SPOKEN WITH KRATISH AT HER ATTORNEY'S OFFICE, AND HAD SPOKEN WITH OTHER SUBJECTS AS WELL IN REGARD TO THIS INVESTIGATION. UPON BROACHING THE SUBJECT OF THE RICO CASE IN NY THAT BERNSTEIN HAD MENTIONED ON A NUMBER OF OCCASIONS AND INQUIRING AS TO THE STATUS OF THE CASE, BERNSTEIN BECAME VERY UPSET. BERNSTEIN ACKNOWLEDGED THE CASE WAS DISMISSED IN 2008 BUT STATED HE WAS FILING AN APPEAL AS NEW ALLEGATIONS AND EVIDENCE HAD COME TO LIGHT.

BERNSTEIN ACCUSED ME OF NOT DOING MY JOB AND AS HE SPOKE HE WOULD SAY "AND YOU TOLD ME OR AND YOU DID OR DIDN'T DO THIS". I EXPLAINED TO HIM THAT A NUMBER OF THINGS HE WAS SPEAKING OF HAD NOTHING TO DO WITH ME OR MY PORTION OF THE INVESTIGATION. BERNSTEIN REPLIED THAT WHEN HE SAID "YOU" HE WAS REFERRING TO PBSO IN CERTAIN INSTANCES BUT WASN'T CLEAR WHICH INSTANCES HE WAS REFERRING TO. BERNSTEIN FELT THAT ROBERT SPALLINA SHOULD HAVE BEEN ARRESTED AND COULD NOT UNDERSTAND WHY HE HAD NOT BEEN ARRESTED AS OF YET. I ADVISED BERNSTEIN IT WAS NOT UP TO HIM AS TO WHETHER OR NOT SPALLINA WAS ARRESTED AND ANOTHER DETECTIVE HAD HANDLED THAT PART OF THE INVESTIGATION. AS BERNSTEIN BECAME MORE UPSET WITH THE ANSWERS HE WAS RECEIVING FROM ME, THE ISSUE OF FEDERAL JURISDICTION CAME UP AS BERNSTEIN HAD MADE ALLEGATIONS OF INTERSTATE MAIL AND WIRE FRAUD. I ADVISED HIM HE COULD SEEK ASSISTANCE FROM A FEDERAL AGENCY AND THAT I WOULD WRAP UP MY CASE AND HE COULD MOVE FORWARD FEDERALLY, ALTHOUGH I COULD NOT THINK OF AN AGENCY THAT WOULD TAKE THE CASE. BERNSTEIN STATED HE DID NOT WISH TO DISCUSS THIS CASE WITH ME ANY FURTHER, YET HE CONTINUED TO SPEAK TO ME. AS I TOLD BERNSTEIN I WOULD BE COMPLETING MY REPORT, HE STATED HE DID NOT WANT ME TO DO THAT AS HE WAS GOING TO BE CONTACTING CAPTAIN GREGG AND POSSIBLY INTERNAL AFFAIRS. BERNSTEIN THEN ASKED FOR THE NUMBER TO INTERNAL AFFAIRS AND I PROVIDED HIM INFORMATION AS TO HOW TO REACH THEM THROUGH THE MAIN PBSO NUMBER. BERNSTEIN CONTINUED TO SPEAK TO ME AND SHORTLY THEREAFTER THE CALL WAS CONCLUDED.

ON 06/29/15, I RECEIVED AN EMAIL FROM BERNSTEIN IN REGARD TO THE

INVESTIGATION. THE EMAIL WAS COPIED TO 13 OTHER RECIPIENTS. THE EMAIL AND ITS ATTACHMENTS AS WELL AS ALL OF THE EMAILS RECEIVED FROM BERNSTEIN DURING MY PORTION OF THIS INVESTIGATION WILL BE TRANSFERRED TO DISK AND PLACED INTO PBSO EVIDENCE.

IT SHOULD BE NOTED THAT BERNSTEIN HAS YET TO DISCLOSE TO ME HE WAS IN RECEIPT OF THE EMAIL OF 05/20/15 FROM ATTORNEY ROSE DESCRIBING THE DISCOVERY OF THE ORIGINAL TRUST DOCUMENTS, WHICH WAS THE BASIS FOR THIS ADDITIONAL INVESTIGATION AND THAT BERNSTEIN ALLEGED WERE FORGED AND/OR DID NOT EXIST. IT IS NOT KNOWN IF HE IS AWARE THAT I HAVE MET WITH ROSE AND VIEWED THE ORIGINAL DOCUMENTS OR THAT KRATISH HAS IDENTIFIED THE SIGNATURES ON THE COPIES OF THE DOCUMENTS SHOWN TO HER AS BEING HER SIGNATURE.

BASED UPON THE TOTALITY OF THE INVESTIGATIVE EFFORT, I DO NOT FIND EVIDENCE OR PROBABLE CAUSE TO SUPPORT ANY CRIMINAL CHARGES. THIS CASE WILL BE CLASSIFIED AS A NON-CRIMINAL INFORMATION REPORT.

DETECTIVE ANDREW PANZER #6685
06/30/15
TRANS. VIA EMAIL/COPY/PASTE: 07/02/2015/MDR/#6405

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APPENDIX 21

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IN THE SUPREME COURT OF FLORIDA

CAUSE NO._____

UNDERLYING CASES NUMBERS

1. **CASE: 502015CP002717XXXXNB - SIMON BERNSTEIN ESTATE - JUDGE COATES**
   CASE: 502012CP004391XXXXSB – SIMON BERNSTEIN ESTATE - JUDGE COLIN
   CASE: 20I2CP004391 IX – SIMON BERNSTEIN ESTATE - JUDGE DAVID FRENCH
2. **CASE: 502011CP000653XXXXSB – SHIRLEY BERNSTEIN ESTATE - JUDGE COLIN**
3. **CASE: 502014CP002815XXXXSB – OPPENHEIMER V. BERNSTEIN MINOR CHILDREN - JUDGE COLIN**
4. **CASE: 502014CP003698XXXXSB – SHIRLEY TRUST CONSTRUCTION - JUDGE COLIN**
5. **CASE: 502015CP001162XXXXSB – ELIOT BERNSTEIN V. TRUSTEE SIMON TRUST CASE - JUDGE COLIN**
6. **CASE: 502014CA014637XXXXMB - JUDGE KEYSER**
   ***ALL SIX CASES WERE TRANSFERRED TO JUDGE COATES WHO RECUSED SUA SPONTE AT THE FIRST HEARING**

OTHER RELATED CASE

7. **CASE: 13-CV-03643 - FEDERAL LAWSUIT IN THE US DISTRICT COURT OF EASTERN ILLINOIS, BEFORE THE HON. JUDGE JOHN ROBERT BLAKEY, PREVIOUSLY BEFORE JUDGE AMY ST. EVE.**

IN THE ESTATES AND TRUSTS OF SIMON LEON BERNSTEIN, SHIRLEY BERNSTEIN AND PETITIONER'S MINOR CHILDREN TRUSTS

ELIOT IVAN BERNSTEIN,

PETITIONER

PETITION FOR ALL WRITS, WRIT OF PROHIBITION, WRIT OF MANDAMUS AND PETITION TO STAY CASES AND TEMPORARILY RESTRAIN SALE, TRANSFER, DISPOSITION OF ANY ASSET AND FOR PRESERVATION OF ALL EVIDENCE

Eliot Ivan Bernstein
Pro Se
2753 NW 34th St.
Tel: (561) 245-8588
iviewit@iviewit.tv
www.iviewit.tv

PETITION FOR ALL WRITS, WRIT OF PROHIBITION, WRIT OF MANDAMUS AND PETITION TO STAY CASES AND TEMPORARILY RESTRAIN SALE, TRANSFER, DISPOSITION OF ANY ASSET AND FOR PRESERVATION OF ALL EVIDENCE

Now comes ELIOT IVAN BERNSTEIN ("PETITIONER") who respectfully petitions and pleads and shows this court as follows:

1. This is a Petition for All Writs and is a Writ of Mandamus, Writ of Prohibition and a Temporary Restraining Order-Stay prohibiting any transfer, sale or disposition of any assets herein under the Estates and Trusts of Simon and Shirley Bernstein and Trusts of PETITIONER'S minor children and further requiring the parties to preserve any and all evidence, documents, records, notes, statements, properties and materials relating to these Estate and Trust matters in all cases stated in the caption.

2. It is respectfully submitted that Hon. Judge Martin Colin ("COLIN") has failed to perform mandatory duties under Florida law by failing to mandatorily Disqualify himself under the Judicial Canons by instead issuing a "Recusal" Order sua sponte within 24 hours of Denying the Disqualification motion "as legally insufficient" and then after "Recusal" acted outside of his jurisdiction to poison and prejudice these cases by communicating with other Judges to transfer the cases while acting as a "material witness" to fraud upon and in his own court. In so doing Judge Martin Colin has acted in excess of his jurisdiction and outside the law and must be prohibited by the writ herein. Because the Orders of Judge Colin

who should have mandatorily Disqualified are a nullity and void and must be officially voided, there are no valid and proper Orders under which the parties are acting and thus the parties herein and each case listed in the caption shall be temporarily restrained from any further transfers, sale, disposition or compromise of any asset herein pending proper determinations of authority to act, proper determinations of who is and should be Trustee, the Personal Representative and what Dispositive documents prevail and other substantive orders in the case.

I. BASIS FOR INVOKING JURISDICTION

3. This is an Original Proceeding filed in the Florida Supreme Court pursuant to Florida Rule of Civil Procedure 9.100(b) and 9.030 for extraordinary writs.

4. Florida Rule of Appellate Procedure Provides:

> **Original Jurisdiction.** The Supreme Court may issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction, and may issue writs of mandamus and quo warranto to state officers and state agencies. The supreme court or any justice may issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

5. This Court has jurisdiction to issue writs of mandamus, prohibition and any other writ within the exercise of its judicial authority. See McFadden vs. Fourth Dist. Court of Appeal, 682 So.2d 1068 (Fla. 1996).

6. Florida Rule of Appellate procedure 9.100(n) provides:

> **Order to Show Cause.** If the petition demonstrates a preliminary basis for relief, a departure from the essential requirements of law that will cause material injury for which there is no adequate remedy by appeal, or that review of final administrative action would not provide an adequate remedy, the court may issue an order either directing the respondent to show cause, within the time set by the court, why relief should not be granted or directing the respondent to otherwise file, within the time set by the court, a response to the petition. In prohibition proceedings, the issuance of an order directing the respondent to show cause shall stay further proceedings in the lower tribunal.

7. Petitioner filed a "VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN" (EXHIBIT A) and seeks Mandamus to compel Hon. Judge Martin Colin to strike his Order Denying the Petition (EXHIBIT B) for mandatory Disqualification as "legally insufficient," further strike his Order (EXHIBIT C) for Sua Sponte Recusal ordered the day after denying the Petition for Disqualification and enter an Order of Disqualification as required by law. Petitioners also seek Prohibition which is also appropriate to prevent Judge Colin from further acting in excess of lawful authority and outside his jurisdiction as Judge Colin acted unlawfully in denying the Motion for Mandatory Disqualification as "legally insufficient" and by his own Sua Sponte Recusal Order issued within 24 hours thereafter showed he had continued to act outside the law and further tainting and poisoning the case by communicating with two

other local Judges which ultimately lead the action which is immersed in fraudulent filings, fraudulent documents and fraud on the court to somehow be Transferred to one Hon. Judge Coates who himself was a Partner working at Proskauer Rose whose conduct and actions are clearly implicated in the case and in fact Judge Coates worked in the office of Proskauer Rose right across the hall from Petitioner here in Boca Raton, Florida during key times at issue in the underlying actions.

II. IMMINENT AND IMMEDIATE PENDING ACTIONS MAKING PROHIBITION, STAY AND TEMPORARY RESTRAINING ORDER APPROPRIATE

8. Prohibition and further Stay and Temporary Restraining Order is further appropriate since the unlawful acts of Judge Colin in denying Disqualification and instead issuing "Recusal" could have the effect of leading the parties herein to further act in fraud such as an immediately imminent illegal Sale of the deceased Simon Bernstein home in Boca Raton, Florida pursuant to an illegal Order of Sale by Judge Colin which should have been vacated as a nullity upon his mandatory disqualification, yet despite being a legal nullity and there being no lawful authority to act, the parties acting in fraud could infer this Sale still proper to move forward and thus must be Stayed and temporarily restrained pending further hearings and determinations. Of fundamental relevance herein and as set out in the mandatory Disqualification motion of Judge Colin, actions were

permitted to continue in fraud in his courts for nearly 2.5 years yet Judge Colin had never held a hearing to determine a proper Trustee of the Trusts, meaning of the Trusts, and likewise never held a hearing to determine the validity of any Will or Trust nor the Personal Representative of either estate and instead Judge Colin's Court simply permitted parties intertwined in the Fraud such as Ted Bernstein to continue to act illegally selling off property, stealing personal property and making other dispositions and now the illegal sale of the deceased Simon Bernstein home by Ted Bernstein is imminently scheduled for sale by tomorrow, June 10, 2015.

III. STATEMENT OF FACTS

9. Petitioner herein, Eliot I. Bernstein, filed a detailed and specified Motion for mandatory Disqualification of Judge Colin on or about May 14, 2015. The motion satisfied all requirements under the law and rules pertaining to mandatory Disqualification under the Canons of Judicial Conduct and was proper in all respects. The motion, which is annexed hereto, set out mandatory Disqualification under several provisions (Florida Rule of Judicial Administration 2.330, Florida Statute 38, and Florida Code of Judicial Conduct, Canon 3(B)7, 3(B)5, 3E(1), 3(E)1a, 3(E)1b and 3(E)1b(iv)) pertaining to (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer; (b) or personal

knowledge of disputed evidentiary facts concerning the proceeding; (c) is to the judge's knowledge likely to be a material witness in the proceeding.

10. While Petitioner set out a proper legally sufficient motion to mandate Disqualification under all three grounds, most troubling and critical for purposes of the Writ of Prohibition as it relates to Judge Colin's conduct acting in excess and outside jurisdiction is the continuing to act and interfere in proper adjudication of the cases with other judges while being a material witness to the ongoing and continuing frauds in his courts and on his court. See, COLIN Sua Sponte Recusal issued within 24 hours of illegal denial of mandatory disqualification motion.

11. It is noted that at the time this mandatory disqualification motion had been filed, Judge Colin had already permitted the cases to continue for nearly 2.5 years without ever holding a hearing to determine who the proper Trustees were, who proper Personal Representatives of the Estate were and are, what the construction and meaning of the Trusts and Estates should be all the while permitting parties such as Ted Bernstein and attorneys Tescher and Spallina who are involved in the direct frauds upon his court to nonetheless continue acting permitting properties to be illegally sold, substantial monies and assets transferred and disposed of while denying Petitioner and Petitioner's minor children rights of inheritancy causing substantial financial and related harm.

12. Such Disqualification motion was filed against the further backdrop of a case wherein the Trustee being illegally allowed to act, Ted Bernstein, had such concerns and suspicions that deceased Simon Bernstein (his father) may have been murdered that he sought action by the Coroner, action to get an independent autopsy and a complaint to the Palm Beach County Sheriff's all within a short amount of hours after Simon Bernstein passed.

13. The Motion for Mandatory Disqualification was filed nearly two years after Petitioner had first filed an Emergency Motion in both the Estate cases of Shirley and Simon Bernstein showing direct fraud on the Court by the filings of Attorneys Donald R. Tescher, Esq. and Robert L. Spallina, Esq. and by the time the May 2015 Disqualification was filed a paralegal Notary Public Kimberly Moran who was employed by Tescher and Spallina had already been under investigation and later charged and convicted in Notary Fraud. Attorney Spallina later admitted to the Palm Beach Sheriff of fraudulent actions by himself personally in conspiracy with his partner Tescher involving one of the Trusts (2008 Shirley Bernstein Trust), yet Judge Colin, despite stating on the Record at the first hearing on September 13, 2013 that Miranda warnings were appropriate for Ted Bernstein and his attorneys Tescher and Spallina and others, continued to allow the parties to move forward in fraud and held no hearings to correct the

frauds and took no actions to refer the attorneys Spallina and Tescher to proper authorities.

14. While Judge Colin's full involvement in the frauds is presently unknown, it is clear that he was made directly aware of the frauds by Petitioner's Emergency motion filing in May, 2013, if not directly aware or involved earlier.

IV. MANDAMUS

15. A Writ OF Mandamus is appropriate and required to direct JUDGE COLIN to vacate his prior illegal ORDERS, specifically the Sua Sponte Order of Recusal and Order Denying the motion for Disqualification as "legally insufficient" and to further enter an Order of Disqualification and Vacating all other Orders in the case. The writ of mandamus is appropriately used to require a government actor to perform a nondiscretionary duty or obligation that he or she has a clear legal duty to perform. See Austin v. Crosby, 866 So. 2d 742, 743 (Fla. 5th D.C.A. 2004) (holding that mandamus may only be granted if there is a clear legal obligation to perform a duty in a prescribed manner). It applies to enforce a right already established. Austin, 866 So. 2d at 744. The writ of mandamus will issue to require a trial court to comply with the mandate of an appellate court. Superior Garlic Int'l, Inc. v. E&A Produce Corp., 29 Fla. L. Weekly D2341 (Fla. 3d D.C.A. Oct. 20, 2004).

16. "Mandamus is a common law remedy used to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law." Poole v. City of Port Orange, 33 So. 3d 739, 741 (Fla. 5th DCA 2010) (citing Puckett v. Gentry, 577 So. 2d 965, 967 (Fla. 5th DCA 1991)). "A duty or act is ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law." Austin v. Crosby, 866 So. 2d 742, 744 (Fla. 5th DCA 2004)."

17. "Mandamus is a common law remedy used to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law." Poole v. City of Port Orange, 33 So. 3d 739, 741 (Fla. 5th DCA 2010) (citing Puckett v. Gentry, 577 So. 2d 965, 967 (Fla. 5th DCA 1991)). "A duty or act is ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law." Austin v. Crosby, 866 So. 2d 742, 744 (Fla. 5th DCA 2004).

18. Petitioner's motion for Disqualification clearly shows it was properly filed according to law and was facially valid and sufficient and thus Petitioner has established a clear legal right to Disqualification by Judge Colin and mandamus is thus appropriate to enforce this right. The only question before this Court is whether Petitioner met this burden in the filing of the original Disqualification and this Petition and such original Disqualification motion (EXHIBIT A) clearly

shows the burden was met by Petitioner thus making mandamus appropriate at this time.

DISQUALIFICATION MOTION SHOWS JUDGE COLIN AS MATERIAL FACT WITNESS

19. The Disqualification motion clearly demonstrated Colin as a material fact witness in relation to the fraud by Attorneys Spallina and Tescher specifically in relation to an Oct. 24, 2012 filing wherein Attorney Spallina files multiple documents allegedly signed by then Deceased Simon Bernstein nearly 6 months before, thus using a Deceased person to attempt to close the Estate of Shirley Bernstein. The Disqualification motion further shows Judge Colin and his Court Officer having Ex Parte contact with Attorney Spallina two weeks later on Nov. 5, 2012 but not even this Ex Parte communication is docketed until the next day, Nov. 6, 2012.

20. An excerpt of the Disqualification motion shows as follows:

> 19. This lack of impartiality by Judge Colin and his Court is further compounded by the facts shown by the face of the Court's own Docket and files that it took at least overnight to even Docket the Nov. 5, 2012 Ex Parte Memo on Nov. 6th, 2012 which leads right in and goes hand in hand with the other mandatory grounds for Disqualification on his own initiative for now having knowledge of disputed evidentiary facts involving the proceeding and being likely to be called as a material and-or fact witness, as it is unknown:
>
> a. Were the Oct. 24, 2012 Filings filed in person and if so by whom?;
> b. If filed in person is Case Manager Astride Limouzin the person who "received' the filings for the Court or is she just the go between with Spallina office and Judge Colin on the Ex Parte Memo?

c. Who communicated on the file with Judge Colin? Just Limouzin or any other Clerks and Case Managers?
d. If filed by Mail then by whom and where is the correspondence and envelopes that the filings arrived in to show who signed the correspondence and mailed them if so? ;
e. If filed by mail then where are the envelopes and correspondence or has this evidence been destroyed?
f. Why such a long delay between when the Nov. 5th 2012 Ex Parte Memo was created and then Docketed on Nov. 6, 2012?
g. How was the Memo transmitted to Spallina office? By fax, by mail? Were any phone calls made by the Court or Court Clerks and Case Managers? Any other Ex Parte communications?
h. Why was the Nov. 5th, 2012 Memo done Ex Parte and not Communicated to all parties with standing in Shirley's case not only for purposes of avoiding impartiality but also to timely apprise the parties of said filings and defects?
i. Did Judge Colin review the documents?
j. Did Judge Colin know if Simon was deceased and when did he know? Who told him?

DISQUALIFICATION MOTION SHOWS LACK OF IMPARTIALITY, BIAS PREJUDICE AND REASONABLE FEAR OF NOT GETTING FAIR TRIAL

21. The motion for mandatory disqualification further shows as follows:

> 20. For purposes of avoiding even the appearance of impropriety, Judge Colin should have Disqualified on Nov. 5, 2012 or at the moment his Court and - or Court Clerk or Case Manager had any involvement in the receipt, handling and processing of any of the filings of Oct. 24, 2012 made by a deceased Personal Representative/Executor, Simon Bernstein.
>
> 21. Judge Colin should have disqualified then and must be disqualified now.
>
> 22. Even assuming arguendo that Judge Colin had no actual knowledge of the Oct. 24, 2012 filings attempting to use Deceased Simon Bernstein to close the Estate of Shirley Bernstein and had no actual knowledge of the Nov. 5th 2012 Ex Parte communication on his behalf to Attorney Spallina directly involved in the fraudulent

illegal acts of using Deceased Simon Bernstein to close Shirley's Estate, at that time, clearly by the time Judge Colin issued the Order to Close the Estate in Jan. 2013[1] Judge Colin must be presumed to have read and reviewed the documents and filings upon which he issues and rationally bases his Order closing the Estate in Jan. 2013 upon and thus should have not only not issued such an Order but should have halted, frozen and stayed the case and case files of all those involved for investigation by this time and then Disqualified himself as clearly at minimum his own Court officers and Case Manager Astride Limouzin had direct involvement and knowledge of material facts and he could not be in charge of investigating himself and his officers.

23. Now if it is assumed arguendo that Judge Colin will somehow claim he had no knowledge of the Court Docket and filings upon which he issued in Jan. 2013 closing Shirley's Estate upon documents filed by Attorney Spallina which purport to have Simon Bernstein take action as the Personal Representative/Executor while deceased because somehow Judge Colin will claim that he had not read the documents upon which he based this Order, then this raises a separate basis of Disqualification under the rule requiring the Judge to diligently (and competently) hear cases that are assigned and thus Judge Colin should have been disqualified then and must now be disqualified.

24. Yet even if it is assumed arguendo that Judge Colin had no knowledge of these matters as of the date he issues the Jan. 2013 Order to close Shirley's estate, which of course again raises Disqualification under the rule of "diligently" hearing cases assigned, clearly by the time of May 06, 2013 upon the first filing of Petitioner's "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"[2] this Court

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[1] Order of Discharge
http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130103%20Order%20of%20Discharge%20Shirley%20Signed%20Judge%20Colin%20Scratched%20Date%20no%20initials.pdf

[2] May 06, 2013 Petition @ URL
http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf

and Attorney Spallina are both put on Notice by Petitioner's motion of :

a. The fraud and alleged fraud in the filings directly involving Spallina including but not limited to documents filed to close Shirley's Estate by Simon Bernstein acting as the Personal Representative of Shirley when Simon Bernstein was already Deceased (Pages 40-43 - Section "IX.FORGED AND FRAUDULENT DOCUMENTS FILED IN THE ESTATE OF SHIRLEY IN THIS COURT BY TESCHER AND SPALLINA CONSTITUTING A FRAUD ON THIS COURT AND THE BENEFICIARIES AND MORE);
b. That there were improper notarizations in Dispositive Documents including a Will and Trust (Pages 43-45 Section "X. INCOMPLETE NOTARIZATION IN THE ALLEGED 2012 AMENDED TRUST OF SIMON AND MORE" and "XI. INCOMPLETE NOTARIZATION IN THE 2012 WILL OF SIMON AND MORE")
c. That Spallina and Tescher had withheld from beneficiaries in violation of Probate Rules and Statutes any documents on Shirley's Estate and Trusts for approximately 18 months which should have created further bases for this Court to Order investigation and a prompt hearing to determine truth and authenticity in the Trusts and Estate dispositive documents (Pages 37-40 Section "VIII. PETITIONER FORCED TO RETAIN COUNSEL DUE TO PERSONAL REPRESENTATIVES LACK OF DUTY AND CARE, BREACHES OF FIDUCIARY DUTIES AND CONFLICTS OF INTEREST REGARDING MISSING ESTATE ASSETS AND DOCUMENTS AND MORE");
d. Of utmost importance should have been information that Ted Bernstein himself and with the aid of his counsel reported the possible Murder of he and Petitioner's Father, which was reported by Ted Bernstein on the date Simon passes away to the Palm Beach County Sheriff and the Coroner and starting two official inquiries into allegations of Murder[3] (Pages 85-

[3]Palm Beach County Sheriff and Coroner's Reports (Pages 25-28 Sheriff Report and Pages 32-41 Coroner Report) http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf
The Court should note that the initial autopsy failed to run a poison heavy metal test but Petitioner upon finding out that this had not been done ordered the Coroner to test for poison and on March 10, 2014, over a year and

86 Section "XVII. ALLEGED MURDER OF SIMON BERNSTEIN");

e. That the Court and Spallina are notified of substantial personal property missing (stolen) including jewelry and artwork worth millions of dollars and that Shirley's condominium had already been sold by Ted Bernstein and yet no Determination had been made by this Court regarding the validity of the Trusts and Ted Bernstein's right to act and dispose of assets (Pages 51-57 "XIV. VANISHING ESTATE ITEMS AND ASSETS");

f. That the Court and Spallina are notified of the "Elephant in the Room" relating to the Iviewit stock and Intellectual Property Interests that Simon Bernstein had, worth an estimated billions of dollars, which is tied into a prior RICO action and a prior car-bombing of Petitioner's Minivan (see www.iviewit.tv for graphic images of the Car Bombing that looks like a scene from a war) that was now relating to the case before this Court (Pages 57-82 Section "XV. THE ELEPHANT IN THE ROOM THE IVIEWIT COMPANIES STOCK AND PATENT INTEREST HOLDINGS OWNED BY SIMON AND SHIRLEY, AS WELL AS, INTERESTS IN A FEDERAL RIC0 ACTION REGARDING THE THEFT OF INTELLECTUAL PROPERTIES AND ONGOING STATE, FEDERAL AND INTERNATIONAL INVESTIGATIONS."

g. That the Court is notified of an alleged Life Insurance fraud scheme (Pages 27-37 Sections "VI. MISSING LIFE INSURANCE TRUST AND LIFE INSURANCE POLICY OF SIMON" and "VII. INSURANCE PROCEED DISTRIBUTION SCHEME");

h. That other assets were remaining that should have been been frozen such as the St. Andrew's home recently listed by Petitioner's father weeks before his passing for over $3 million.

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half after Simon died, it was completed (Pages 42-44) and several poisons showed elevated levels and the deceased had morphed to a **113 year old male.**

25. Simply reviewing the September 13, 2013 Hearing Transcript[4] of a proceeding before Judge Colin regarding the Emergency Petition filed on May 06, 2013 and heard on September 13, 2013 (held on the anniversary of Simon's death four months after filing) shows further clear basis for Disqualification of Judge Colin on numerous grounds including knowledge of disputed evidentiary facts and likelihood of being called as a fact witness premised upon his involvement and knowledge of the Ex Parte Communications with Attorney Spallina on Nov. 5th 2012 after the fraudulent filings of Spallina on Oct. 24, 2012 but also based upon clear bias and prejudice and lack of impartiality as by this date September 13, 2013 Judge Colin:

a. knows about Tescher and Spallina using alleged documents of Deceased Simon Bernstein to close Shirley's Estate filed on Oc. 24, 2012;
b. knows of the fraudulent Notaries made upon the Waivers that had first been rejected by his Court via the Ex Parte Memo of Nov. 5, 2012 for having no Notaries and then later submitted with the fraudulent Notaries to help close the Estate;
c. knows that Tescher and Spallina have never been Ordered to Show Cause before his Court about the fraud;
d. knows he had not referred Tescher and Spallina's law firm's conduct for Attorney Discipline investigation;
e. knows of the claims of substantial personal properties stolen and missing from Shirley's Estate;
f. knows of Spallina's firm withholding any documents on Shirley's Trusts from beneficiaries for over two years, which should have raised clear red flags particularly in light of the frauds on his own Court by Tescher and Spallina's firm;
g. knows of the failure to have any Accounting of Shirley's Estate with the failure ongoing for years by this time in violation of Probate Rules and Statutes;
h. knows he has conducted no Hearing to determine the proper construction and meaning of Shirley's Trusts and Estate, which remains incomplete to this date and determine who the proper Beneficiaries, Trustee and Representatives should be, all which remains unknown to this date;

[4] September 13, 2013 Hearing Judge Colin
http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20mirandas.pdf

i. knows that Ted Bernstein himself reported possible Murder of Simon Bernstein to police authorities and the state Medical Examiner for autopsy on the date of Simon's passing5;

j. knows of the "elephant in the room"6 being Iviewit and the Iviewit stock and patents valued in the billions involving Simon Bernstein and now a missing part of the Estates and Trusts and tied into a prior RICO and Antitrust Lawsuit and a car-bombing of Petitioner's minivan reported and investigated by authorities; and

k. knows that Petitioner's minor children have been intentionally and with scienter denied the trust and inheritance funds for their food, shelter, and well being for months that were all part of their inheritance and yet Judge Colin wants to talk instead that day for most of the hearing about Dunkin Donuts, Burger King and having Petitioner cut his Court lawn[7], instead of addressing any of the serious crimes and frauds in his own Court where he and his Court staff are now witnesses and centrally involved in the fraudulent activities.

26. Now perhaps Judge Colin missed lunch and was hungry that first hearing four months after an Emergency Motion was filed by Petitioner and was thinking about Dunkin Donuts and Burger King but there is no way to look at this proceeding and the transcript without not only finding clear bias and prejudice and lack of impartiality in adjudicating rights to such a gross degree as to constitute not only an abdication of Judicial function, duties and responsibility but done in such as way as to be a mockery of the judicial system and process and denying very important rights and claims raised in Petitioner's filings.

27. Consistent with what has emerged in not only this and other Florida Probate Courts but other Courts in New York and around the nation, a review of the Transcripts of proceedings before Judge Colin shows the standard "M.O.", modus operandi, used by

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[5] May 06, 2013 Petition – Already Exhibited Herein - Section III "POST MORTEM AUTOPSY DEMAND AND SHERIFF DEPARTMENT INVESTIGATION OF ALLEGATIONS OF MURDER"

[6] May 06, 2013 Petition – Already Exhibited Herein - Section XV "The Elephant in the Room" Pages 57-82

[7] September 13, 2013 Hearing Page 11
http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf

corrupted and conflicted Courts by neglecting and burying the real issues of fraud and integrity of proceedings and filings and actions of licensed attorneys and instead proceeding to threaten and harass those exposing the wrongdoings, as is the case with Petitioner as the exposer of fraud, who then is assaulted with multiple hearings for his alleged Contempt, attempts to have Guardians appointed over his family, threats of sanctions and acts of judicial mockery.

28. Judge Colin falsely claims on this September 13, 2013 date not only that no Emergency issues had been raised in Petitioner's Emergency Motion but also that no assets were left to freeze as requested in the relief of the Emergency Motion when in fact the St. Andrews's home that had been listed and valued at over $3 million dollars by Simon Bernstein in the months before his passing still had not been sold and of course there is and was the millions in personal property reported as missing and stolen and the illegal sale of Shirley's Trust Beach Condominium all of which can be subject to claw back processes and other injunctive relief while of course the very real emergency issues of actual fraud upon the Court had been shown involving Judge Colin, the Courts employees and his appointed Officers and Fiduciaries making them all Fact and Material Witnesses at minimum and thus emergency and related relief could and should have been granted, including the voluntary disqualification and more.

29. By the time of this hearing on September 13, 2013, not only did Judge Colin wholly fail to have attorneys Tescher and Spallina Show Cause after the Nov. 5, 2012 Ex Parte Memo and discovery of fraud filings by their office knowingly acting on behalf of their client a deceased Personal Representative/Executor Simon Bernstein to FRAUDULENTLY close Shirley's Estate, Judge Colin also wholly failed to have Attorney Tescher and Spallina and the alleged Fiduciary of Shirley's Trust Ted Bernstein answer in Court that day, especially after Tescher, Spallina and Ted Bernstein had never even submitted a written answer to Petitioner's very specific, detailed Emergency Motion filed May 06, 2013 and subsequently filed motions (Non-Emergency as Colin had forced Eliot to refile his Emergency Pleading several times as a Non-Emergency before allowing it to be heard) placing Tescher, Spallina and Ted Bernstein on further notice of fraud allegations and more.

30. The date of this Hearing was nearly an entire year after Tescher and Spallina had first submitted the fraudulent filings

before Judge Colin's Court in Oct. 2012 and yet they were not Ordered to answer the Emergency Petition while allowing Shirley's Estate and Trust to be squandered in fraud and unaccounted for, as Spallina, Tescher and Ted seized Dominion and Control of the Estates and Trusts of both Simon and Shirley Bernstein through a series of fraudulent dispositive documents and refused to give beneficiaries any documents in violation of Probate Statutes and Rules and Colin remained asleep at the wheel.

31. It is respectfully submitted that by this time on September 13, 2013, Judge Colin is engaging in the aiding and abetting of the fraud and attempting to cover up past fraud in, upon and by the Court, by what is known as "Steering" and orchestrating of the proceedings away from the crimes and criminals and begins a cleverly disguised retaliation against Petitioner that continues to bias and prejudice Petitioner to this date.

32. This can be more clearly seen in the subsequent Evidentiary Hearing of Oct 28, 2013 when again, Judge Colin at the helm, steers and directs the proceedings to avoid the issues of Fraud upon and before his own Court by limiting the proceeding to testimony about a $25,000 value to Shirley's Estate Inventory (which was never served to beneficiaries in Violation of Probate Rules and Statutes) and discusses not throwing Spallina's Legal Assistant and Notary Public, Kimberly Moran "under the bus" who has by this time admitted to the Governor's Office and West Palm Beach police that she not only falsely Notarized the Waivers, including for a deceased Simon but also forged the signatures for six separate parties, including for the decedent Simon Bernstein Post Mortem, that are ultimately filed before Judge Colin to illegally close the Shirley Estate. Note, while Moran admits to falsifying Notaries and forging signatures on Waivers, not only is there no full record of her acts before Colin's Court but more importantly none of her admissions addresses the other clear fraud such as the Petition for Discharge containing Spallina's signature on the document filed on behalf of Deceased Simon Bernstein on Oct. 24, 2012 by Tescher and Spallina, utilizing a Deceased person to close Shirley's Estate and Colin has direct knowledge that no examination of Spallina and Tescher regarding their involvement in the Petition and other document frauds used to close the Estate illegally and knowledge of Moran's admitted activities has occurred even to this date in his Court with his own office and Case Manager

implicated by the Ex Parte Memo yet Colin has continued to allow Ted Bernstein who has been represented by Spallina and Tescher continue to act with no accountability where almost all the crimes committed directly benefited Ted Bernstein who had been disinherited.

33. At no time does Judge Colin in the Evidentiary Hearing with Tescher, Spallina and Ted Bernstein present seek to ascertain the truth of the fraud, forgeries and fraud on his Court but more importantly wholly failed to force Spallina or Tescher to Show Cause or swear them in to answer questions to explain the acts of Tescher and Spallina's Legal Assistant and Notary Public Moran and explain their law firms acts of filing documents with a deceased client acting as a fiduciary while dead and more importantly no investigation into how Spallina's signature is on the Petition for Discharge also fraudulently filed before Judge Colin, which is Not the subject of any Admissions by his employee Kimberly Moran and where she was not involved in that crime.

34. Judge Colin simply later permits Spallina and Tescher to withdraw as attorneys, instead of removing them instantly and securing their files and the corpus of the Estate and Trusts while the material facts surrounding the fraud that directly involve Spallina by his own Signature on the Petition for Discharge, Judge Colin and his Case Manager Limouzin, by the Nov. 5th 2012 Ex Parte Memo communication remain undetermined and unheard.

35. These are additional grounds for removal in that Judge Colin's failure to Order attorneys Tescher, Spallina and the fiduciary Ted Bernstein at minimum to Show Cause before the Court on the frauds on the Court and for Discipline having actual knowledge of the substantial likelihood of misconduct by the fraud by presence of Spallina's own signature on the document purported to be April 9, 2012 Petition for Discharge but not filed with Judge Colin's Court until Oct. 2012 when Simon Bernstein is Deceased nearly a month is itself a failure to discharge Judicial obligations; and then being further Disqualified for being the necessary fact witness of his own Ex Parte Communication to Spallina as evidenced by the Nov. 5th, 2012 Memo and by prejudice and bias shown by the failure to Order Tescher, Spallina and Ted Bernstein for investigation and discipline and Show Cause before his own Court not only in Nov. 2012 but which has still not happened to this day in May of 2015 some 2.5 years later while permitting Ted

Bernstein to continue to act as Trustee and Personal Representative/Executor when Ted Bernstein is directly intertwined, interconnected and involved with his own counsel Spallina and Tescher (as they represented Ted in Shirley's Estate and Trusts while acting as Co-Personal Representatives and Co-Trustees of Simon's Estate and Trusts and further represented themselves in their fiducial capacities in Simon's Estate and Trusts) as attorneys involved in the fraud that ultimately benefit their client and business associate Ted and his lineal descendants who are all considered predeceased for all purposes of dispositions of the Shirley Trust and without their fraudulent documents and fraudulent scheme upon the Court would remain so.

36. That after reopening the illegally closed Estate of Shirley in the September 13, 2013 Hearing and immediately prior to the Evidentiary Hearing, Judge Colin, knowing of the Fraud on the Court and already stated to Ted and his counsel Spallina, Tescher and Manceri that he had enough evidence in the hearing to read them all their Miranda Warnings for two separate crimes identified in the hearing (the Moran fraudulent notarizations and forgeries and Spallina's using a dead Simon to posit documents with Court to close Shirley's Estate) then shockingly and appallingly appointed Ted as a Successor Personal Representative to the newly reopened Shirley Estate shortly thereafter although Ted was not then qualified to serve under Florida Probate Rules and Statutes..

37. It is noted that while an Attorney was present as Counsel for the Petitioner's Minor children in the hearing this Court held on or about Oct. 28 2013, the record should reflect that this counsel Brandan J. Pratt, Esq. not only failed to inform the Court he was retained to represent Petitioner's Minor children Josh, Jacob and Danny Bernstein and instead in the hearing misrepresented to the Court he was representing Eliot and Candice despite their opposition to this claim, but said counsel Pratt further wholly failed to properly and competently cross examine Spallina, Tescher, Moran and Ted Bernstein and call proper witnesses at this hearing to delve into the criminal and civil torts against the beneficiaries despite advance preparation and planning to the contrary with Eliot and Candice. Pratt claimed he was very close to Judge Colin after the hearing and knew what he wanted.

38. Counsel Pratt failed to examine any of the witnesses about the Tescher and Spallina Petition to Discharge fraud, the

fraudulent positing of fraudulent records with the court and failed to examine Ted Bernstein, Spallina and Tescher about known personal property items valued at over $1 million that they were in had custody over as fiduciaries that he knew were alleged stolen and Counsel Pratt was immediately after the hearing withdrawing as counsel but was requested by Petitioner in writing to notify his malpractice carrier of malpractice for his conduct and misrepresentations of this hearing. The Transcript in this regard clearly speaks for itself on what material issues were not only never addressed by Judge Colin but also never asked by Counsel Pratt. See Discharge letter to Counsel Pratt.

39. Improper representation by attorney Pratt, likely malpractice itself, does not eliminate Judge Colin's obligations to address fraud upon his own Court by licensed attorneys and fiduciaries he appointed and in fact the actions of attorney Pratt may likely be part of additional steering and orchestration of the proceedings to cover-up the real fraud and delay and denial to Petitioner, his wife Candice Bernstein, and their Minor children Josh, Jacob and Danny of lawful inheritance and monies due under the Trusts.

40. Pratt seemingly falls out of the sky days before the Hearing and is retained by Eliot and Candice for their children's representation, it was later learned that Pratt, on information and belief, was close personal friends and business associates with Andrew Shamp, Esq. and where Shamp it was later learned worked directly for Ted Bernstein in the past as an employee.

41. This pattern of aiding, abetting and obfuscation of the fraud and criminal enterprise and pattern of acts at play as seen further in Judge Colin's continued abdication of judicial functions in duties in relation to the sale of the St. Andrew's home.

42. This Court's recent Order on May 06, 2015 (which falls under the 10 day rule for disqualification herein) permitting the Sale of the St. Andrew's Home shows even further grounds for mandatory Disqualification of Judge Colin (on his own initiative without waiting for Pro Se Petitioner to file a disqualification pleading) although ample grounds have already been established dating back to Nov. 2012.

43. Judge Colin has absolute, unequivocal direct knowledge that no testimony of the alleged "buyer" occurred during the Hearing on the sale of the St. Andrew's Home and knows Florida

law requires no undue influence or pressure must be exerted or buyer or seller for there to be an "arms-length" transaction yet issues an Order May 6, 2015 as if the Buyer provided testimony when in fact the buyer's identity is not even known.

44. In fact, despite Florida's rigid Disclosure laws Judge Colin has withheld a lis pendens I attempted to file on the property and still has not let said lis pendens be filed or published to this Buyer or any prospective buyer and has threatened Petitioner that if he disclosed the Lis Penden or the fact that the home was tangled in these litigations he would hold him in contempt.

45. According to the Florida Real Property Appraisal Guidelines Adopted Nov. 26, 2002 by the Florida Department of Revenue Property Tax Administration Program Definitions Section 3.1.8 Arm's-Length Transaction: " This means a sale or lease transaction for real property where the parties involved are not affected by undue stimuli from family, business, financial, or personal factors." See, http://dor.myflorida.com/dor/property/rp/pdf/FLrpg.pdf.

46. Yet, not only does Judge Colin have actual knowledge he took no testimony from the Buyer since the Buyer was not only not present in Court but the identity not disclosed, but Judge Colin knows the case is ripe with nothing but pressure and undue influence such that Judge Colin has covered up fraud upon his own Court involving licensed attorneys, failed to discharge Judicial obligations and failed to abide by the Code of Judicial Conduct, knows the Trustee he is permitting to act Ted Bernstein reported a possible murder of Petitioner's father Simon Bernstein the property owner prior to passing, allowing Ted Bernstein to act despite knowing his attorneys and Ted are involved in fraud on the Court and yet failing to conduct a hearing into the construction and truth of the Trusts even though he says on the Record he knows he has to conduct a hearing and feigned at reading the attorneys Miranda Warnings, has reasons to investigate and suspect these are a continuation of RICO acts tied to a car-bombing, knows or has reason to know the sale is grossly undervalued at $1,100,000.00 as the property was listed for $3,200,000.00 weeks prior to the possible murder of Simon Bernstein, knows he and his own Court staff are at least involved as witnesses if not for the fraud itself and is willing to forego his own Judicial responsibilities which could lead to the end of his Judicial career but issues a false order

nonetheless saying an arm's length transaction to an unknown buyer, possible straw man buyer was made.

47. Judge Colin knows and should know due process is violated by withholding the identity of the alleged buyer and making such person or entity available for cross-examination.

48. This would seem more than reflective of substantial pressure and influence at play and reflective of a fire sale.

49. Last, fair market value has been defined as "the sum arrived at by fair negotiation between an owner willing to sell and a purchaser willing to buy, neither being under pressure to do so." Flagship Bank of Orlando v. Bryan, 384 So.2d 1323 (Fla. 5th DCA 1980). A witness for the appellee admitted at the deficiency hearing that the bank was under pressure to sell the lots and that its bid was lowered because the bank would not be able to sell the lots for what they were worth. The bid price was therefore more an indication of a "quick sale" value than of the property's true fair market value. BARNARD v. FIRST NAT. BK. OF OKALOOSA CTY.482 So.2d 534 (1986) District Court of Appeal of Florida, First District. February 4, 1986.

50. Judge Colin could have Judicially Subpoenaed the Realtor Petitioner had originally spoken to who initially had a far differing opinion of the sales price and value of the home but who then refused to get involved due to the presence of another of Ted Bernstein's attorneys Alan Rose who, according to his bio at his firm's website, "Handled securities arbitration for investor in a Madoff feeder fund against major brokerage firm which recommended the investment. confidential terms." The case was settled on confidential terms." See, http://mrachek-law.com/ourteam/alan-b-rose/.

51. Further, Judge Colin silenced Petitioner via an illegal Order that mandated that Petitioner could do nothing to directly or indirectly notify the buyer of the Lis Penden or that litigation involving the house was at play and had testimony from the Realtor, John Poletto that he had not notified the buyer of any potential litigation and this seems to force Petitioner to not disclose pertinent facts to a buyer in opposite Florida's disclosure laws.

52. Finally, in his own words in the first day of the hearing to sell the house on March 26, 2015, Colin stated that he first had to have hearings to remove Ted, hearings for trust construction to determine validity and investigation of wrongdoings beyond

Tescher and Spallina before being able to proceed further and yet with none of those things were achieved and at the next hearing he allows the sale of the house ignoring his prior statement:

13 MR. ROSE: We didn't share the appraisal
14 because, frankly, we were concerned it would be
15 public and that would defeat their chance of
16 selling it.
17 THE COURT: I'm not -- look, nothing is easy
18 here. It's not going to get easier until we can
19 get hearings where I can start to knock off some
20 of the issues, which is what I have been saying
21 now like a broken record.
22 At some point, either Eliot is going to be
23 sustained on his positions or he's going to be
24 overruled, but one way or the other, we can put
25 some of this stuff to rest. The problem is we're
1 doing all of this business with some of the metes [matters?]
2 of the case still up in the air where I haven't
3 been able to adjudicate; the claims that Ted
4 should be removed; the claims that there's
5 wrongdoing beyond Spallina and Tescher, the trust
6 is not valid. I mean, give me a chance to rule on
7 that, because once I rule on that, then the matter
8 is over with on those and you'll know one way or
9 the other what to do.

53. That since May 06, 2013 Judge Colin, knowing of the fraudulent documents in the Estates and Trusts of Simon and Shirley Bernstein, knowing that Simon Bernstein's 2012 Will and Amended Trust done only days before his death when Simon was

suffering severe mental and physical duress have been determined by Governor Rick Scott's Notary Public Division to be improperly notarized and further Petitioner has alleged they are wholly fraudulent, knowing that there are ongoing criminal investigations into the documents of both Estates and Trusts, knowing that the new Executor of Simon's Estate has claimed that Ted is not a legally valid Trustee of Simon's Trust by the very terms of the Trust that claim that a Successor cannot be related to the issuer, knowing that Ted is considered predeceased for all purposes of dispositions under the Shirley and Simon trust, knowing that Peter Feaman, Esq., has stated to Colin that Ted and his counsel Alan B. Rose are not qualified as Trustee and Counsel due to serious problems with Ted and Alan's misconduct, knowing that Ted and his counsel Alan B. Rose are counter defendants in two counter complaints filed by Petitioner in these matters with allegations of serious breaches of fiduciary duties (which Colin stayed) and more, knowing that Eliot has filed a Counter Complaint in the Shirley Trust case that has both he and Judge French listed as material and fact witnesses that may be Defendants in future amended pleadings, has ignored all of these facts and held hearing, after hearing, after hearing and has:

a. allowed Estate and Trust properties to be disposed of and distributed without knowing who the beneficiaries are at this time due to the fraudulent documents affects not being resolved at this time,
b. allowed Estate and Trust properties to be disposed of and distributed without knowing if the Wills and Trusts are valid,
c. allowed assets to be converted and changed, including allowing a JP Morgan IRA to be converted to a new account when the old account was missing beneficiaries and monies are alleged stolen from it,
d. allowed assets to be sold and converted without any accountings in violation of Probate Statutes and Rules,
e. allowed assets to be sold and distributions made to improper beneficiaries despite not having held trust construction or validity hearings to determine first who the true and proper beneficiaries are, thus delaying intentionally beneficiaries inheritances, while allowing assets to be distributed will now have to be clawed back,

f. allowed fiduciaries and counsel involved in the commission of the fraud to continue to operate in the courtroom with impunity,
g. allowed continuous hearings where the alleged Trustee Ted has brought in up to five lawyers to defend himself misusing Trust and Estate assets to do so, who have all now resigned other than Alan B. Rose,
h. deprived Minor possible beneficiaries from counsel despite their need arising from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,
i. deprived Eliot's family from inheritances that has caused massive financial damages to them despite their financial damage arising from the delays in their inheritances from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,
j. forced the Creditor William Stansbury for two years to accrue hundreds of thousands of dollars of legal fees, while blocking him from being able to have his counsel file to remove Ted, while the job of removing Ted was Colin's from the moment he became aware that Ted and his counsel had committed Fraud on the Court and stated he had enough to read them all their Miranda's twice,
k. allowed a settlement with Stansbury where Ted Bernstein acting as the Trustee of the Shirley Trust and simultaneously a Defendant in the Stansbury Lawsuit with his attorney at law Rose acting as counsel to Ted in his conflicting capacities, that settled Ted personally out of the lawsuit and shifted the burden of the settlement cost entirely to the Trusts of Shirley and Simon beneficiaries and where Ted has no beneficial interests, thereby stiffing the beneficiaries with the settlement cost for acts Stansbury alleges were done primarily by Ted,
l. allowed Ted and his counsel to block the Estate and Trust of Simon to intervene in an Illinois Federal Breach of Contract Lawsuit where the beneficiaries of the Estate and Trusts of Simon have potential interest in an insurance policy, where Ted is acting in conflict to achieve this as the Plaintiff in the Breach of Contract lawsuit who stands to get one fifth of the insurance benefit, whereas if the Estate and Trusts of Simon receive the proceeds Ted again would get nothing. Colin

only allowing the Estate to intervene after Stansbury, in efforts to protect the beneficiaries who were unrepresented in the Federal lawsuit and himself to pay the entire cost of the litigation expense for the Estate?

m. been rude to Petitioner repeatedly and continuously shut him down during hearings, whenever fraud on the court is brought to his attention, and,

n. interfered with Palm Beach County Sheriff investigations, having detectives told not to pursue Petitioner's criminal complaints and claiming his Court would handle the criminal matters and fraud upon his Court.

54. That from at least the September 13, 2013 hearing Judge Colin had a mandated duty to disqualify himself on his own initiative according to Judicial Cannons, Attorney Conduct Codes and Law, as he became fully cognizant that his Court had become a crime scene involving Fraud on the Court and Fraud in the Court, directly involving Judge Colin and Judge French and their court, the Officers of the Court, including Attorneys at Law practicing before them, Fiduciaries appointed by them (Personal Representatives and Trustees) and other Court employees.

55. That once it was determined that crimes had been committed in Judge Colin and Judge French's courts constituting Fraud on the Courts and Fraud in the Courts in which Judge Colin would now be a material and fact witnesses to events in the matter, to avoid the appearance of impropriety and conflicts caused due to his direct involvement as both a material and fact witness, Judge Colin should have voluntarily on his own initiative disqualified himself and distanced himself from the matters, allowing a conflict free adjudicator to replace him who could have investigated the involvement of, the Court, Judge Colin, Judge French, the Officers of the Court and the Fiduciaries of the Court and this would have eliminated the appearance of impropriety created due to Judge Colin's direct involvement in the frauds that had occurred and his subsequent handling of investigations or lack thereof of himself and his court.

56. That failing to disqualify himself on his own initiative for mandated causes by Judicial Canons, Attorney Conduct Codes and Law, Judge Colin lost jurisdiction in this case and his continued actions are all outside the color of law.

57. That Judge Colin's acts forward in these matters from the point that he had knowledge of criminal misconduct in the Court that would make him a material and fact witness constitute Fraud by the Court. It is alleged that Judge Colin began a Pattern and Practice of Fraud by the Court by continuing to rule in a matter where disqualification was mandated on his own initiative and so each judicial ruling and proceeding is therefore void.

58. That Petitioner fears that Judge Colin's acts after having cause to disqualify himself have prejudiced and biased the case and continue to prejudice and bias the case, as they are now viewed as part of a Cover Up of the crimes committed in his Court and on his Court by Colin's court appointed Officers and Fiduciaries and the effectuation of new crimes by his Court.

59. That Petitioner fears that Judge Colin's acts outside the color of law after knowing of the causes mandating him to instantly disqualify have been prejudicial to Petitioner and favor those Court officials and fiduciaries that he appointed who committed the criminal acts in and on his Court and these acts have protected himself, his Court appointed officials, fiduciaries and employees who were involved and aid and abet them in evading prosecution and investigation in efforts to cover up criminal acts and have provided legal cover for new criminal acts to be committed under the guise of legal proceedings.

60. Colin is biased and prejudiced against Petitioner who has exposed the crimes of his Court and those committed in Judge David E. French's court in the Simon and Shirley Bernstein Estate and Trust cases and the case involving Petitioner's Minor children.

61. The Estate and Trust cases of Simon and Shirley Bernstein were improperly merged by Judge Colin and Judge French in violation of Probate Rules and Statutes as it was achieved without separate hearings by both Judges and thus improperly transferred to Colin's Court. This included a complex bait and switch, whereby once Colin had approved the transfer to himself of Judge French's case, Judge French's hearing was scheduled on the day before Christmas when the courthouse was closed entirely and Petitioner and his wife showed up to an empty building, ruining their holiday family planned trip to attend. That at the subsequent rescheduled hearing before Judge French, Judge Colin was instead presiding and when asked where Judge French was Colin stated it did not matter if he were there as he routinely handled French's

cases. When Petitioner cited the rule calling for separate hearings by each Judge, Colin proceeded ahead. That Petitioner fears that since the crimes were committed in both courts this improper merging of the cases was to cover up and protect Judge French and his court officials from investigation and possible prosecution and remove one of the crime scenes entirely since similar acts of fraud are alleged in Judge French's court and similarly all his case files should have been sealed for investigation and he and his court officials questioned as to the Fraud on the Court and Fraud in the Court.

62. Once Colin had evidence that FELONY crimes were committed in his Court and Judge French's court by Officers of their courts and fiduciaries of their courts, Colin and French had obligations under Judicial Cannons, Rules of Professional Conduct and Law to report the misconduct to the proper criminal and civil authorities for investigation and failed to do so.

63. Once Colin had evidence of Fraud on the Court, he had obligations to immediately disqualify and allow for the resetting of the proceeding by removing all elements of the fraud, removing all officers of the court involved, all fiduciaries involved and have all court and other records of those involved seized for investigation, have all assets seized and frozen and turn the case over to a new adjudicator and Judge Colin did not do any of these things, in fact, he has intentionally and with scienter done the opposite.

64. That instead of doing what was mandated when Fraud on the Court is discovered, Colin has allowed a pattern and practice of retaliation against Eliot to take place for his efforts in exposing the criminal acts and has continuously allowed conflicted attorneys at law and fiduciaries, involved with the original fraudsters, to file pleading after pleading to attempt to harm Eliot and his family, including several contempt and guardianship hearings held against Eliot, all bleeding the estates and trusts of thousands upon thousands of illegal legal billings for conflicted counsel.

65. Petitioner has blown the whistle on corruption that took place in both Judge Colin and French's courts and has also been involved in an over a decade old whistleblowing lawsuit and other actions against members of this courthouse the 15th Judicial, The Florida Bar and many Judges of the Supreme Court of Florida and Petitioner fears this also creates prejudice and bias against Petitioner

with virtually the entire State of Florida legal machine conflicted with him.

66. Petitioner's prior Federal RICO sued the following parties of the Florida Bar Association:

> STATE OF FLORIDA,
> OFFICE OF THE STATE COURTS
> ADMINISTRATOR, FLORIDA,
> HON. JORGE LABARGA in his official and individual capacities,
> [this lawsuit prior to his unbelievable rise to Chief Justice of the Florida Supreme Court after the Bush v. Gore election where he aided in the failure to recount the People's vote when he was a civil circuit judge and for his effort to derail Eliot's legal rights in the first lawsuit involving Eliot and others stolen Intellectual Properties that has led to this mess filed before his court. Proskauer v. Iviewit, Case #CASE NO. CA 01-04671 AB.]
> THE FLORIDA BAR,
> JOHN ANTHONY BOGGS, ESQ. in his official and individual capacities,
> KELLY OVERSTREET JOHNSON, ESQ. in her official and individual capacities,
> LORRAINE CHRISTINE HOFFMAN, ESQ. in her official and individual capacities,
> ERIC TURNER, ESQ. in his official and individual capacities,
> KENNETH MARVIN, ESQ. in his official and individual capacities,
> JOY A. BARTMON, ESQ. in her official and individual capacities,
> JERALD BEER, ESQ. in his official and individual capacities,
> BROAD & CASSEL, and, all of its Partners, Associates and Of Counsel, in their professional and individual capacities,
> JAMES J. WHEELER, ESQ. in his professional and individual capacities,
> **FLORIDA SUPREME COURT**,

Hon. Charles T. Wells, in his official and individual capacities,

Hon. Harry Lee Anstead, in his official and individual capacities,

Hon. R. Fred Lewis, in his official and individual capacities,

Hon. Peggy A. Quince, in his official and individual capacities,

Hon. Kenneth B. Bell, in his official and individual capacities,

THOMAS HALL, ESQ. in his official and individual capacities,

DEBORAH YARBOROUGH in her official and individual capacities,

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION – FLORIDA,

CITY OF BOCA RATON, FLA., [Police Department]

DETECTIVE ROBERT FLECHAUS in his official and individual capacities,

CHIEF ANDREW SCOTT in his official and individual capacities,

CHRISTOPHER C. WHEELER, ESQ. in his professional and individual capacities, [now involved in the Estate and Trust matters]

MATTHEW M. TRIGGS, ESQ. in his official and individual capacity for The Florida Bar and his professional and individual capacities as a partner of Proskauer,

ALBERT T. GORTZ, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters]

67. Petitioner feels that Judge Colin's acts outside the color of law have been intentional to prevent Petitioner from gaining his inheritance and having funds that could be used in this legal action against his court and Petitioner's other legal actions against members of the Florida Bar, including protecting what Judge Colin claims in a Florida Bar Publication to be his mentor, Chief Judge Jorge Labarga, who is a central figure in Petitioners ongoing civil and criminal complaints regarding theft of Intellectual Properties of Petitioner's and his father.

68. Judge Colin is acting outside his jurisdiction once he was mandated to disqualify on his own initiative and acting outside the color of law and therefore he should disqualify on his own initiative instantly and his orders must then be voided. Judge Colin is a disqualified judge who has not relinquished his unlawful jurisdiction.

69. Judge Colin now is also adverse to Petitioner because Petitioner has filed with the Federal Court in the Northern District of Illinois under The Honorable John Robert Blakey exposing the corruption in his Colin's court and throughout the Probate courts in Florida. Petitioner is seeking to have these Probate cases transferred to the Federal Court involving estate related subject matter (the insurance breach of contract proceeds) under Blakey for investigation, review and further adjudication of the matters free of conflicts and illegal activities, once Judge Colin complies with the mandated disqualification or is forced off the case if he continues to refuse.

70. Petitioner has sought Federal Court intervention due to the fact that Petitioner is adverse to all Florida State Bar Members and where he has taken civil action and filed criminal complaints against the Florida State Bar and thus all members are technically and legally conflicted and adverse to Petitioner as members of the organization Petitioner is pursuing.

71. Petitioner has been viciously retaliated by Judge Colin by denying him due process in one manner or another, acting above the law and removing rights of Petitioner and his Minor children, while protecting his Court and those involved in criminal misconduct from exposure of the crimes committed in his and Judge French's court by Officers and Fiduciaries of the Court.

72. Where it may be learned by investigation that both Judge Colin and Judge French may be involved directly in the original Frauds Upon the Court and were willing participants in such crimes against Petitioner and his family, including but not limited to, Fraud on the Court, Fraud in the Court, Fraud by the Court, Forged documents posited with the Court by officers and fiduciaries of the Court, Fraudulent Notarizations (including Post Mortem for decedents in the actions) filed and posited with the Court, Illegal Closing of an Estate using a deceased person's identity and ultimately the possible Murder of Simon Bernstein as alleged by Ted Bernstein and others (not Petitioner) on the day Simon died.

73. Judge Colin's actions once he failed to disqualify as mandated, outside the color law and without jurisdiction, make him an accomplice to current and ongoing fraud against Eliot and Eliot's Minor children who are beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein and it is clear that Eliot has valid fear that he has been denied due process and procedure once his mandatory disqualification was not entered on his own initiative.

Rule 2.330 (d) Grounds.

(2) That the judge before whom the case is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto or is interested in the result thereof, or that said judge is related to an attorney or counselor of record in the cause by consanguinity or affinity within the third degree, or that said judge is a material witness for or against one of the parties to the cause.

74. Judge Colin will be a material and fact witness regarding his direct involvement in the documents used fraudulently in his Court, regarding the interaction with the Officers of his Court involved, regarding the interaction with the Fiduciaries of his Court he appointed and his interaction with the Court employees involved in this case as described above, regarding the criminal misconduct that has occurred in and on his Court and that of Judge French's court. Judge Colin's position now as a material and fact witness MANDATE under Judicial Canon his INSTANT DISQUALIFICATION.

75. Judge Colin due to his direct involvement in the matters and failure to disqualify upon mandated grounds requiring his disqualification on his own initiative will now also make him a party of interest in ongoing and future criminal and civil actions to determine if he has committed felony acts and more in so acting outside the color of law. Now there is not only an appearance of impropriety but the alleged possible criminal misconduct of Judge Colin which may constitute criminal impropriety and again cause for MANDATORY DISQUALIFICATION.

76. Judge Colin cannot investigate his own court, himself and the officers and fiduciaries of his Court, especially where he is directly involved, due to the appearance of impropriety this creates and this appearance of impropriety prejudices Petitioner from due process rights." See, Motion to Disqualify.

22. PETITIONER'S MOTION TO DISQUALIFY filed on May 14, 2015 was "legally sufficient" because:

a. COLIN had a mandatory duty to disqualify independent of whether PETITIONER'S MOTION TO DISQUALIFY was "legally sufficient" (an undefined legal term) under the due process clause of the United States Constitution due to the crimes committed in and upon his Court by his Court Appointed Officers and Fiduciaries, his direct involvement in the Fraud on his Court, the Conflicts created by his handling matters he is a material and fact witness in and therefore he was mandated to Disqualify from the matters on his own initiative;

b. PETITIONER had listed COLIN in a Counter Complaint (EXHIBIT 1) filed in these matters as a Material and Fact Witness whom may become a defendant in any amended complaint filed. Whereby COLIN again instead of disqualifying then "stayed" the Counter Complaint that named him and Judge French as witnesses, further derailing PETITIONER'S right to fair and impartial due process and further causing COLIN to be conflicted with

PETITIONER. Yet, COLIN continued to act and adjudicate in violation of Judicial Canons and Law;

c. PETITIONER has filed criminal complaints against the Fiduciaries, the Attorneys at Law and others involved in the criminal matters and where COLIN then attempted to influence law enforcement to cease investigating PETITIONER'S filed criminal complaints with the Palm Beach County Sheriff Office, stating he would handle the criminal investigations into the matters in his court and this led to investigators attempting to shut down the criminal investigations PETITIONER instigated, this too is cause for disqualification;

d. Upon learning of this attempt to shut down the criminal investigations by the Palm Beach County Sheriff investigators, PETITIONER notified law enforcement that COLIN had no jurisdiction to interfere and could in fact become a suspect in the investigations into the Fraud on his court and thus his actions constituted intentional Obstruction of Justice;

e. PETITIONER was then forced to start an Internal Affairs complaint against the Sheriff officers involved and elevate the matters to the Captain of the Sheriff department to get the complaints re-opened, which then led to attorney at law, Co-Personal Representative and Co-Trustee of Simon Bernstein's Estate and Trusts SPALLINA being questioned and admitting to

fraudulently altering a Shirley Bernstein Trust document on behalf of his client Theodore Stuart Bernstein ("TED") who TESCHER and SPALLINA represented as alleged Trustee of Shirley's Trust, yet no arrest of SPALLINA or his partner TESCHER who SPALLINA stated conspired with him to commit the fraud has yet been made and possibly due to interference by COLIN; and

f. TESCHER and SPALLINA acted as fiduciaries to the Estate and Trusts of Simon and simultaneously as TED'S counsel in Shirley's Estate and Trusts, acted against the interests of the beneficiaries of Shirley's Trust (of which her son TED is excluded) to benefit their client TED and themselves by trying to insert TED into her Trust fraudulently and COLIN did not sanction them and report these matters to the proper authorities as required by Judicial Canons and Law thereby further cause for COLIN'S disqualification.

23. However, COLIN after learning of the frauds committed in his Court instead of taking actions to protect the beneficiaries, creditors and interested parties has instead created an Attorney at Law and Fiduciary protection system for those involved in the criminal misconduct in and on his court by:

a. failing to report the misconduct of the attorneys at law and fiduciaries to the proper authorities;

b. interfering in ongoing investigations of the suspect parties;

c. allowing the Attorneys at Law who committed felony criminal acts in and upon his court to withdraw from the matters after admitting criminal acts instead of removing them as demanded by PETITIONER who filed motions to remove them and where removal would have had a more severe impact on those involved and given greater protection to the beneficiaries;

d. staying Counter Complaints that named COLIN and Judge David E. French ("FRENCH") as material and fact witnesses;

e. forcing PETITIONER to file new complaints but ordering (EXHIBIT 2) that Attorneys at Law involved in the criminal acts or any Attorney at Law could not be sued by PETITIONER, despite their being fiduciaries and thereby preventing PETITIONER from including Attorneys at Law in a court ordered complaint (the Simon Trust case);

f. staying the Counter Complaint other than demanding to have PETITIONER remove COLIN and FRENCH from the complaint as possible defendants in any amended complaint;

g. repeatedly delaying and stymying actions to remove TED and others involved from the cases, instead of removing all elements of those involved in the initial Fraud on the court immediately on his own motion, even after in an initial hearing on September 13, 2013 stating twice (for two separate crimes discovered by COLIN) that he had enough evidence at that time to

read TED, TESCHER, SPALLINA and attorney at law Mark Manceri, Esq. ("MANCERI") their Miranda Rights, yet he then failed to ever take any action to have them prosecuted for the crimes he affirmed had taken place on his court (EXHIBIT 10) for two years;

h. suggesting to PETITIONER to file a new Simon Trust lawsuit to remove the legally impermissible fiduciary Ted Bernstein as Trustee and Ordering that Eliot could not sue attorneys at law in the complaint, despite the fact that the two prior Co-Trustees were attorneys at law who resigned amidst the fraud and corruption they were directly involved in and admitted to and whom as a last act before resigning transferred trusteeship to their legal client TED who they committed the crimes to benefit in addition to themselves and COLIN allowed this;

i. knowing that TED upon allegedly accepting successorship has done nothing to pursue the wrongdoings of his former counsel, the former Personal Representatives, Trustees and Counsel, TESCHER and SPALLINA or to correct the frauds on the court on behalf of the beneficiaries, as TED was involved in the crimes as well and COLIN was aware of these failures and violations of Statutes and did nothing to protect the beneficiaries, creditors and interested parties;

j. knowing TED was disinherited by both Simon and Shirley Bernstein in their estate plans and considered predeceased for all purposes of the trusts and has fraudulently seized his fiduciary roles and Obstructed beneficiaries from documents and accountings to protect TED, his counsel TESCHER, SPALLINA, COLIN and others from prosecution for the crimes committed and being committed and where COLIN aided and abetted this fraud by allowing TED to remain a fiduciary;

k. allowing a fraudulent transfer of trusteeship to TED was OBSCENE, as well as illegal, as TED could not be a Successor Trustee for the Simon Bernstein Trust (EXHIBIT 3) as the very language of the Trust states the Successor cannot be related to the issuer and that TED, the son of the issuer Simon, is additionally considered PREDECEASED for ALL PURPOSES OF THE TRUST! The 2012 Simon Trust has been challenged as fraudulent and is under ongoing investigation and yet, COLIN continued to use these documents without affirming validity or construction first despite evidence of Fraud with the documents;

l. continuing to have hearings using Dispositive documents that are challenged for validity and construction for over two years and being investigated as fraudulent and which remain under ongoing investigations;

m. failing to seize records and preserve and protect assets once COLIN became aware of the frauds committed by the court appointed Officers and Fiduciaries of his court;

n. making privileged an email (EXHIBIT 4) sent only to PETITIONER from TED that described the use of FORCE and AGGRESSION (EXHIBIT 5) against PETITIONER by the fiduciary TED and his lawyers Alan B. Rose, Esq. ("ROSE") and John J. Pankauski, Esq. ("PANKAUSKI") (the letter also details misuse of trust funds and attacks on minor children beneficiaries and friends of Simon's) and again in efforts to cover up the corruption occurring in his court, COLIN ruled (EXHIBIT 6) the email from TED to PETITIONER (two non attorneys) was inadvertent disclosure of privileged material;

The Court should note that PETITIONER has had a bomb in his car and has reported that his brother TED was the last person in possession of the vehicle and that TED has acquired friends that PETITIONER is pursuing for his stolen Intellectual Properties, including direct defendants in PETITIONER'S RICO and ANTITRUST suit filed, Proskauer Rose, Gerald R. Lewin, former executives from the Madoff and Sir Allen Stanford Ponzi schemes and others who are directly involved in the Estate and Trust matters before the court for direct involvement in the estate and trust matters and yet COLIN ignored

these facts in his ruling to make privileged the email and instead guestimated about TED'S intent and meaning to the his use of the words about using "force and aggression" against PETITIONER without even asking him under oath what he meant.

The Court should note that COLIN was aware that PETITIONER had stated to the court that SIMON may have been talking with investigators regarding the Sir Allen Stanford Ponzi, which PETITIONER has joined the Texas Federal Lawsuit and Receiver action alleging that Stanford was a money laundering scheme for PROSKAUER for royalties converted illegally from PETITIONER'S stolen Intellectual Properties;

The Court should note COLIN was aware that PETITIONER'S stolen Intellectual Properties involved allegations that the 15th Judicial Circuit Judge of the case that was sued by PETITIONER for his acts outside the color of law in the case is Chief Judge of this Court, Jorge Labarga, who COLIN cites as his mentor and this too was cause for the cases to be moved for the Appearance of Impropriety, especially where PETITIONER continues to pursue his invention royalties and intellectual properties against these very same officials;

The Court should note that COLIN was aware that TED contacted on the morning his father died the Palm Beach County Sheriff who came to Simon's

home and opened an investigation (EXHIBIT 7) at TED'S bequest and TED also contacted the Palm Beach Coroner (EXHIBIT 8) to report that his father may have been murdered on that day, and yet, under deposition (EXHIBIT 9) TED could not recall having done those things on that day and so denied doing them; and

o. attempting to steer the cases after his Sua Sponte recusal by poisoning the next jurisdiction and venue and setting up the transfer of the cases to a court he influenced the move to post recusal and where it just so happens lands in the lap of Judge Howard K. Coates, Jr. a former Proskauer partner during the years Proskauer represented PETITIONERS intellectual properties and who worked across the hall from PETITIONER during the years Proskauer represented PETITIONER'S Intellectual Properties.

24. Due to the frauds on, in and by the Court that began the instant COLIN failed to Disqualify himself on his own initiative, all orders issued by COLIN must be voided and vacated, Village of Willowbrook, 37 Ill. App. 3D 393 (1962).

25. Due to COLIN'S steering the case post recusal the cases should all be stayed while PETITIONER seeks a new jurisdiction and venue, conflict free to ensure due process and procedure.

26. Judge Coates who the cases were steered to by COLIN recused himself Sua Sponte at the first hearing, after having had access to the court records of COLIN

and this may have been the intent of COLIN in steering the case to Coates, knowing he would then have to recuse after having access to the files. PETITIONER fears that the whole steering of the case was designed to achieve this end and benefit PROSKAUER, a Counter Defendant in PETITIONER'S Counter Complaint in the Trust cases and that the transfer from Judge Coates to the next judge is also part of this scheme to further deny due process and procedure to PETITIONER.

27. A MOTION TO DISQUALIFY (EXHIBIT A) was Denied (EXHIBIT B) by Judge Martin Colin ("COLIN") as "Legally Insufficient" in violation of Florida Rule of Judicial Administration 2.330, Florida Statute 38, and Florida Code of Judicial Conduct, Canon 3(B)7, 3(B)5, 3E(1), 3(E)1a, 3(E)1b and 3(E)1b(iv), all of which require that a judge disqualify himself on his own initiative and where once the Petitioner has established a reasonable fear that he will not obtain a fair hearing by a Petition for Disqualification the Judge must Disqualify as well.

28. Thus, since the motion for Disqualification showed a clear right for Petitioner to obtain Disqualification, Mandamus is now appropriate.

V. PROHIBITION

29. The writ of prohibition is issued when a judge improperly denies a motion for recusal or disqualification and appropriately directs the Judge to refrain from exceeding its jurisdiction. Carroll v. Fla. State Hosp., 885 So. 2d 485 (Fla. 1st

D.C.A. 2004) (noting that prohibition is the appropriate way to review a trial judge's order denying a motion to disqualify).

30. That the day after denying PETITIONER'S Petition to Disqualify as "Legally Insufficient" that would have voided his orders due to the fact that they were issued as part of a Fraud on the Court, COLIN suddenly decided to Sua Sponte Recuse (EXHIBIT C) himself instead from the six cases involving the Estates and Trusts of Simon and Shirley Bernstein and in so doing again denied PETITIONER due process and procedure. Then to further compound the problems COLIN influenced the transfer of the cases post recusal and thus tainted the next court from the start.

31. COLIN began abusing his discretion in failing to disqualify himself on or before an initial hearing in the matters on September 13, 2013 (EXHIBIT 10) in legal actions involving Shirley Bernstein's ("Shirley") Estate and Trusts and Simon Bernstein's ("Simon") Estate and Trusts, when it was discovered by COLIN that there was Fraud upon his court committed by Fiduciaries and Counsel he appointed in the matters and these frauds materially affected PETITIONER'S rights to a fair and impartial hearing adjudicated by COLIN as he was now a material and fact witness to certain of the fraudulent events. This abuse of process denied PETITIONER due process and procedure, obstructed justice and interfered with expectancies and property rights from that point forward.

32. COLIN was mandatorily required at the time of discovering the frauds on his court, when he found he would be a material and fact witness to certain of the events and possible suspect to voluntarily and on his own motion disqualify himself, as the crimes were committed in his court and directly conflicted him with the matters, especially since the crimes were committed by his court appointed officers, fiduciaries and staff. COLIN had direct involvement in the matters that would have to be questioned as well.

33. Once the Fraud in and on his court was discovered, it became impossible for COLIN to continue to handle the matters due to the overwhelming appearance of impropriety created by COLIN handling the investigations involving his court, the Officers of his court he appointed, his staff and himself, without PETITIONER fearing that his direct involvement in the matters biased his decisions and under Judicial Canons Colin was obligated to Disqualify.

34. PETITIONER filed Petitions for Disqualifications (EXHIBITS – 11, 12 & 13) and Motions for Disqualification on COLIN'S own initiative but COLIN refused to disqualify despite his duty under Judicial Canons and Law to mandatorily disqualify himself when he became a material and fact witness in the case, when it became necessary to investigate his court, himself and his court appointed Officers and Fiduciaries as the crimes had taken place in and on his court by his court appointed Officers and Fiduciaries. Also the fact that COLIN may be a

potential suspect in the crimes conflicted him and forced disqualification. Yet, COLIN continued to proceed and rule in the matters as if Above the Law and Judicial Canons and thus every act forward by COLIN was without legal Jurisdiction.

35. PETITIONER'S APPLICATION FOR WRIT OF PROHIBITION and WRIT OF MANDAMUS should be granted because:

a. All acts of COLIN after his mandatory disqualification was required defied law and denied due process and caused PETITIONER to fear continued prejudice and the inability to obtain a fair trial for himself and his three minor children going forward;

b. COLIN recused himself improperly from the proceedings after two and a half years, only one day after denying a disqualification petition filed by PETITIONER. This sharp practice of recusing himself versus ruling in favor of PETITIONER'S disqualification petition not only appears an attempt to leave his legally void orders issued without jurisdiction standing but to then prejudice PETITIONER further with having a hand in the new court he had the cases assigned to;

c. The only way these improper judicial acts of COLIN can now be removed from prejudicing the cases further is if this Court rules that COLIN'S Sua Sponte Recusal (coming the day after he denied PETITIONER'S Petition for

Disqualification) is voided and he is mandated to instead Disqualify himself and ALL acts and orders of COLIN be voided and stricken from the record as fraud on the court mandates in this situation and that this court then preclude COLIN from making any post disqualification actions that influence the transfer of the cases as he has done already;

d. COLIN is a material and fact witness and thus has an interest in the cases involving PETITIONER'S family that is adverse and prejudicial to PETITIONER and his family who have exposed the court of COLIN and the Fraud on his court, Fraud in his court, Fraud by his court and other crimes both proven and alleged, several being investigated at this time both state and federally. Almost all of the crimes committed were committed by Officers of the court and court appointed Fiduciaries, who were misusing the court as the vehicle to commit the crimes and under COLIN the perpetrators were shielded and protected by COLIN from prosecution;

e. The proven crimes that occurred in the court, include but are not limited to:

   i. Forgeries of dispositive documents; Fraudulent Notarizations of dispositive documents; Fraudulent closing of a deceased's estate using a deceased Personal Representative to close the estate as part of a larger fraud to seize Dominion and Control of the Estates and Trusts of both

Simon and Shirley Bernstein by the court appointed fiduciaries and attorneys at law;

ii. Fraudulent Alteration of Dispositive documents admitted to by Attorney at Law Robert Spallina, Esq. to Palm Beach County Sheriff Investigators, which were altered by SPALLINA and his partner Donald R. Tescher, Esq. ("TESCHER") on behalf of their client Theodore Stuart Bernstein ("TED"); and

iii. Fraud on the court, Fraud in the court and Fraud by the court committed by TESCHER, SPALLINA, TED and others;

f. Where there continue to be ongoing, state and federal, civil and criminal investigations and proceedings into multiple fraudulent acts that are in combination to the frauds that took place using the court of COLIN to achieve; and,

g. COLIN cannot investigate himself, his court appointed Officers, Fiduciaries and his court staff regarding the Fraud on the court, Fraud in the court and Fraud by the court, without the overwhelming appearance of impropriety that he steered the cases improperly to avoid investigation and prosecution, covering up the crimes to avoid bad press, covering up the crimes to allow continued crimes against PETITIONER and his family and shift the focus away from his direct involvement in the matters. Once knowledgeable about

these conflicts of interest and adverse interests created by the criminal activity that took place in his court COLIN was mandated by Judicial Canons and law to disqualify from the matters on his own initiative but again did not.

36. WRIT OF PROHIBITION is proper to prevent an inferior court or tribunal from improperly exercising jurisdiction over a controversy and if a petition for a writ of prohibition demonstrates a preliminary basis for entitlement to relief, the court can issue an order to show cause why relief should not be granted. Once a show cause order issues in prohibition, it automatically stays the lower court proceeding. Fla. R. App. P. 9.100(h).

37. The writ of prohibition is issued when a judge improperly denies a motion for recusal or disqualification and appropriately directs the Judge to refrain from exceeding its jurisdiction. *Carroll v. Fla. State Hosp.*, 885 So. 2d 485 (Fla. 1st D.C.A. 2004) (noting that prohibition is the appropriate way to review a trial judge's order denying a motion to disqualify).

38. The next Jurisdiction and Venue have already been poisoned by the egregiousness of COLIN'S post recusal misconduct.

VI. ALL PRIOR ORDERS OF JUDGE COLIN SHOULD BE VACATED AS VOID AND A LEGAL NULLITY

39. "Procedural due process promotes fairness in government decisions by requiring the government to follow appropriate procedures when its agents decide to deprive any person of life, liberty or property." John Corp. v. City of Houston,

214 F.3d 573, 577 (5th Cir. 2000) (internal citations and quotations omitted). "Substantive due process, by barring certain government actions regardless of the fairness of the procedures used to implement them, serves to prevent governmental power from being used for purposes of oppression." Id. In order to establish either a substantive or procedural due process violation, a plaintiff must first establish the denial of a constitutionally protected property interest. See Bryan v. City of Madison, 213 F.3d 267, 276 (5th Cir. 2000).

40. COLIN'S actions spanning the last two and half years, may be directly tied to PETITIONER'S pursuing legal remedies against members of this Court, including Chief Judge Jorge Labarga, other Justices of this Court, the FLORIDA BAR and its officers and several large South Florida Law Firms, regarding stolen intellectual properties, alleged to have been stolen from PETITIONER and his father by their Intellectual Property Lawyers, primarily at the law firm Proskauer Rose LLP and Foley & Lardner, in conjunction with various state actors installed to block due process and procedure and obstruct justice. PETITIONER filed a RICO and ANTITRUST Lawsuit (EXHIBIT 14) and an Amended Complaint (EXHIBIT 15) before the Honorable Judge Shira A. Scheindlin and will be petitioning to reopen that RICO based on the new RICO predicate acts committed in COLIN and FRENCH'S courts (Fraud on the Court, Alleged Murder by TED Bernstein, Extortion, Intentional Interference with an Expectancy, Conspiracy and

more), crimes committed again primarily by ATTORNEYS AT LAW and COURT OFFICERS many related to the prior RICO.

41. WRIT OF MANDAMUS is required to direct JUDGE COLIN to vacate his prior illegal ORDERS. The writ of mandamus is appropriately used to require a government actor to perform a nondiscretionary duty or obligation that he or she has a clear legal duty to perform. *See Austin v. Crosby*, 866 So. 2d 742, 743 (Fla. 5th D.C.A. 2004) (holding that mandamus may only be granted if there is a clear legal obligation to perform a duty in a prescribed manner). It applies to enforce a right already established. Austin, 866 So. 2d at 744. The writ of mandamus will issue to require a trial court to comply with the mandate of an appellate court. *Superior Garlic Int'l, Inc. v. E&A Produce Corp.*, 29 Fla. L. Weekly D2341 (Fla. 3d D.C.A. Oct. 20, 2004).

42. PETITIONER and his minor children are in imminent continued and ongoing danger of irreparable injury due to COLIN'S use of illegal ORDERS to exact revenge from the bench for over two years acting improperly "under Color of State Law" via a series of illegal ORDERS that have destroyed PETITIONER'S rights to his property and endangered his family, in retaliation for PETITIONER filing civil and criminal complaints against those involved in the crimes that took place in COLIN'S court. These retaliatory actions have caused serious financial

harms on certain of the beneficiaries of the estate including three minor children and as COLIN acted outside of the Color of Law, NO IMMUNITY HAS HE.

43. Denial of PETITIONER'S plea will place the ELIOT BERNSTEIN FAMILY in further substantial risk of danger for their reporting criminal activity in the court of COLIN and FRENCH. Recently PETITIONER has received a warning from his attorney at law, Candice Schwager, Esq. that he and his family were in grave danger due to their whistleblowing efforts.(EXHIBIT 16)

44. PETITIONER met the burden of demonstrating that a reasonable person would fear bias and the inability to decide matters in this case with impartiality and that COLIN should have disqualified based on PETITIONER'S Petition for Disqualification.

VII. LACK OF JURISDICTION – FRAUD ON THE COURT, FRAUD IN THE COURT AND FRAUD BY THE COURT

45. COLIN did not have jurisdiction to proceed with hearings and proceedings after knowing he would be a material and fact witness to the proceedings at no later than the first hearing on September 13, 2013 exactly one year after Simon died when he discovered he would be a witness and more and that his court was a crime scene involving his court appointed Officers and Fiduciaries, which required mandatory disqualification.

46. Upon discovering the criminal felony acts committed in and upon his court COLIN needed to hand off the matters instantly and disqualify himself on his

own initiative according to Judicial Canons and Law and have a new judge adjudicate the matters forward and have conducted an independent investigation of the crimes in COLIN'S court, investigate and question COLIN and his court appointed Officers and Fiduciaries involved directly in the crimes, yet disregarding his judicial duties COLIN instead proceeded to act outside of the Color of Law from that point forward and continued to adjudicate without legal Jurisdiction and without immunity.

47. COLIN held hearing after hearing using Dispositive Documents that he knew were challenged, fraudulent in some instances, confirmed improperly notarized and forged in certain instances by Governor Rick Scott's Notary Public Division, under ongoing criminal investigations and yet issued void order after order while suppressing any investigations of the criminal misconduct and attempting to sweep it under the rug to protect himself and his court appointed Officers and Fiduciaries involved. COLIN was even reported partying with several of TED'S counsel involved in the crimes, several who have since resigned in these matters, at a Florida Bar party the night before a hearing with PETITIONER.

48. The Supreme Court **must intervene** immediately to protect PETITIONER, his wife and minor children from further acts of aggression of COLIN et al., who have been exacting revenge from the bench and through abuse of process in conspire with Officers and Fiduciaries of the court, all actions disguised "under

color of State law" to continue to harm PETITIONER and deprive due process and procedure to deny PETITIONER property rights and more.

49. That even in his final act of "recusal" instead of mandatory "disqualification" COLIN acted **after his recusal** to further influence and poison the next court and further controlled the process again void of legal Jurisdiction. COLIN pre and post Recusal steered the case to a county where a former PROSKAUER partner was sitting as a judge and where the case was transferred to such judge, where PROSKAUER is a counter defendant in Petitioners stayed Counter Complaints and thus COLIN transferred highly confidential case and court records to a conflicted party.

50. PROSKAUER is also at the center of Petitioner's claims in the RICO and ANTITRUST and other state and federal actions filed in relation to Intellectual Property thefts and whereby PETITIONER'S car was already bombed, which remains under ongoing state and federal investigations to the best of PETITIONER'S knowledge (See Graphic Images of the Car Bombing, which blew up three cars next to it @ www.iviewit.tv).

51. PROSKAUER is also directly involved in the Estates and Trusts of Simon and Shirley in direct relation to estate planning work done in 1999-2001 to protect the Intellectual Properties which Proskauer was also representing, which have been

valued in the billions to trillions of dollars and work they did is now directly involved in the Estate and Trust cases before COATES' court.

52. That COLIN influencing the matters after recusal appears further obstruction and may have given Proskauer inside information and records with intent and scienter in further efforts to derail PETITIONER'S rights.

> The Court further stated:
> In Metropolitan Dade County v. Martinsen, 736 So. 2d 794, 795 (Fla. 3d DCA 1999), this Court restated the well-settled principle "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." Hanono v. Murphy, 723 So. 2d 892, 895 (Fla. 3d DCA 1998) (citing Carter v. Carter, 88 So. 2d 153, 157 (Fla. 1956).

53. This is the exact same divisive and devious conduct exhibited herein – these state actors are employing the very institution they have subverted to achieve their ends.

VIII. VIOLATION OF DUE PROCESS

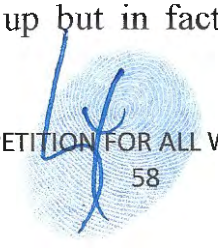
54. COLIN has intentionally sought to deprive PETITIONER and his three minor children of privileges, properties and immunities guaranteed citizens of the United States by the Constitution in violation of 18 U.S.C. 241 ("conspiracy against rights"), 242 ("deprivation of rights under color of State law), and 42 U.S.C. 1983 (civil deprivation of rights under color of State law) –constituting official oppression.

55. COLIN intentionally and with scienter and in conspire with others deprived PETITIONER and his three minor children of First, Fifth, Sixth, Seventh, and Fourteenth Amendment rights to freedom of speech, freedom of association, due process, equal protection of the law, and the right to effective assistance of counsel.

56. 18 U.SC. 242 provides as follows:

> Whoever, under color of any law, ordinance, statute, ordinance, regulation, or custom, willfully subjects any person in any State…to the deprivation of rights, privileges, or immunities secured or protected by the Constitution of the laws of the United States, or to different punishments, pains or penalties…than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year; or both… and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap…shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death. [Note 18 U.S.C. 241 contains similar language but applies to two or more people conspiring to deprive a citizen of rights and privileges under the Constitution.]

57. COLIN violated PETITIONER and his three minor children's due process rights in his fervor to retaliate and cover up for crimes exposed, committed and run through the misuse of his court as a vehicle to commit said crimes and other ancillary crimes, all the while covering up for the crimes of his court appointed officers and fiduciaries in efforts to exculpate the criminals from prosecution by aiding and abetting the felonious acts through a complex legal process abuse scheme that not only covered up but in fact continued to commit new crimes



against PETITIONER and his minor children through the legal process abuse scheme and artifice to defraud.

58. COLIN violated the OPEN COURTS provision of the U.S. and Florida Constitution, due process and equal protection clause via the following scheme: (a) Issuance of illegal void ORDERS issued outside the color of law, allowing Officers and Fiduciaries to continue in proceedings after learning of their involvement in Felony Misconduct and after stating he had enough evidence of their fraud and fraud on the court to read them all their Miranda Warnings twice at the very first hearing where he learned of obscene frauds on the court, including crimes committed POST MORTEM of decedents SIMON and SHIRLEY to directly contradict and defeat their last wishes, (EXHIBIT 10) and then failing to do ANYTHING required of him by Law and Judicial Canons over the next two and one half years about any of the felony crimes.

IX. COLIN ORDERS WITHOUT LEGAL JURISDICTION UNDER THE COLOR OF LAW AFTER MANDATORY DISQUALIFICATION DUE TO FRAUD ON THE COURT AND HIS STANDING AS A MATERIAL AND FACT WITNESS AND MORE ARE VOID

59. All of COLIN'S Orders from the moment he knew he was mandated under Judicial Canons and law to disqualify himself and then does not are all obtained outside the color of law and continue a Fraud on the court, Fraud in the court and Fraud by the court.

60. COLIN was aware that Motions and Petitions are unheard involving Trust Validity, Trust Construction and Removal of the PR for serious breaches and allegations of felony misconduct and yet without hearing these issues first he moves forward using the documents to make orders, have hearings with the disputed and alleged fraudulent documents, sell assets, etc. From a March 26, 2015 hearing[8] COLIN states in response to a home sale question by ROSE,

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17 THE COURT: I'm not -- look, nothing is easy
18 here. It's not going to get easier until we can
19 get hearings where I can start to knock off some
20 of the issues, which is what I have been saying
21 now like a broken record.
22 At some point, either Eliot is going to be
23 sustained on his positions or he's going to be
24 overruled, but one way or the other, we can put
25 some of this stuff to rest. The problem is we're

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1 doing all of this business with some of the metes [matters]
2 of the case still up in the air where I haven't
3 been able to adjudicate; the claims that Ted
4 should be removed; the claims that there's
5 wrongdoing beyond Spallina and Tescher, the trust
6 is not valid. I mean, give me a chance to rule on
7 that, because once I rule on that, then the matter
8 is over with on those and you'll know one way or
9 the other what to do.

[8] March 26, 2015 Hearing
http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150326%20HEARING%20TRANSCRIPT%20HOME%20SALE.pdf

10 Do you understand what I'm saying? I think
11 we have hearing time coming up. Let's use that,
12 you know, prioritize hearings on this case. So as
13 soon as we can, I'll give it to you.
14 MR. ROSE: I appreciate that.

61. COLIN is the next hearing only days later then ruled to sell the house without having any of the hearings he stated he needed to have first before moving forward (after two years of moving forward without them), including validity hearings, removal of PR hearings and further fraud hearings and this typifies COLIN'S continued acts outside the color of law in furtherance of fraudulent activities.

62. COLIN denied the initial Emergency Motion[9] PETITIONER filed, denying it as an Emergency when there was evidence in the filing submitted that Fraud Upon the Court had occurred by Officers and Fiduciaries of his court, documents were submitted fraudulently to court and there were allegations that Simon Bernstein had been murdered made by his son TED making it a valid Emergency and this denial as an Emergency delayed hearing the matters for four more months while PRO SE PETITIONER refiled and rescheduled.

63. COLIN in a hearing on September 13, 2013 then ordered that Shirley Bernstein's Estate be reopened due to the fraud he discovered took place in the hearing but

[9] EMERGENCY PETITION
http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20LOW.pdf

then failed to have the fraud investigated and after threatening to read TESCHER, SPALLINA, TED and MANCERI their Miranda's upon discovering and affirming two separate and distinct frauds upon his court they were all involved in, leaves those involved in the frauds as fiduciaries and moves forward as if nothing took place stating he will get to it and after almost two years has failed to do so.

64. COLIN then, after threatening to read TED and his counsel their Miranda's and learning of the frauds he was involved in, COLIN appoints TED as PR to Shirley's Estate when he reopens the Estate due to the fraud. COLIN then states that TED is named in the Shirley Will as a Successor Trustee and this despite having weeks earlier stated he was going to read TED and his attorneys at law, TESCHER, SPALLINA and MANCERI their Miranda Rights upon learning of multiple frauds on the court they committed, including fraudulent Dispositive documents and using a deceased Personal Representative to close the Estate of Shirley.

65. COLIN further allowed TESCHER, SPALLINA and MANCERI to continue to act as the attorneys in the case despite having learned they were involved in felony misconduct.

66. COLIN allowed TESCHER and SPALLINA to continue for months until they were forced to resign after admission of fraud to PBSO investigators and instead

of removing them COLIN allows them to withdraw and without ordering investigations or reporting their misconduct as required by Judicial Canons and Law.

67. COLIN rules on trusts and wills and uses language from trusts and wills despite knowing they have been challenged and found improperly notarized by Governor Rick Scott's Notary Public division for over two years.

68. COLIN evades hearings to remove TED as a fiduciary and continues to allow TED and his minion of attorneys to file pleading despite evidence showing COLIN TED is not legally a valid trustee. That many of the pleading filed were retaliatory at PETITIONER attempting to have him held in contempt or have guardians placed over him and his children, in efforts to intimidate PETITIONER to give up his pursuit of the criminal matters.

69. COLIN denies Disqualification motions filed by PETITIONER as "legally insufficient" and evades motions filed by PETITIONER to have COLIN disqualify himself on his own initiative as provided for by statute.

70. COLIN orders that an IRA account for Simon and Shirley Bernstein can be modified to change investments despite PETITIONER'S protest that the account has been reported to authorities as having been illegally accessed and COLIN assures PETITIONER that no change of the account will occur but then allows a complete change of the account to occur, erasing the old account. The problem is

that COLIN was aware that the beneficiary of the IRA is missing and documents regarding the account were also missing at the time and the change appears to be an attempt to cover up the problems.

71. COLIN ruled that a trust without signature pages is a legally valid trust unless Pro Se PETITIONER could cite law stating it was not valid without signature pages.

72. COLIN allegedly orders a transfer of trusteeship from Stanford Trust Company (the infamous Ponzi schemer Sir Robert Allen Stanford company) to Oppenheimer in 2010 but orders the transfer without having the trusts to review and determine if the transfer is legal under the terms of the trust. The trusts when discovered are all full of errors, are unexecuted in part, have missing signature pages and have conflicting trustees and would have precluded such transfer by COLIN.

73. COLIN holds accounting hearings for the minor children's trusts in the Oppenheimer case and precludes Eliot from making a record and when Eliot (who is approved as indigent) asks the court to get a reporter and COLIN states the court is broke and cannot afford any luxuries. Eliot asks to create a taped record and is refused.

74. COLIN Orders a letter between TED and PETITIONER, two non-attorneys to be privileged when no attorney was sent the letter. The letter also exposes fiduciary

misconduct alleged by TED'S counsel and misuse of Trust funds and contains threats to use "force and aggression" on PETITIONER.

75. COLIN Orders Simon's house be sold after stating at hearing he cannot order the sale until trust construction hearings, hearings to remove Ted and trust validity hearings are heard first. Then in next hearing he sells the house without doing any of the other things he stated must be done first at the prior hearing.

76. COLIN Orders against PETITIONER'S motions to remove conflicted counsel repeatedly, allowing counsel involved in the frauds to continue protected.

77. COLIN Orders cases of he and FRENCH be consolidated but violates statutes requiring each judge to hold a separate hearing to merge the cases and Colin hears FRENCH'S motion for him and violates the statute in so doing.

78. COLIN Orders school for three minor children to be paid, when it was not paid and PETITIONER filed an EMERGENCY HEARING regarding when he finds out order was violated and children thrown out of school states he will deal with it and never does.

79. COLIN orders that Eliot cannot contact buyer of Simon home to inform the buyer of a Lis Penden pending that COLIN has held and precluded PETITIONER from filing for several months and orders PETITIONER to not contact the buyer to inform them of ongoing litigation or face severe court ordered sanctions, where PETITIONERS head would spin if he did or words to that effect.

80. COLIN stated in the home sale order that he conducted hearings and the transaction was arm's length but never had any statements or testimony from the buyer or even allows PETITIONER to know who the secret buyer is and precludes the buyer from knowledge of litigation by Order.

X. LEGAL AUTHORITIES

MANDATORY DISQUALIFICATION

81. COLIN had a statutory duty and was mandated by judicial canons to disqualify himself on his own initiative years before his Sua Sponte Recusal on May 20, 2015 and after PETITIONER filed a Petition to Disqualify on May 14, 2015 that was legally sufficient within Fla. Stat. 38.10 and Fla. Rules Jud. Admin 2.330 and Judicial Canons.

82. That Petitioner, being Pro Se, also motioned COLIN several times to disqualify on his own initiative as required under statutes and Judicial Canons and COLIN failed to rule on the motion and disqualify himself.

83. The Florida Code of Judicial Conduct Canon 3 provides states:

> A Judge SHALL disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning the party or a party's lawyers.

84. Disqualification is mandatory under Florida Rule of Judicial Administration Rule 2.330 and Florida Statute 38.10. In 1994, the U.S. Supreme Court held that

"Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994). Positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988); *Levine v. United States*, 362 U.S. 610 (1960);

85. Should a judge not disqualify himself, the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.")"[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal quotation marks and citation omitted). *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976);

86. Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which further disqualifies the judge. Should a judge not disqualify himself, then

the judge is violation of the Due Process Clause of the U.S. Constitution. United States v. Sciuto, 521 F.2d 842, 845 (7th Cir. 1996).

87. Disqualification is Mandatory under the Code of Judicial Conduct, Canon 3

> "A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently" Section E. Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding."

88. The issues before this Court are the failure of COLIN to mandatorily Disqualify and the "**legal sufficiency**" of the motion to Disqualify filed by PETITIONER and more importantly the failure of COLIN to manditorily disqualify on his own initiative versus waiting for PRO SE PETITIONER to file sufficient pleadings. In order to demonstrate legal sufficiency, PETITIONER needed to show:

> ...a well-grounded fear that he will not receive a fair [hearing] at the hands of the judge. **It is not a question of how the judge feels; it is a question of what feeling resides in the affiant's mind and the basis for such feeling**.'
> *State ex rel. Brown v. Dewell*, 131 Fla. 566, 573, 179 So. 695, 697- 98 (1938). *See also Hayslip v. Douglas*, 400 So. 2d 553 (Fla. 4th DCA 1981). **The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially**. *State v. Livingston*, 441 So. 2d 1083, 1086 (Fla. 1983)

> (emphasis added). In a case where the PETITIONER'S liberty is at stake, the court "should be especially sensitive to the basis for the fear." *Chastine v. Broome*, 629 So. 2d 293, 294 (Fla. 4th DCA 1993). The circumstances of this case are of such a nature that they are "sufficient to warrant fear on PETITIONER'S part] that he would not receive a fair hearing by the assigned judge." *Suarez v. Dugger*, 527 So. 2d 191, 192 (Fla. 1988).

89. PETITIONER and his minor children are entitled to a full and fair proceeding, including a fair determination of the issues by a neutral, detached judge. *Holland v. State*, 503 So. 2d 1354 (Fla. 1987); *Easter v. Endell*, 37 F.3d 1343 (8th Cir. 1994). Due process guarantees the right to a neutral, detached judiciary in order "to convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk of mistaken deprivations of protected interests." *Carey v. Piphus*, 435 U.S. 247, 262 (1978). Principles of due process demand that this case be heard by another judge selected without COLIN'S prejudice and for COLIN to disqualify himself and remove his Orders issued outside his jurisdiction and outside the color of law:

> The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. *See Carey v. Piphus*, 435 U.S. 247, 259-262, 266-267 (1978). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of

> an erroneous or distorted conception of the facts or the law. *See Matthews v. Eldridge*, 424 U.S. 319, 344 (1976). At the same time, it preserves both the appearance and reality of fairness, 'generating the feeling, so important to a popular government, that justice has been done,' *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172, (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

90. The disqualification rules require judges to avoid even the appearance of impropriety and COLIN'S self-dealing actions after knowing he would be a material and fact witness to crimes that occurred in his court by officers and fiduciaries he appointed, in which his own actions became questionable, establishes a prima facie case of appearance of impropriety:

> It is the established law of this State that every litigant…is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of the court to scrupulously guard this right of the litigant and to refrain from attempting to exercise jurisdiction in any manner where his qualification to do so is seriously brought into question. The exercise of any other policy tends to discredit and place the judiciary in a compromising attitude which is bad for the administration of justice. *Crosby v. State*, 97 So.2d 181 (Fla. 1957); *State ex rel. Davis v. Parks*, 141 Fla. 516, 194 So. 613 (1939); *Dickenson v. Parks*, 104 Fla. 577, 140 So. 459 (1932); *State ex rel. Mickle v. Rowe*, 100 Fla. 1382, 131 So. 3331 (1930).
>
> * *
>
> The prejudice of a judge is a delicate question for a litigant to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge in question should be prompt to recuse himself. No judge

> under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned. *Dickenson v. Parks*, 104 Fla. 577, 140 So. 459 (1932); *State ex rel. Aguiar v. Chappell*, 344 So.2d 925 (Fla. 3d DCA 1977).

91. The United States Supreme Court has stated:

> ...the inquiry must be not only whether there was actual bias on respondent's part, but also whether there was 'such a likelihood of bias or **an appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused.**' *Ungar v. Sarafite*, 376 U.S. 575, 588 (1964). 'Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties,' but due process of law requires no less. *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). *Taylor v. Hayes*, 418 U.S 488, 501 (1974) (**emphasis added**).

92. The appearance of impropriety violates state and federal constitutional rights to due process. A fair hearing before an impartial tribunal is a basic requirement of due process. *See In re Murchison*, 349 U.S. 133 (1955). "Every litigant is entitled to nothing less than the cold neutrality of an impartial judge." *State ex rel. Mickle v. Rowe*, 131 So. 331, 332 (Fla. 1930). Absent a fair tribunal, there can be no full and fair hearing.

93. The issues before this Court are the dismissal of the Recusal order of Colin in favor of a mandated mandatory disqualification of COLIN and voiding of his prior orders and the question of "legal sufficiency" of the motion filed by

PETITIONER; there is no deference owed to the lower court. *Smith v. Santa Rosa Island Authority*, 729 So. 2d 944, 946 (Fla. 1st DCA 1998). The test for determining the legal sufficiency of a motion for disqualification is an objective one which asks whether the facts alleged in the motion would place a reasonably prudent person in fear of not receiving a fair and impartial hearing. *See Livingston v. State*, at 1087. The fact that the crimes were committed in COLIN'S court by Officers and Fiduciaries under COLIN'S tutelage requires mandatory disqualification on COLIN'S own initiative and casts "a shadow…upon judicial neutrality so that disqualification [of the circuit] is required." *Chastine v. Broome*, at 295.

94. In *Partin v* Solange *et al*, 2015 WL 2089081 (Fla.App. 4 Dist., 2015), the court granted the petition to disqualify stating the lower court judge cut-off petitioners' counsel and expressed his prejudgment of the matter and in another hearing, the lower court judge made acerbic comments about petitioners and exhibited overall hostility toward both petitioners and their counsel. Not only did COLIN engage in this similar egregious conduct towards PETITIONER from the start but his disqualification is also mandated because of his direct involvement and handling of the fraudulently notarized and forged documents posited in his court and other direct involvement in the matters that eroded PETITIONER'S rights to fair and

impartial due process under law by retaliating for two years against PETITIONER instead.

95. The Due Process Clause serves to protect use of fair procedures to prevent the wrongful deprivation of interests and is a guarantee of basic fairness. *Johnson v. Mississippi*, 403 U.S. 212, 216 (1971); *Peters v. Kiff*, 407, U.S. 493, 502 (1972). "[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo,* 380 U.S. 545, 552 (1965) *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); Denying access to important records, evidence, and witnesses and mistreating PETITIONER and his minor children as a *pro se* party are violations of Equal Protection and due process of law. *Pro se* parties are a distinct minority class in judicial proceedings. COLIN should have demanded that the minor children and PETITIONER were represented by counsel, forced bonding of the fiduciaries and officers he appointed involved in the criminal acts, posted bonds for the court, reported the misconduct, removed all parties involved in the fraud instead of allowing them to continue to participate for months and even to this day, disqualified himself and instead COLIN took opposite actions to harm PETITIONER and his minor children and delay their inheritances by continuing the Fraud on the court, Fraud in the court and Fraud by the court, to intentionally

cause catastrophic financial ruin upon PETITIONER and his minor children by continuing to hold fraudulent proceedings and illegally issue orders.

96. None of the orders issued by a judge who has been disqualified or should have disqualified by law are valid. They are void as a matter of law, and are of no legal force or effect. The orders issued by COLIN are null and void and of no force and effect as they are procured by fraud, without jurisdiction, the result of unlawful rulings, are unconstitutional and violate due process causing criminal Obstruction of Justice.

ALL ORDERS OF JUDGE COLIN ARE A NULLITY AND ARE VOID

97. Where a judge fails to disqualify, there is no jurisdiction to act and any order issued is illegal and void. *Kilbourn v. Thompson*, 103 U.S. 168 (1881). In *Kilbourn*, the Sergeant-at-Arms of the United States House of Representatives was held not to have immunity for ordering that the PLAINTIFF be arrested under a warrant issued by the House for refusing to testify because they lacked jurisdiction to issue such an order. Id, The court held that the House *did not have jurisdiction* to conduct the particular investigation. The Sergeant at Arms was liable for false arrest and could not assert the issuance of the warrant as a defense. Id. An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. See *Pennoyer v. Neff* (1877) 95 US 714; *Windsor v. McVeigh* (1876) 93 US

274; A void judgment is no judgment at all and "a court must vacate any judgment entered in excess of its jurisdiction." *Lubben v. Selective Service System Local Bd. No.* 27, 453 F.2d 645 (1st Cir. 1972). *Kalb v. Feuerstein* (1940) 308 US 433.

98. "A void judgment does not create any binding obligation. *Kalb v. Feuerstein* (1940) 308 US 433. If a court grants relief, which, under the circumstances, it hasn't any authority to grant, its judgment is to that extent void." An illegal order is forever void. A void order is *void ab initio* and does not have to be declared void by a judge. The law is established by the *U.S. Supreme Court in Valley v. Northern Fire & Marine Ins.* Co., 254 U.S. 348, (1920) as well as other state courts, in *People v. Miller*. "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities..." *Valley v. Northern Fire* and Marine Ins. Co., 254 U.S. 348.

FRAUD UPON THE COURT VOIDS ORDERS

An order is void if it was procured by fraud upon the court," In re Village of Willowbrook, 37 Ill. App. 3D 393(1962)

A void judgment is one that has been procured by extrinsic or collateral fraud, or entered by court that did not have jurisdiction over subject matter or the parties, Rook v. Rook, 353 S.E. 2d 756 (Va. 1987).

A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any

time, in any court, either directly or collaterally, provided that the party is properly before the court. See *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999)

"Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted."

"Fraud upon the court" makes void the orders and judgments of that court.
It is also clear and well-settled law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. The People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354; 192 N.E. 229 (1934) ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); Allen F. Moore v. Stanley F. Sievers, 336 Ill. 316; 168 N.E. 259 (1929) ("The maxim that fraud vitiates every transaction into which it enters ..."); In re Village of Willowbrook, 37 Ill.App.2d 393 (1962) ("It is axiomatic that fraud vitiates everything."); Dunham v. Dunham, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); Skelly Oil Co. v. Universal Oil Products Co., 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); Thomas Stasel v. The American Home Security Corporation, 362 Ill. 350; 199 N.E. 798 (1935).

Under Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect."

As reiterated in Baker v. Myers Tractor Services, Inc., 765 So. 2d 149, (Fla. 1st DCA 2000): When the central issues of a case are based in fraud, the courts cannot move forward as a matter of law.

The integrity of the civil litigation process depends on truthful disclosure of facts. A system that depends on an adversary's ability to uncover falsehoods is doomed to failure, which is why this kind of conduct must be discouraged in the strongest possible way.

As set forth in Rosenthal v. Rodriguez, 750 So. 2d 703, 704 (Fla. 3d DCA 2000): 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 their 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).

VOID ORDERS IN VIOLATION OF DUE PROCESS

"Due Process is a requirement of the U.S. Constitution. Violation of the United States Constitution by a judge deprives that person from acting as a judge under the law. He/she is acting as a private person, and not in the capacity of being a judge,": Piper v. Pearson, 2 Gray 120, cited in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872) "any judge who acts without jurisdiction is engaged in an act of treason," U.S. v. Will, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2d 392, 406 (1980); Cohens v. Virginia, 19 U.S. (6) Wheat) 264, 404, 5 L.Ed 257 (1821). "Engaging in an act of treason against the United States Constitution by any citizen of the United States is an act of war against the United States," Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958).

The United States Supreme Court, in Twining v. New Jersery, 211 U.S. 78, 29 S.Ct. 14, 24, (1908), stated that "Due Process requires that the court which assumes to determine the rights of parties shall have jurisdiction."; citing Old Wayne Mut. Life Assoc. V. McDonough, 204 U. S. 8, 27 S. Ct. 236 (1907); Scott v McNeal, 154 U.S. 34, 14, S. Ct. 1108 (1894); Pennoyer v. Neff, 95 U.S. 714, 733 (1877).

"Void judgment is one where court lacked personal or subject matter jurisdiction or entry of order violated due process," U.S.C.A. Const. Amend. 5-Triad Energy Corp. v. McNell, 110 F.R.D. 382 (S.D.N.Y. 1986).

Judgment is a void judgment if the court that rendered the judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules of Civil Procedure, Rule 60(B) (4), 28 U.S.C.A., U.S.C.A. Const. Amend. 5 – Klug v. U.S., 620 F. Supp. 892 (D.S.C. 1985).

"A judgment is void if it violated due process," Johnson v. Zerbst, 304 U.S. 458 S Ct.1019; Pure Oil Co. v. City of Northlake, 10 Ill. 2D 241, 245, 140 N.E. 2D 289 (1956) Hallberg v. Goldblatt Bros., 363 Ill. 25 (1936)

VOID ORDERS IN VIOLATION OF RIGHT TO BE HEARD

It is a fundamental doctrine of law that a party to be affected by a personal judgment must have his day in court, and an opportunity to be heard. Renaud v. Abbott, 116 US 277, 29 L Ed 629, 6 S Ct 1194. Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interests, before he is affected by any judicial decision on the question. Earle v McVeigh, 91 US 503, 23 L Ed 398.

A judgment of a court without hearing the party or giving him an opportunity to be heard is not a judicial determination of his rights. Sabariego v Maverick, 124 US 261, 31 L Ed 430, 8 S Ct 461, and is not entitled to respect in any other tribunal.

"A void judgment does not create any binding obligation. Federal decisions addressing void state court judgments include Kalb v. Feuerstein (1940) 308 US 433, 60 S Ct 343, 84 L ed 370; Ex parte Rowland (1882) 104 U.S. 604, 26 L.Ed. 861: "A judgment which is void upon its face, and which requires only an inspection of the judgment roll to demonstrate its wants of vitality is a dead limb upon the judicial tree, which should be lopped off, if the power to do so exists."

VOID ORDERS WITHOUT JURISDICTION OR EXCEED JURISDICTION

"If a court grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void." (1 Freeman on Judgments, 120-c.)

"When judges act when they do not have jurisdiction to act, or they enforce a void order (an order issued by a judge without jurisdiction), they become trespassers of the law, and are engaged in treason," The Court in Yates v. Village of Hoffman Estates, Illinois, 209 F.Supp. 757 (N.D. Ill. 1962) held that "not every action by a judge is in exercise of his judicial function. ... it is not a judicial function for a judge to commit an intentional tort even though the tort occurs in the courthouse."

void order is an order issued without jurisdiction by a judge and is void ab initio and does not have to be declared void by a judge to be void. Only an inspection of the record of the case showing that the judge was without jurisdiction or violated a person's due process rights, or where fraud was involved in the attempted procurement of jurisdiction, is sufficient for an order to be void. Potenz Corp. v. Petrozzini, 170 Ill. App. 3d 617, 525 N.E. 2d 173, 175 (1988). In instances herein, the law has stated that the orders are void ab initio and not voidable because they are already void.

The United States Supreme Court has clearly, and repeatedly, held that any judge who acts without jurisdiction is engaged in an act of treason. U.S. v. Will, 449 U.S. 200, 216, 101, S. Ct. 471, 66 L.Ed. 2d 392, 406 (1980): Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821).

Title 5, US Code Sec. 556(d), Sec. 557, Sec.706: Courts lose jurisdiction if they do not follow Due Process.

An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. (See Rose v. Himely (1808) 4 Cranch 241, 2 L ed 608; Pennoyer v. Neff (1877) 95 US 714, 24 L ed 565; Thompson v. Whitman (1873) 18 Wall 457, 21 l ED 897; Windsor v. McVeigh (1876) 93 US 274, 23 L ed 914; McDonald v. Mabee (1917) 243 US 90, 37 Sct 343, 61 L ed 608.

"If a court grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void." (1 Freeman on Judgments, 120-c.) "A void judgment is no judgment at all and is without legal effect." (Jordon v. Gilligan, 500 F.2d 701, 710 (6th Cir. 1974)) "a court must vacate any judgment entered in excess of its jurisdiction." (Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645 (1st Cir. 1972).).

A void judgment does not create any binding obligation. Federal decisions addressing void state court judgments include Kalb v. Feuerstein (1940) 308 US 433, 60 S Ct 343, 84 L ed 370. Federal judges issued orders permanently barring Stich from filing any papers in federal courts. After Judges Robert Jones and Edward Jellen corruptly seized and started to liquidate Stich's assets, Judge Jones issued an unconstitutional order barring Stich from filing any objection to the seizure and liquidation.

Void judgment is one entered by court without jurisdiction of parties or subject matter or that lacks inherent power to make or enter particular order involved and such a judgment may be attacked at any time, either directly or collaterally, People v. Wade, 506 N.W.2d 954 (Ill. 1987).

Void judgment may be defined as one in which rendering court lacked subject matter jurisdiction, lacked personal jurisdiction, or acted in manner inconsistent with due process of law Eckel v. MacNeal, 628 N.E.2d 741 (Ill. App.Dist. 1993).

Void judgment is one where court lacked personal or subject matter jurisdiction or entry of order violated due process, U.S.C.A. Const. Amend. 5-Triad Energy Corp. v. McNell, 110 F.R.D. 382 (S.D.N.Y. 1986).

Void judgment is one entered by court without jurisdiction of parties or subject matter or that lacks inherent power to make or enter particular order involved; such judgment may be attacked at any time, either directly or collaterally People v. Sales, 551 N.E.2d 1359 (Ill.App. 2 Dist. 1990).

Subject matter jurisdictional failings:

Fraud committed in the procurement of jurisdiction, Fredman Brothers Furniture v. Dept. of Revenue, 109 Ill.2d 202, 486 N.E.2d 893 (1985).

Fraud upon the court, In re Village of Willowbrook, 37 Ill. App.3d 393 (1962)

A judge does not follow statutory procedure, Armstrong v. Obucino, 300 Ill. 140, 143 (1921).

Unlawful activity of a judge, Code of Judicial Conduct.
If the court exceeded its statutory authority, Rosenstiel v. Rosenstiel, 278 F.Supp. 794 (S.D.N.Y. 1967).

Any acts in violation of 11 U.S.C. §362(a), In re Garcia, 109 B.R. 335 (N.D. Illinois, 1989).

Where no justiciable issue is presented to the court through proper pleadings, Ligon v. Williams, 264 Ill. App.3d 701, 637 N.E.2d 633 (1st Dist. 1994).

Where a complaint states no cognizable cause of action against that party, Charles v. Gore, 248 Ill.App.3d 441, 618 N.E.2d 554 (1st Dist. 1993).

When the judge is involved in a scheme of bribery (the Alemann cases, Bracey v. Warden, U.S. Supreme Court No. 96-6133; June 9, 1997)

VOID IN VIOLATION OF THE CONSTITUTION

A Judge has no lawful authority to issue any order which violates the Supreme Law of the Land.

The First Amendment to the U.S. Constitution states that all entities have the mandatory right of an adequate, complete, effective, fair, full meaningful and timely access to the court.

The First and the Fourteenth Amendment to the U.S. Constitution guarantees the right of association.

The Fifth and Fourteenth Amendment guarantees Due Process and Equal Protection to all. "No state shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." United States Constitutional Amendment XIV and adopted by State of Indiana Constitution.

"Choices about marriage, family life, and upbringing of children are among associational rights ranked as of basic importance in our society, rights sheltered by the Fourteenth Amendment against State's unwarranted usurpation, disregard, or disrespect. U.S.C.A. Constitutional Amendment 14.

"Officers of the court have no immunity, when violating a Constitutional right, from liability. For they are deemed to know the law." -- Owen v. Independence, 100 S.C.T. 1398, 445 US 622; Scheuer v. Rhodes, 416 U.S. 232.

A judgment may not be rendered in violation of constitutional protections. The validity of a judgment may be affected by a failure to give the constitutionally required due process notice and an opportunity to be heard. Earle v. McVeigh, 91 US 503, 23 L Ed 398. See also Restatements, Judgments ' 4(b). Prather v Loyd, 86 Idaho 45, 382 P2d 910. The limitations inherent in the requirements of due process and equal protection of the law extend to judicial as well as political branches of government, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees. Hanson v Denckla, 357 US 235, 2 L Ed 2d 1283, 78 S Ct 1228.

VOID ORDERS CAN BE ATTACKED AT ANY TIME

An order that exceeds the jurisdiction of the court, is void, or voidable, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. (See Rose v. Himely (1808) 4 Cranch 241, 2 L ed 608; Pennoyer v. Neff (1877) 95 US 714, 24 L ed 565; Thompson v. Whitman (1873) 18 Wall 457, 21 l ED 897; Windsor v. McVeigh (1876) 93 US 274, 23 L ed 914; McDonald v. Mabee (1917) 243 US 90, 37 Sct 343, 61 L ed 608. U.S. v. Holtzman, 762 F.2d 720 (9th Cir. 1985) ("Portion of judgment directing defendant not to import

vehicles without first obtaining approval ... was not appropriately limited in duration and, thus, district court abused its discretion by not vacating it as being prospectively inequitable." Id at 722.)

VOID JUDGMENTS DO NOT HAVE TO BE DECLARED VOID BY A JUDGE

A void order is an order issued without jurisdiction by a judge and is void ab initio and does not have to be declared void by a judge to be void. Only an inspection of the record of the case showing that the judge was without jurisdiction or violated a person's due process rights, or where fraud was involved in the attempted procurement of jurisdiction, is sufficient for an order to be void. Potenz Corp. v. Petrozzini, 170 Ill. App. 3d 617, 525 N.E. 2d 173, 175 (1988). In instances herein, the law has stated that the orders are void ab initio and not voidable because they are already void.

A void order is void ab initio and does not have to be declared void by a judge. The law is established by the U.S. Supreme Court in Valley v. Northern Fire & Marine Ins. Co., 254 U.S. 348, 41 S. Ct. 116 (1920) as well as other state courts, e.g. by the Illinois Supreme Court in People v. Miller. A party may have a court vacate a void order, but the void order is still void ab initio, whether vacated or not; a piece of paper does not determine whether an order is void, it just memorializes it, makes it legally binding and voids out all previous orders returning the case to the date prior to action leading to void ab initio.

This principle of law was stated by the U.S. Supreme Court as "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply VOID, AND THIS IS EVEN PRIOR TO REVERSAL ." [Emphasis added]. Vallely v. Northern Fire and Marine Ins. Co., 254 U.S. 348, 41 S. Ct. 116 (1920). See also Old Wayne Mut. I. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907); Williamson v. Berry, 8 How. 495, 540, 12 L. Ed, 1170, 1189, (1850); Rose v. Himely, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).

Pursuant to the Vallely court decision, a void order does not have to be reversed by any court to be a void order. Courts have also held that, since a void order is not a final order, but is in effect no order at all, it cannot even be appealed. Courts have held that a void decision is not in essence a decision at all, and never

becomes final. Consistent with this holding, in 1991, the U.S. Supreme Court stated that, "Since such jurisdictional defect deprives not only the initial court but also the appellate court of its power over the case or controversy, to permit the appellate court to ignore it. ...[Would be an] unlawful action by the appellate court itself." Freytag v. Commissioner, 501 U.S. 868 (1991); Miller, supra. Following the same principle, it would be an unlawful action for a court to rely on an order issued by a judge who did not have subject-matter jurisdiction and therefore the order he issued was Void ab initio.

A void order has no legal force or effect. As one court stated, a void order is equivalent to a blank piece of paper.

A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded, or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place. ... It is not entitled to enforcement ... All proceedings founded on the void judgment are themselves regarded as invalid. 30A Am Jur Judgments " 44, 45.

VOID JUDGMENTS ARE A NULLITY

"A void judgment does not create any binding obligation. Kalb v. Feuerstein (1940) 308 US 433. If a court grants relief, which, under the circumstances, it hasn't any authority to grant, its judgment is to that extent void." An illegal order is forever void. A void order is void ab initio and does not have to be declared void by a judge. The law is established by the U.S. Supreme Court in Valley v. Northern Fire & Marine Ins. Co., 254 U.S. 348, (1920) as well as other state courts, in People v. Miller. "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities..." Valley v. Northern Fire and Marine Ins. Co., 254 U.S. 348.

Am Jur Judgments " 44, 45. "A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded, or declared inoperative by any tribunal in which effect is sought to be given to it. All proceedings founded on the void judgment are themselves regarded as invalid" Freeman on Judgments, 120-c.) An illegal order is forever void.

A void order is void ab initio and does not have to be declared void by a judge. The law is established by the U.S. Supreme Court in Valley v. Northern Fire &

Marine Ins. Co., 254 U.S. 348, 41 S. Ct. 116 (1920) as well as other state courts, e.g. by the Illinois Supreme Court in People v. Miller. A party may have a court vacate a void order, but the void order is still void ab initio, whether vacated or not; a piece of paper does not determine whether an order is void, it just memorializes it, makes it legally binding and voids out all previous orders returning the case to the date prior to action leading to void ab initio.

This principle of law was stated by the U.S. Supreme Court as "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply VOID, AND THIS IS EVEN PRIOR TO REVERSAL." [Emphasis added]. Vallely v. Northern Fire and Marine Ins. Co., 254 U.S. 348, 41 S. Ct. 116 (1920). See also Old Wayne Mut. I. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907); Williamson v. Berry, 8 How. 495, 540, 12 L. Ed, 1170, 1189, (1850); Rose v. Himely, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).

Pursuant to the Vallely court decision, a void order does not have to be reversed by any court to be a void order. Courts have also held that, since a void order is not a final order, but is in effect no order at all, it cannot even be appealed. Courts have held that a void decision is not in essence a decision at all, and never becomes final. Consistent with this holding, in 1991, the U.S. Supreme Court stated that, "Since such jurisdictional defect deprives not only the initial court but also the appellate court of its power over the case or controversy, to permit the appellate court to ignore it. ...[Would be an] unlawful action by the appellate court itself." Freytag v. Commissioner, 501 U.S. 868 (1991); Miller, supra. Following the same principle, it would be an unlawful action for a court to rely on an order issued by a judge who did not have subject-matter jurisdiction and therefore the order he issued was Void ab initio.

A void judgment is one which, from its inception, was a complete nullity and without legal effect. See Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645, 14 A.L.R. Fed. 298 (C.A. 1 Mass. 1972)

A void judgment is one which from the beginning was complete nullity and without any legal effect. See Hobbs v. U.S. Office of Personnel Management, 485 F.Supp. 456 (M.D. Fla. 1980).

Void judgment is one that, from its inception, is complete nullity and without legal effect. Holstein v. City of Chicago, 803 F.Supp. 205, reconsideration denied 149 F.R.D. 147, affirmed 29 F.3d 1145 (N.D. Ill. 1992).

A void judgment is one which, from its inception, was a complete nullity and without legal effect, Rubin v. Johns, 109 F.R.D. 174 (D. Virgin Islands 1985).

A void judgment is one which, from its inception, is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind the parties or to support a right, of no legal force and effect whatever, and incapable of enforcement in any manner or to any degree. Loyd v. Director, Dept. of Public Safety, 480 So.2d 577 (Ala.Civ.App. 1985). A judgment shown by evidence to be invalid for want of jurisdiction is a void judgment or at all events has all attributes of a void judgment, City of Los Angeles v. Morgan, 234 P.2d 319 (Cal.App. 2 Dist. 1951).

Void judgment which is subject to collateral attack, is simulated judgment devoid of any potency because of jurisdictional defects, Ward. v. Terriere, 386 P.2d 352 (Colo. 1963). A void judgment is a simulated judgment devoid of any potency because of jurisdictional defects only, in the court rendering it and defect of jurisdiction may relate to a party or parties, the subject matter, the cause of action, the question to be determined, or relief to be granted, Davidson Chevrolet, Inc. v. City and County of Denver, 330 P.2d 1116, certiorari denied 79 S.Ct. 609, 359 U.S. 926, 3 L.Ed. 2d 629 (Colo. 1958).

Void judgment is one which, from its inception is complete nullity and without legal effect In re Marriage of Parks, 630 N.E.2d 509 (Ill.App. 5 Dist. 1994).

Void judgment is one entered by court that lacks the inherent power to make or enter the particular order involved, and it may be attacked at any time, either directly or collaterally; such a judgment would be a nullity. People v. Rolland, 581 N.E.2d 907 (Ill.APp. 4 Dist. 1991).

XI. PETITION TO STAY CASES AND TEMPORARILY RESTRAIN ANY SALE, TRANSFER, DISPOSITION OF ANY ASSET OR PROPERTY AND PRESERVATION OF EVIDENCE

99. Petitioners must establish the following four elements:

(1) a substantial likelihood that the plaintiffs will prevail on the merits; (2) a substantial threat that plaintiffs will suffer irreparable injury if the injunction is not granted; (3) the threatened injury to plaintiffs outweighs the threatened harm the injunction may do to the defendant; and (4) granting the preliminary injunction will not disserve the public interest. Church v. City of Huntsville, 30 F.3d 1332, 1342 (11th Cir.1994).

100. The mandamus petition herein and filed motion for mandatory Disqualification clearly shows said motion was legally sufficient and Judge Colin should have mandatorily disqualified. Thus Petitioners have a substantial likelihood to prevail on this application. In addition to an illegal sale of real property being the home of deceased Simon Bernstein imminently scheduled for sale by tomorrow, June 10, 2015, Petitiioners have shown loss of property, loss of records, loss of documents and evidence, loss of trusts and inheritances and other issues of irreparable harm. Granting a temporary stay and injunction against further threatened injury to Petitioners outweighs and harm to Respondent –defendants. Granting a temporary stay is in the public interest until a neutral court can sort out the frauds and conflicts and proper parties and proper trustees and proper trusts and instruments.

101. PETITIONER has suffered at the hands of the Florida court system for thirteen years and has been denied INTELLECTUAL PROPERTIES and due process to seek redress as the alleged criminals are almost all attorneys at law in their various capacities as private lawyers, judges, prosecutors and politicians.

102. PETITIONER has suffered at the hands of the Florida court system for almost three years since the passing of PETITIONER'S father and has been denied PROPERTIES rightfully his through inheritance and again the criminals are almost all attorneys at law and many are connected to the prior INTELLECTUAL PROPERTIES thefts.

103. PETITIONER again cannot get redress or due process in the Florida court system and seeks to have the cases moved from the Florida court system as due to his pursuit of Supreme Court Justices, the Florida Bar and many Florida Lawyers and Law Firms and therefore PETITIONER fears he cannot get a fair and impartial hearing and adequate remedy of law by any party that is a member of the Florida Bar.

104. PETITIONER has battled two years to remove JUDGE COLIN for a situation of Fraud on the Court that was irrefutable and cause for disqualification on several grounds but who refused to follow Judicial Canons and Law and thus has caused severe harms to PETITIONER and his three minor children as the record reflects.

105. Even when "recusing" JUDGE COLIN influenced inappropriately the case knowingly to a former PROSKAUER partner and where PETITIONER was again harmed as the new judges COATES then had access to all the courts records to gain further advantage over PETITIONER. That COLIN and COATES knew of

the conflict of interest and that PROSKAUER was a Counter Defendant in the certain of PETITIONER'S Counter Complaints and a party to the matters.

106. That COATES had reviewed the case file and stated on the record that he was NOT CONFLICTED with PETITIONER and the matters until PETITIONER reminded JUDGE COATES that despite his desire to stay on the case that he had JUDICIAL CANONS that could make his retaining the case violate them, whereby JUDGE COATES after several attempts to claim NO CONFLICT suddenly SUA SPONTE recused himself.

107. That due to this nefarious setup of PETITIONER'S cases to further stymie and delay and interfere with PETITIONER'S due process and procedure rights PETITIONER fears that no matter how or who the cases are transferred to in Florida that PETITIONER cannot receive due process.

XII. CONCLUSION AND PRAYER

WHEREFORE, PETITIONER seeks a WRIT OF PROHIBITION to prohibit COLIN from:

a. Acting in excess of his lawful jurisdiction;

b. Attempting to enforce the May 20th 2015 SUA SPONTE RECUSAL or ANY OTHER ORDER;

c. Taking any action in this matter other than vacating and voiding all Orders and immediately disqualifying himself;

d. Prohibition is invoked for the protection of PETITIONER and his minor children, whose safety and well being are in danger if this WRIT is denied for lack of a legal remedy.

WHEREFORE, PETITIONER seeks a WRIT OF MANDAMUS, compelling the COLIN to:

a. abide by the laws of the State of Florida, Federal law and the United States Constitution and cease acting beyond his jurisdiction immediately;

b. set aside the May 20th 2015 Order to Recuse as void ab initio immediately and instead disqualify himself and make NO FURTHER ACTION;

c. set aside the ALL ORDERS as void ab initio immediately;

d. set aside all other Orders in his Court as *void ab initio* immediately as they are the product of fraud on, in and by the court; and,

e. immediately disqualify himself from this case and take no further action.

WHEREFORE, PETITIONER seeks a 30 day STAY ORDER for all cases in order to move the cases to a prescreened conflict free venue, either state or federal.

a. IMMEDIATELY SEIZE ALL ASSETS AND PROPERTIES OF THE ESTATES AND TRUSTS of Simon and Shirley Bernstein and have all assets that have been converted through the fraudulent orders immediately be returned and put in protective custody by this Court, until all matters of document fraud, trust constructions, trust validity, fraud and breaches of fiduciary duties can be adjudicated by a fair and impartial court of law; and,

b. Reverse COLIN'S acts to interfere with the next venue in these matters by having the case assigned to a proper jurisdiction and venue without COLIN'S steering the case to a court and judge that he influenced the outcome in choosing.

And for such other and further relief as to this Court may seem just and proper.

DATED: Wednesday, June 10, 2015

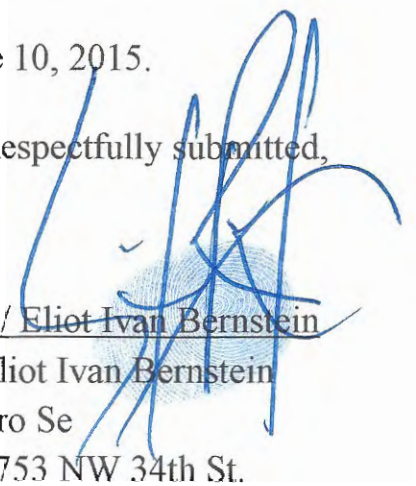
Respectfully submitted,

/s/ Eliot Ivan Bernstein
Eliot Ivan Bernstein
Pro Se
2753 NW 34th St.
Tel: (561) 245-8588
iviewit@iviewit.tv
www.iviewit.tv

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by e-filing and email on this Wednesday, June 10, 2015.

Respectfully submitted,



/s/ Eliot Ivan Bernstein
Eliot Ivan Bernstein
Pro Se
2753 NW 34th St.
Tel: (561) 245-8588
iviewit@iviewit.tv
www.iviewit.tv

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the font standards, i.e. Times New Roman 14 point font as set forth in Florida Rule of Appellate Procedure 9.210.

DATED: Wednesday, June 10, 2015

Respectfully submitted,

/s/ Eliot Ivan Bernstein
Eliot Ivan Bernstein
Pro Se
2753 NW 34th St.
Tel: (561) 245-8588
iviewit@iviewit.tv
www.iviewit.tv

EXHIBITS

URL' S ARE FULLY INCORPORATED HEREIN BY REFERENCE.

Exhibits	Document - URL
A	See Attachment – Disqualification Petition
B	See attachment – Order Denying Disqualification Petition
C	See attachment – Order Sua Sponte Recusal
1	September 02, 2014 Counter Complaint http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf
2	October 06, 2014 Colin Order Prohibiting Attorney/Fiduciaries from being sued http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141006%20Order%20on%20Ted%20Bernstein%20Removal%20as%20Trustee%20and%20Attorney%20Protection%20Order.pdf
3	July 25, 2012 ALLEGED Simon Bernstein Trust (See Pages 5,6 and 16, 17) http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120725SimonBernsteinAmendedRestatedTrust.pdf
4	Crystal Cox Blog http://tedbernsteinreport.blogspot.com/2014/07/alan-rose-john-pankauski-and-ted.html
5	TED Testimony Admitting Force and Aggression to be used against PETITIONER with his counsel. http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140711%20Hearing%20TED%20ADMITS%20FORCE%20AND%20AGRESSION%20AGAINST%20ELIOT.pdf
6	July 18, 2014 COLIN Privilege Order

	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140718%20Order%20Regarding%20Privilege.pdf
7	Palm Beach County Sheriff Report (Pages 25-28) http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf
8	Palm Beach County Coroner Report (Pages 31-51) http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf
9	May 06, 2015 TED Deposition (Pages 115-134) http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf
10	September 13, 2013 Emergency Hearing http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf
11	May 14 2015 Motion for Disqualification http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf
12	June 16, 2104 Petition to Remove Judge Colin http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140616%20FINAL%20SIGNED%20PRINTED%20OBJECTION%20TO%20PROPOSED%20AND%20EXISTING%20ORDERS%20and%20DISQUALIFY%20OF%20HON%20JUDGE%20MARTIN%20COLIN.pdf
13	January 01, 2014 Motion to Disqualify Colin http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140101%

	20Final%20PRINTED%20SIGNED%20Motion%20to%20Disqualify%20Colin%20and%20more%20131279ns.pdf
14	Iviewit RICO and Antitrust http://www.iviewit.tv/20071215usdcsnycomplaint.pdf
15	Iviewit RICO and Antitrust Amended Complaint http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080509%20FINAL%20AMENDED%20COMPLAINT%20AND%20RICO%20SIGNED%20COPY%20MED.pdf
16	Candice Schwager, Esq. Warning - PETITIONER correspondences with Sheriff Andrew Panzer & DOJ OIG Michael Horowitz http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150411CandiceSchwagerEsqWarningDOJOIGHorowitzAndSherifPanzerLetters.pdf

EXHIBIT A

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

TED BERNSTEIN, AS TRUSTEE
OF THE SHIRLEY BERNSTEIN TRUST AGREEMENT
DATED MAY 20, 2008, AS AMENDED,

PROBATE DIVISION
CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

_____/

Other Applicable Related Cases this Disqualification of Judge Martin Colin Should Apply to:

Case # 502012CP004391XXXXSB – Simon Bernstein Estate

Case # 502011CP000653XXXXSB – Shirley Bernstein Estate

Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children

Case # 502014CP003698XXXXSB – Shirley Trust Construction

Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB

_____/

VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN

COMES NOW Eliot Bernstein ("Petitioner") and files under information and belief this Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin, pursuant to Fla R. Admin P. 2.330 and section 38.10, Florida Statutes, for the following grounds and reasons:

Rule 2.330 (a) Application. This rule applies only to county and circuit judges in all matters in all divisions of court.

1. Judge Martin Colin is a circuit judge in the 15th Judicial Circuit Probate Division.

Rule 2.330 (b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.

2. Petitioner, a party to the case moves for mandatory disqualification and to otherwise disqualify trial Judge Colin provided by rules, statute and by the Code of Judicial Conduct.

   a. Judge Colin has violated the following Judicial Canons, including but not limited to,

      i. Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary

      ii. Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities

      iii. Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

      B. Adjudicative Responsibilities.

      (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

      (2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

      D. Disciplinary Responsibilities.

      (1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.

      (2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.

      E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

F. **Remittal of Disqualification.**

A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

b. Judge Colin has violated Statutes related to, including but not limited to,

i. Fraud on the Court and by the Court – This Disqualification shall Reset the case, render void all relevant Orders and Decisions which shall be vacated, all OFFICERS and FIDUCIARIES presently appointed by such Judge shall be replaced and more.

ii. Fraud in the Court

iii. Fraud by the Court

iv. Obstruction of Justice through Denial of Due Process

v. Aiding and Abetting and more.

c. Judge Colin has violated Probate Statutes and Rules

Rule 2.330 (c) Motion.
A motion to disqualify shall:
(1) be in writing.

3. This Motion is in writing.

Rule 2.330 (c) Motion
(2) allege specifically the facts and reasons upon which the movant relies as the grounds for disqualification.

4. This Motion specifically alleges specific facts and reasons upon which the movant relies as the grounds for disqualification.

Rule 2.330 (c) Motion
(3) be sworn to by the party by signing the motion under oath or by a separate affidavit.

5. Petitioner is acting Pro Se and has no attorney and therefore Petitioner has sworn to and signed this Motion for Disqualification under oath and before a notary as required by Rule 2.330 (c)

Rule 2.330 (c) Motion
(4) include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions.

6. There has been no previously granted motions to disqualify in this case filed under Rule 2.330

Rule 2.330 (c) Motion
(4) The attorney for the party shall also separately certify that the motion and the client's statements are made in good faith. In addition to filing with the clerk, the movant shall immediately serve a copy of the motion on the subject judge as set forth in Florida Rule of Florida Rule of Civil Procedure 1.080.

7. Petitioner movant is acting Pro Se and thus has no attorney at law representing him and Pro Se Petitioner has certified that the motion and the statements made herein are made in good faith. That Service is proper to Judge Colin under Rule 1.080.

Rule 2.330 (d) Grounds.
A motion to disqualify shall show:
(1) that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.

8. That Petitioner asserts that he will not and has not received a fair trial or hearing because of the following specifically described prejudices and biases of Judge Colin under Rule 2.330 (d), and shall be mandatory disqualified for the reasons that follow:

Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.
B. Adjudicative Responsibilities.
(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.
E. Disqualification.
(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding
(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

9. Judge Colin had reasons to voluntarily disqualify himself from these proceedings prior to and regardless of this Motion to Disqualify him by Petitioner and has failed to do so prompting Pro Se Petitioner to file this disqualification on multiple grounds.

10. Judge Colin's Court Docket in this case reflects an Entry on Nov. 6, 2012 which is the Filed and Time-Stamped Date by the Court Clerk's Office of a Memorandum[1] allegedly made by

[1] November 05, 2012 Memorandum

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121105%20Court%20Memorandum%20Need%20Notarization%20Reciepts%20for%20assets%20from%20all%20of%20specific%20beneficiaries%20were%20not%20notarized.pdf

Astride Limouzin, Case Manager which by the express notations on said document was done on behalf of Judge Martin Colin, the Judge in this case at that time.

11. Notwithstanding the fact that this is listed as an Ex Parte communication in the Court's own Docket which will be addressed later, the Ex Parte communication is addressed to Attorney Robert L. Spallina. The Memorandum document purports to be notifying Attorney Spallina on behalf of Judge Colin that "Receipts for assets from all of the specific beneficiaries were not notarized." It is important to note that Attorney Spallina is fully aware at this time that his client Simon Bernstein the Personal Representative has passed away on September 13, 2012 and yet he continues to file with the Court documents on his deceased clients behalf to close the Estate months after his passing and presumably without notifying the Court.

12. However, by the time of this Ex Parte communication which purports to be by Astride Limouzin of Judge Colin's Court on behalf of Judge Colin to Attorney Spallina dated Nov. 5, 2012 by the express language of the document and is rejecting for filing Waivers not notarized by decedent Shirley's deceased at the time husband, Simon Bernstein[2], and, Eliot Ivan Bernstein, Jill Bernstein-Iantoni, Pam Bernstein-Simon, Theodore Stuart Bernstein and Lisa Bernstein-Friedstein, as the adult surviving children of Shirley Bernstein in the Shirley Bernstein Estate case, Judge Colin's Court had already received for filing:

    a. A Petition for Discharge (Full Waiver)[3] (also needing notarization but not notarized) to close Shirley's Estate allegedly dated April 9th, 2012 and allegedly signed by Simon

[2] Simon Bernstein un-notarized Waiver @ URL

http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20WAIVER%20SIMON%20UNNOTARIZED%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024%20EIB%20COMMENTS.pdf

[3] Simon Bernstein un-notarized Petition for Discharge (Full Waiver) @ URL

Bernstein on said date and Subscribed before Attorney Robert Spallina on same date of April 9, 2012, yet which is not Filed and Docketed with the Court until Oct. 24, 2012 with Judge Colin's Court and time-stamped by the Clerk's Office on said date, thus meaning Simon Bernstein was acting as Personal Representative/Executor to close Shirley's Estate a month ***after he was Deceased on Sept. 13 2012; being filed and time-stamped as received by the Court Clerk of Judge Colin's Court nearly 2 weeks before the Nov. 5, 2012 Ex Parte Memo above;***

b. A Tax Statement[4] allegedly dated April 9, 2012 and allegedly signed by Simon Bernstein on said date indicating no Florida Estate Tax due yet again this Document was Filed and Time-stamped with Judge Colin's Court Oct. 24, 2012 nearly 2 weeks before the Ex Parte Memo from Judge Colin to Robert Spallina allegedly made by Judge Colin's Case Manager Astride Limouzin on Nov. 5, 2012 and again posited with the Court by Simon acting as the Personal Representative/Executor after he is deceased; and

c. A Probate Checklist[5] dated Feb. 15, 2012 which again references Attorney Robert Spallina as the involved attorney, Simon Bernstein as the Personal

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http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%2012%20COMMENTS.pdf

[4] Affidavit of No Florida Estate Tax Due @ URL

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Affidavit%20of%20No%20Florida%20Estate%20Tax%20Due%20SIGNED%2020110409%20NOT%20FILED%20until%2020121024%20Shirley.pdf

[5] Probate Checklist

Representative/Executor of the Estate but which is not only substantially defective in the items it references but again is not filed until Oct. 24, 2012 and time-stamped as received by Judge Colin's Court Clerks on said date again being filed by Simon acting as Personal Representative/Executor ***nearly a month after Simon Bernstein passed away and was deceased but nearly 2 weeks before the Ex Parte Memo to Attorney Spallina by Judge Colin via Case Manager Astride Limouniz dated Nov. 5, 2012.***

13. Judge Colin is chargeable with knowledge of the documents filed and entered into his Court upon which he is adjudicating and presiding over.

14. Thus, prior to transmitting the Nov. 5th 2012 Ex Parte Memorandum from Judge Colin via his Case Manager Astride Limouzin to Attorney Robert Spallina, Judge Colin's Court had received multiple filings as referenced above which are not only dated many months prior to the actual filing date but are clearly filed nearly an entire month after Simon Bernstein was deceased and at least one of these documents is Subscribed and witnessed by Attorney Robert Spallina being the Petition to Discharge to close Shirley's Estate and Judge Colin is now communicating with Attorney Spallina Ex Parte according to the Court's own Docket.

15. As of this date itself, Nov. 5, 2012, Judge Colin should have been Disqualified under the Florida Rules and Statutes and now should be Disqualified under at least 3 separate grounds of the Rules and Codes as an instance in which a Judge's impartiality may be reasonably questioned, as one with knowledge of disputed evidentiary facts concerning the proceeding and both as a material witness or likely material witness and - or fact witness of disputed and material evidentiary facts in the proceeding.

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http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120215%20Prbate%20Checklist%20Shirley%20NOT%20FILED%20UNTIL%20OCTOBER%2024%202010.pdf

16. Now, back to the Ex Parte nature of the Nov. 5, 2015 Memo from Judge Colin through Judge Colin's Caseworker Astride Limouzin to Attorney Robert Spallina who is now shown and presumably already known to Judge Colin and his Court Clerks to have filed with the Court multiple documents on behalf of a Deceased person Simon Bernstein and being filed months and months after allegedly performed and completed, yet secrets this information from the Court presumably.

17. A careful review of the Nov. 5, 2012 Ex Parte Memo shows that while the Memo is dated Nov. 5, 2012 on the face of the document, the document is not time-stamped with the Court Clerk's for 24 hours or so or at least until sometime the next day Nov. 6, 2012 as shown by the time stamp on the face of the document.

18. Judge Colin's impartiality can reasonably be questioned by the act of he and his Court Clerk Case Manager Astride Limouzin discovering filings in the Court by Attorney Robert Spallina on Oct. 24, 2012 purporting to act on behalf of a Deceased person Simon Bernstein without any authority demonstrated to act for now Deceased Simon Bernstein and by filing documents purportedly completed nearly 6 months earlier in April 2012, yet instead of Ordering Attorney Spallina for Disciplinary Investigation and to also immediately appear before his Court to Show Cause why said actions should not be immediately referred to Investigative and Prosecutorial authorities, Judge Colin and his Case Manager send an Ex Parte Memo to correct un-notarized Waivers with no mention of the Petition for Discharge now filed on behalf of Deceased Simon Bernstein clearly not able to act on said date.

19. This lack of impartiality by Judge Colin and his Court is further compounded by the facts shown by the face of the Court's own Docket and files that it took at least overnight to even Docket the Nov. 5, 2012 Ex Parte Memo on Nov. 6th, 2012 which leads right in and goes hand

in hand with the other mandatory grounds for Disqualification on his own initiative for now having knowledge of disputed evidentiary facts involving the proceeding and being likely to be called as a material and-or fact witness, as it is unknown:

a. Were the Oct. 24, 2012 Filings filed in person and if so by whom?;

b. If filed in person is Case Manager Astride Limouzin the person who "received' the filings for the Court or is she just the go between with Spallina office and Judge Colin on the Ex Parte Memo?

c. Who communicated on the file with Judge Colin? Just Limouzin or any other Clerks and Case Managers?

d. If filed by Mail then by whom and where is the correspondence and envelopes that the filings arrived in to show who signed the correspondence and mailed them if so? ;

e. If filed by mail then where are the envelopes and correspondence or has this evidence been destroyed?

f. Why such a long delay between when the Nov. 5th 2012 Ex Parte Memo was created and then Docketed on Nov. 6, 2012?

g. How was the Memo transmitted to Spallina office? By fax, by mail? Were any phone calls made by the Court or Court Clerks and Case Managers? Any other Ex Parte communications?

h. Why was the Nov. 5th, 2012 Memo done Ex Parte and not Communicated to all parties with standing in Shirley's case not only for purposes of avoiding impartiality but also to timely apprise the parties of said filings and defects?

i. Did Judge Colin review the documents?

j. Did Judge Colin know if Simon was deceased and when did he know? Who told him?

20. For purposes of avoiding even the appearance of impropriety, Judge Colin should have Disqualified on Nov. 5, 2012 or at the moment his Court and - or Court Clerk or Case Manager had any involvement in the receipt, handling and processing of any of the filings of Oct. 24, 2012 made by a deceased Personal Representative/Executor, Simon Bernstein.

21. Judge Colin should have disqualified then and must be disqualified now.

22. Even assuming arguendo that Judge Colin had no actual knowledge of the Oct. 24, 2012 filings attempting to use Deceased Simon Bernstein to close the Estate of Shirley Bernstein and had no actual knowledge of the Nov. 5th 2012 Ex Parte communication on his behalf to Attorney Spallina directly involved in the fraudulent illegal acts of using Deceased Simon Bernstein to close Shirley's Estate, at that time, clearly by the time Judge Colin issued the Order to Close the Estate in Jan. 2013[6] Judge Colin must be presumed to have read and reviewed the documents and filings upon which he issues and rationally bases his Order closing the Estate in Jan. 2013 upon and thus should have not only not issued such an Order but should have halted, frozen and stayed the case and case files of all those involved for investigation by this time and then Disqualified himself as clearly at minimum his own Court officers and Case Manager Astride Limouzin had direct involvement and knowledge of material facts and he could not be in charge of investigating himself and his officers.

23. Now if it is assumed arguendo that Judge Colin will somehow claim he had no knowledge of the Court Docket and filings upon which he issued in Jan. 2013 closing Shirley's Estate upon documents filed by Attorney Spallina which purport to have Simon Bernstein take action as the Personal Representative/Executor while deceased because somehow Judge Colin will claim

[6] Order of Discharge

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130103%20Order%20of%20Discharge%20Shirley%20Signed%20Judge%20Colin%20Scratched%20Date%20no%20initials.pdf

that he had not read the documents upon which he based this Order, then this raises a separate basis of Disqualification under the rule requiring the Judge to diligently (and competently) hear cases that are assigned and thus Judge Colin should have been disqualified then and must now be disqualified.

24. Yet even if it is assumed arguendo that Judge Colin had no knowledge of these matters as of the date he issues the Jan. 2013 Order to close Shirley's estate, which of course again raises Disqualification under the rule of "diligently" hearing cases assigned, clearly by the time of May 06, 2013 upon the first filing of Petitioner's "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"[7] this Court and Attorney Spallina are both put on Notice by Petitioner's motion of :

    a. The fraud and alleged fraud in the filings directly involving Spallina including but not limited to documents filed to close Shirley's Estate by Simon Bernstein acting as the Personal Representative of Shirley when Simon Bernstein was already Deceased (Pages 40-43 - Section "IX.FORGED AND FRAUDULENT DOCUMENTS FILED IN THE ESTATE OF SHIRLEY IN THIS COURT BY TESCHER AND SPALLINA CONSTITUTING A FRAUD ON THIS COURT AND THE BENEFICIARIES AND MORE);

[7] May 06, 2013 Petition @ URL

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf

b. That there were improper notarizations in Dispositive Documents including a Will and Trust (Pages 43-45 Section "X. INCOMPLETE NOTARIZATION IN THE ALLEGED 2012 AMENDED TRUST OF SIMON AND MORE" and "XI. INCOMPLETE NOTARIZATION IN THE 2012 WILL OF SIMON AND MORE")

c. That Spallina and Tescher had withheld from beneficiaries in violation of Probate Rules and Statutes any documents on Shirley's Estate and Trusts for approximately 18 months which should have created further bases for this Court to Order investigation and a prompt hearing to determine truth and authenticity in the Trusts and Estate dispositive documents (Pages 37-40 Section "VIII. PETITIONER FORCED TO RETAIN COUNSEL DUE TO PERSONAL REPRESENTATIVES LACK OF DUTY AND CARE, BREACHES OF FIDUCIARY DUTIES AND CONFLICTS OF INTEREST REGARDING MISSING ESTATE ASSETS AND DOCUMENTS AND MORE");

d. Of utmost importance should have been information that Ted Bernstein himself and with the aid of his counsel reported the possible Murder of he and Petitioner's Father, which was reported by Ted Bernstein on the date Simon passes away to the Palm Beach County Sheriff and the Coroner and starting two official inquiries into allegations of Murder[8] (Pages 85-86 Section "XVII. ALLEGED MURDER OF SIMON BERNSTEIN");

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[8]Palm Beach County Sheriff and Coroner's Reports (Pages 25-28 Sheriff Report and Pages 32-41 Coroner Report)

http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf

The Court should note that the initial autopsy failed to run a poison heavy metal test but Petitioner upon finding out that this had not been done ordered the Coroner to test for poison and on March 10, 2014, over a year and half after Simon died, it was completed (Pages 42-44) and several poisons showed elevated levels and the deceased had morphed to a **113 year old male.**

e. That the Court and Spallina are notified of substantial personal property missing (stolen) including jewelry and artwork worth millions of dollars and that Shirley's condominium had already been sold by Ted Bernstein and yet no Determination had been made by this Court regarding the validity of the Trusts and Ted Bernstein's right to act and dispose of assets (Pages 51-57 "XIV. VANISHING ESTATE ITEMS AND ASSETS");

f. That the Court and Spallina are notified of the "Elephant in the Room"relating to the Iviewit stock and Intellectual Property Interests that Simon Bernstein had, worth an estimated billions of dollars, which is tied into a prior RICO action and a prior car-bombing of Petitioner's Minivan (see www.iviewit.tv for graphic images of the Car Bombing that looks like a scene from a war) that was now relating to the case before this Court (Pages 57-82 Section "XV. THE ELEPHANT IN THE ROOM THE IVIEWIT COMPANIES STOCK AND PATENT INTEREST HOLDINGS OWNED BY SIMON AND SHIRLEY, AS WELL AS, INTERESTS IN A FEDERAL RICO ACTION REGARDING THE THEFT OF INTELLECTUAL PROPERTIES AND ONGOING STATE, FEDERAL AND INTERNATIONAL INVESTIGATIONS."

g. That the Court is notified of an alleged Life Insurance fraud scheme (Pages 27-37 Sections "VI. MISSING LIFE INSURANCE TRUST AND LIFE INSURANCE POLICY OF SIMON" and "VII. INSURANCE PROCEED DISTRIBUTION SCHEME");

h. That other assets were remaining that should have been been frozen such as the St. Andrew's home recently listed by Petitioner's father weeks before his passing for over $3 million.

25. Simply reviewing the September 13, 2013 Hearing Transcript[9] of a proceeding before Judge Colin regarding the Emergency Petition filed on May 06, 2013 and heard on September 13, 2013 (held on the anniversary of Simon's death four months after filing) shows further clear basis for Disqualification of Judge Colin on numerous grounds including knowledge of disputed evidentiary facts and likelihood of being called as a fact witness premised upon his involvement and knowledge of the Ex Parte Communications with Attorney Spallina on Nov. 5th 2012 after the fraudulent filings of Spallina on Oct. 24, 2012 but also based upon clear bias and prejudice and lack of impartiality as by this date September 13, 2013 Judge Colin:

a. knows about Tescher and Spallina using alleged documents of Deceased Simon Bernstein to close Shirley's Estate filed on Oc. 24, 2012;

b. knows of the fraudulent Notaries made upon the Waivers that had first been rejected by his Court via the Ex Parte Memo of Nov. 5, 2012 for having no Notaries and then later submitted with the fraudulent Notaries to help close the Estate;

c. knows that Tescher and Spallina have never been Ordered to Show Cause before his Court about the fraud;

d. knows he had not referred Tescher and Spallina's law firm's conduct for Attorney Discipline investigation;

e. knows of the claims of substantial personal properties stolen and missing from Shirley's Estate;

[9] September 13, 2013 Hearing Judge Colin

http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20mirandas.pdf

f. knows of Spallina's firm withholding any documents on Shirley's Trusts from beneficiaries for over two years, which should have raised clear red flags particularly in light of the frauds on his own Court by Tescher and Spallina's firm;

g. knows of the failure to have any Accounting of Shirley's Estate with the failure ongoing for years by this time in violation of Probate Rules and Statutes;

h. knows he has conducted no Hearing to determine the proper construction and meaning of Shirley's Trusts and Estate, which remains incomplete to this date and determine who the proper Beneficiaries, Trustee and Representatives should be, all which remains unknown to this date;

i. knows that Ted Bernstein himself reported possible Murder of Simon Bernstein to police authorities and the state Medical Examiner for autopsy on the date of Simon's passing[10];

j. knows of the "elephant in the room"[11] being Iviewit and the Iviewit stock and patents valued in the billions involving Simon Bernstein and now a missing part of the Estates and Trusts and tied into a prior RICO and Antitrust Lawsuit and a car-bombing of Petitioner's minivan reported and investigated by authorities; and

k. knows that Petitioner's minor children have been intentionally and with scienter denied the trust and inheritance funds for their food, shelter, and well being for months that were all part of their inheritance and yet Judge Colin wants to talk instead that day for most of the hearing about Dunkin Donuts, Burger King and having Petitioner cut his

[10] May 06, 2013 Petition - Section III "POST MORTEM AUTOPSY DEMAND AND SHERIFF DEPARTMENT INVESTIGATION OF ALLEGATIONS OF MURDER"

[11] May 06, 2013 Petition - Section XV "The Elephant in the Room" Pages 57-82

Court lawn[12], instead of addressing any of the serious crimes and frauds in his own Court where he and his Court staff are now witnesses and centrally involved in the fraudulent activities.

26. Now perhaps Judge Colin missed lunch and was hungry that first hearing four months after an Emergency Motion was filed by Petitioner and was thinking about Dunkin Donuts and Burger King but there is no way to look at this proceedings and the transcript without not only finding clear bias and prejudice and lack of impartiality in adjudicating rights to such a gross degree as to constitute not only an abdication of Judicial function, duties and responsibility but done in such as way as to be a mockery of the judicial system and process and denying very important rights and claims raised in Petitioner's filings.

27. Consistent with what has emerged in not only this and other Florida Probate Courts but other Courts in New York and around the nation, a review of the Transcripts of proceedings before Judge Colin shows the standard "M.O.", modus operandi, used by corrupted and conflicted Courts by neglecting and burying the real issues of fraud and integrity of proceedings and filings and actions of licensed attorneys and instead proceeding to threaten and harass those exposing the wrongdoings, as is the case with Petitioner as the exposer of fraud, who then is assaulted with multiple hearings for his alleged Contempt, attempts to have Guardians appointed over his family, threats of sanctions and acts of judicial mockery.

28. Judge Colin falsely claims on this September 13, 2013 date not only that no Emergency issues had been raised in Petitioner's Emergency Motion but also that no assets were left to freeze as

[12] September 13, 2013 Hearing Page 11

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf

requested in the relief of the Emergency Motion when in fact the St. Andrews's home that had been listed and valued at over $3 million dollars by Simon Bernstein in the months before his passing still had not been sold and of course there is and was the millions in personal property reported as missing and stolen and the illegal sale of Shirley's Trust Beach Condominium all of which can be subject to claw back processes and other injunctive relief while of course the very real emergency issues of actual fraud upon the Court had been shown involving Judge Colin, the Courts employees and his appointed Officers and Fiduciaries making them all Fact and Material Witnesses at minimum and thus emergency and related relief could and should have been granted, including the voluntary disqualification and more.

29. By the time of this hearing on September 13, 2013, not only did Judge Colin wholly fail to have attorneys Tescher and Spallina Show Cause after the Nov. 5, 2012 Ex Parte Memo and discovery of fraud filings by their office knowingly acting on behalf of their client a deceased Personal Representative/Executor Simon Bernstein to FRAUDULENTLY close Shirley's Estate, Judge Colin also wholly failed to have Attorney Tescher and Spallina and the alleged Fiduciary of Shirley's Trust Ted Bernstein answer in Court that day, especially after Tescher, Spallina and Ted Bernstein had never even submitted a written answer to Petitioner's very specific, detailed Emergency Motion filed May 06, 2013 and subsequently filed motions (Non-Emergency as Colin had forced Eliot to refile his Emergency Pleading several times as a Non-Emergency before allowing it to be heard) placing Tescher, Spallina and Ted Bernstein on further notice of fraud allegations and more.

30. The date of this Hearing was nearly an entire year after Tescher and Spallina had first submitted the fraudulent filings before Judge Colin's Court in Oct. 2012 and yet they were not Ordered to answer the Emergency Petition while allowing Shirley's Estate and Trust to be

squandered in fraud and unaccounted for, as Spallina, Tescher and Ted seized Dominion and Control of the Estates and Trusts of both Simon and Shirley Bernstein through a series of fraudulent dispositive documents and refused to give beneficiaries any documents in violation of Probate Statutes and Rules and Colin remained asleep at the wheel.

31. It is respectfully submitted that by this time on September 13, 2013, Judge Colin is engaging in the aiding and abetting of the fraud and attempting to cover up past fraud in, upon and by the Court, by what is known as "Steering" and orchestrating of the proceedings away from the crimes and criminals and begins a cleverly disguised retaliation against Petitioner that continues to bias and prejudice Petitioner to this date.

32. This can be more clearly seen in the subsequent Evidentiary Hearing of Oct 28, 2013[13] when again, Judge Colin at the helm, steers and directs the proceedings to avoid the issues of Fraud upon and before his own Court by limiting the proceeding to testimony about a $25,000 value to Shirley's Estate Inventory (which was never served to beneficiaries in Violation of Probate Rules and Statutes) and discusses not throwing Spallina's Legal Assistant and Notary Public, Kimberly Moran "under the bus" who has by this time admitted to the Governor's Office and West Palm Beach police that she not only falsely Notarized the Waivers, including for a deceased Simon but also forged the signatures for six separate parties, including for the decedent Simon Bernstein Post Mortem, that are ultimately filed before Judge Colin to illegally close the Shirley Estate. Note, while Moran admits to falsifying Notaries and forging signatures on Waivers, not only is there no full record of her acts before Colin's Court but more importantly none of her admissions addresses the other clear fraud such as the Petition for

[13] October 28, 2013 Evidentiary Hearing

http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf

Discharge containing Spallina's signature on the document filed on behalf of Deceased Simon Bernstein on Oct. 24, 2012 by Tescher and Spallina, utilizing a Deceased person to close Shirley's Estate and Colin has direct knowledge that no examination of Spallina and Tescher regarding their involvement in the Petition and other document frauds used to close the Estate illegally and knowledge of Moran's admitted activities has occurred even to this date in his Court with his own office and Case Manager implicated by the Ex Parte Memo yet Colin has continued to allow Ted Bernstein who has been represented by Spallina and Tescher continue to act with no accountability where almost all the crimes committed directly benefited Ted Bernstein who had been disinherited.

33. At no time does Judge Colin in the Evidentiary Hearing with Tescher, Spallina and Ted Bernstein present seek to ascertain the truth of the fraud, forgeries and fraud on his Court but more importantly wholly failed to force Spallina or Tescher to Show Cause or swear them in to answer questions to explain the acts of Tescher and Spallina's Legal Assistant and Notary Public Moran and explain their law firms acts of filing documents with a deceased client acting as a fiduciary while dead and more importantly no investigation into how Spallina's signature is on the Petition for Discharge also fraudulently filed before Judge Colin, which is Not the subject of any Admissions by his employee Kimberly Moran and where she was not involved in that crime.

34. Judge Colin simply later permits Spallina and Tescher to withdraw as attorneys, instead of removing them instantly and securing their files and the corpus of the Estate and Trusts while the material facts surrounding the fraud that directly involve Spallina by his own Signature on the Petition for Discharge, Judge Colin and his Case Manager Limouzin, by the Nov. 5th 2012 Ex Parte Memo communication remain undetermined and unheard.

35. These are additional grounds for removal in that Judge Colin's failure to Order attorneys Tescher, Spallina and the fiduciary Ted Bernstein at minimum to Show Cause before the Court on the frauds on the Court and for Discipline having actual knowledge of the substantial likelihood of misconduct by the fraud by presence of Spallina's own signature on the document purported to be April 9, 2012 Petition for Discharge but not filed with Judge Colin's Court until Oct. 2012 when Simon Bernstein is Deceased nearly a month is itself a failure to discharge Judicial obligations; and then being further Disqualified for being the necessary fact witness of his own Ex Parte Communication to Spallina as evidenced by the Nov. 5th, 2012 Memo and by prejudice and bias shown by the failure to Order Tescher, Spallina and Ted Bernstein for investigation and discipline and Show Cause before his own Court not only in Nov. 2012 but which has still not happened to this day in May of 2015 some 2.5 years later while permitting Ted Bernstein to continue to act as Trustee and Personal Representative/Executor when Ted Bernstein is directly intertwined, interconnected and involved with his own counsel Spallina and Tescher (as they represented Ted in Shirley's Estate and Trusts while acting as Co-Personal Representatives and Co-Trustees of Simon's Estate and Trusts and further represented themselves in their fiducial capacities in Simon's Estate and Trusts) as attorneys involved in the fraud that ultimately benefit their client and business associate Ted and his lineal descendants who are all considered predeceased for all purposes of dispositions of the Shirley Trust and without their fraudulent documents and fraudulent scheme upon the Court would remain so.

36. That after reopening the illegally closed Estate of Shirley in the September 13, 2013 Hearing and immediately prior to the Evidentiary Hearing, Judge Colin, knowing of the Fraud on the Court and already stated to Ted and his counsel Spallina, Tescher and Manceri that he had enough evidence in the hearing to read them all their Miranda Warnings for two separate

crimes identified in the hearing (the Moran fraudulent notarizations and forgeries and Spallina's using a dead Simon to posit documents with Court to close Shirley's Estate) then shockingly and appallingly appointed Ted as a Successor Personal Representative to the newly reopened Shirley Estate shortly thereafter although Ted was not then qualified to serve under Florida Probate Rules and Statutes..

37. It is noted that while an Attorney was present as Counsel for the Petitioner's Minor children in the hearing this Court held on or about Oct. 28 2013, the record should reflect that this counsel Brandan J. Pratt, Esq. not only failed to inform the Court he was retained to represent Petitioner's Minor children Josh, Jacob and Danny Bernstein and instead in the hearing misrepresented to the Court he was representing Eliot and Candice despite their opposition to this claim, but said counsel Pratt further wholly failed to properly and competently cross examine Spallina, Tescher, Moran and Ted Bernstein and call proper witnesses at this hearing to delve into the criminal and civil torts against the beneficiaries despite advance preparation and planning to the contrary with Eliot and Candice. Pratt claimed he was very close to Judge Colin after the hearing and knew what he wanted.

38. Counsel Pratt failed to examine any of the witnesses about the Tescher and Spallina Petition to Discharge fraud, the fraudulent positing of fraudulent records with the court and failed to examine Ted Bernstein, Spallina and Tescher about known personal property items valued at over $1 million that they were in had custody over as fiduciaries that he knew were alleged stolen and Counsel Pratt was immediately after the hearing withdrawing as counsel but was requested by Petitioner in writing to notify his malpractice carrier of malpractice for his conduct and misrepresentations of this hearing. The Transcript in this regard clearly speaks for

itself on what material issues were not only never addressed by Judge Colin but also never asked by Counsel Pratt. See Discharge letter to Counsel Pratt[14].

39. Improper representation by attorney Pratt, likely malpractice itself, does not eliminate Judge Colin's obligations to address fraud upon his own Court by licensed attorneys and fiduciaries he appointed and in fact the actions of attorney Pratt may likely be part of additional steering and orchestration of the proceedings to cover-up the real fraud and delay and denial to Petitioner, his wife Candice Bernstein, and their Minor children Josh, Jacob and Danny of lawful inheritance and monies due under the Trusts.

40. Pratt seemingly falls out of the sky days before the Hearing and is retained by Eliot and Candice for their children's representation, it was later learned that Pratt, on information and belief, was close personal friends and business associates with Andrew Shamp, Esq. and where Shamp it was later learned worked directly for Ted Bernstein in the past as an employee.

41. This pattern of aiding, abetting and obfuscation of the fraud and criminal enterprise and pattern of acts at play as seen further in Judge Colin's continued abdication of judicial functions in duties in relation to the sale of the St. Andrew's home.

42. This Court's recent Order on May 06, 2015 (which falls under the 10 day rule for disqualification herein) permitting the Sale of the St. Andrew's Home shows even further grounds for mandatory Disqualification of Judge Colin (on his own initiative without waiting for Pro Se Petitioner to file a disqualification pleading) although ample grounds have already been established dating back to Nov. 2012.

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[14] Brand Pratt Letter and Conflict of Interest Disclosure Form

http://www.jviewit.tv/Simon%20and%20Shirley%20Estate/20131109HuthPrattWithdrawalLetterandConflictDisclosure.pdf

43. Judge Colin has absolute, unequivocal direct knowledge that no testimony of the alleged "buyer" occurred during the Hearing on the sale of the St. Andrew's Home and knows Florida law requires no undue influence or pressure must be exerted or buyer or seller for there to be an "arms-length" transaction yet issues an Order May 6, 2015 as if the Buyer provided testimony when in fact the buyer's identity is not even known.

44. In fact, despite Florida's rigid Disclosure laws Judge Colin has withheld a lis pendens I attempted to file on the property and still has not let said lis pendens be filed or published to this Buyer or any prospective buyer and has threatened Petitioner that if he disclosed the Lis Penden or the fact that the home was tangled in these litigations he would hold him in contempt.

45. According to the Florida Real Property Appraisal Guidelines Adopted Nov. 26, 2002 by the Florida Department of Revenue Property Tax Administration Program Definitions Section 3.1.8 Arm's-Length Transaction: " This means a sale or lease transaction for real property where the parties involved are not affected by undue stimuli from family, business, financial, or personal factors." See, http://dor.myflorida.com/dor/property/rp/pdf/FLrpg.pdf.

46. Yet, not only does Judge Colin have actual knowledge he took no testimony from the Buyer since the Buyer was not only not present in Court but the identity not disclosed, but Judge Colin knows the case is ripe with nothing but pressure and undue influence such that Judge Colin has covered up fraud upon his own Court involving licensed attorneys, failed to discharge Judicial obligations and failed to abide by the Code of Judicial Conduct, knows the Trustee he is permitting to act Ted Bernstein reported a possible murder of Petitioner's father Simon Bernstein the property owner prior to passing, allowing Ted Bernstein to act despite knowing his attorneys and Ted are involved in fraud on the Court and yet failing to conduct a

hearing into the construction and truth of the Trusts even though he says on the Record he knows he has to conduct a hearing and feigned at reading the attorneys Miranda Warnings, has reasons to investigate and suspect these are a continuation of RICO acts tied to a car-bombing, knows or has reason to know the sale is grossly undervalued at $1,100,000.00 as the property was listed for $3,200,000.00 weeks prior to the possible murder of Simon Bernstein, knows he and his own Court staff are at least involved as witnesses if not for the fraud itself and is willing to forego his own Judicial responsibilities which could lead to the end of his Judicial career but issues a false order nonetheless saying an arm's length transaction to an unknown buyer, possible straw man buyer was made.

47. Judge Colin knows and should know due process is violated by withholding the identity of the alleged buyer and making such person or entity available for cross-examination.

48. This would seem more than reflective of substantial pressure and influence at play and reflective of a fire sale.

49. Last, fair market value has been defined as "the sum arrived at by fair negotiation between an owner willing to sell and a purchaser willing to buy, neither being under pressure to do so." Flagship Bank of Orlando v. Bryan, 384 So.2d 1323 (Fla. 5th DCA 1980). A witness for the appellee admitted at the deficiency hearing that the bank was under pressure to sell the lots and that its bid was lowered because the bank would not be able to sell the lots for what they were worth. The bid price was therefore more an indication of a "quick sale" value than of the property's true fair market value. BARNARD v. FIRST NAT. BK. OF OKALOOSA CTY.482 So.2d 534 (1986) District Court of Appeal of Florida, First District. February 4, 1986.

50. Judge Colin could have Judicially Subpoenaed the Realtor Petitioner had originally spoken to who initially had a far differing opinion of the sales price and value of the home but who then

refused to get involved due to the presence of another of Ted Bernstein's attorneys Alan Rose who, according to his bio at his firm's website, "Handled securities arbitration for investor in a Madoff feeder fund against major brokerage firm which recommended the investment. confidential terms." The case was settled on confidential terms." See, http://mrachek-law.com/ourteam/alan-b-rose/.

51. Further, Judge Colin silenced Petitioner via an illegal Order that mandated that Petitioner could do nothing to directly or indirectly notify the buyer of the Lis Penden or that litigation involving the house was at play and had testimony from the Realtor, John Poletto that he had not notified the buyer of any potential litigation and this seems to force Petitioner to not disclose pertinent facts to a buyer in opposite Florida's disclosure laws.

52. Finally, in his own words in the first day of the hearing to sell the house on March 26, 2015, Colin stated that he first had to have hearings to remove Ted, hearings for trust construction to determine validity and investigation of wrongdoings beyond Tescher and Spallina before being able to proceed further and yet with none of those things were achieved and at the next hearing he allows the sale of the house ignoring his prior statement:

> 13 MR. ROSE: We didn't share the appraisal
> 14 because, frankly, we were concerned it would be
> 15 public and that would defeat their chance of
> 16 selling it.
> 17 THE COURT: I'm not -- look, nothing is easy
> 18 here. It's not going to get easier until we can
> 19 get hearings where I can start to knock off some
> 20 of the issues, which is what I have been saying
> 21 now like a broken record.
> 22 At some point, either Eliot is going to be
> 23 sustained on his positions or he's going to be
> 24 overruled, but one way or the other, we can put
> 25 some of this stuff to rest. The problem is we're
> 1 doing all of this business with some of the metes [matters?]

2 of the case still up in the air where I haven't
3 been able to adjudicate; the claims that Ted
4 should be removed; the claims that there's
5 wrongdoing beyond Spallina and Tescher, the trust
6 is not valid. I mean, give me a chance to rule on
7 that, because once I rule on that, then the matter
8 is over with on those and you'll know one way or
9 the other what to do.

53. That since May 06, 2013 Judge Colin, knowing of the fraudulent documents in the Estates and Trusts of Simon and Shirley Bernstein, knowing that Simon Bernstein's 2012 Will and Amended Trust done only days before his death when Simon was suffering severe mental and physical duress have been determined by Governor Rick Scott's Notary Public Division to be improperly notarized and further Petitioner has alleged they are wholly fraudulent, knowing that there are ongoing criminal investigations into the documents of both Estates and Trusts, knowing that the new Executor of Simon's Estate has claimed that Ted is not a legally valid Trustee of Simon's Trust[15] by the very terms of the Trust that claim that a Successor cannot be related to the issuer, knowing that Ted is considered predeceased for all purposes of dispositions under the Shirley and Simon trust, knowing that Peter Feaman, Esq., has stated to Colin that Ted and his counsel Alan B. Rose are not qualified as Trustee and Counsel due to serious problems with Ted and Alan's misconduct[16], knowing that Ted and his counsel Alan B. Rose are counter defendants in two counter complaints filed by Petitioner in these matters with allegations of serious breaches of fiduciary duties (which Colin stayed) and more, knowing that Eliot has filed a

[15] O'Connell Affirmative Defense, Ted is not a valid Trustee

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf (Page 7)

[16] Peter Feaman, Esq. Letter to Brian O'Connell Regarding Ted Bernstein and Alan Rose, Esq. misconduct

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O%27Counell%20re%20Ted%20and%20Alan%20Conflicts.pdf

Counter Complaint in the Shirley Trust case that has both he and Judge French listed as material and fact witnesses that may be Defendants in future amended pleadings[17], has ignored all of these facts and held hearing, after hearing, after hearing and has:

a. allowed Estate and Trust properties to be disposed of and distributed without knowing who the beneficiaries are at this time due to the fraudulent documents affects not being resolved at this time,

b. allowed Estate and Trust properties to be disposed of and distributed without knowing if the Wills and Trusts are valid,

c. allowed assets to be converted and changed, including allowing a JP Morgan IRA to be converted to a new account when the old account was missing beneficiaries and monies are alleged stolen from it,

d. allowed assets to be sold and converted without any accountings in violation of Probate Statutes and Rules,

e. allowed assets to be sold and distributions made to improper beneficiaries despite not having held trust construction or validity hearings to determine first who the true and proper beneficiaries are, thus delaying intentionally beneficiaries inheritances, while allowing assets to be distributed will now have to be clawed back,

f. allowed fiduciaries and counsel involved in the commission of the fraud to continue to operate in the courtroom with impunity,

g. allowed continuous hearings where the alleged Trustee Ted has brought in up to five lawyers to defend himself misusing Trust and Estate assets to do so, who have all now resigned other than Alan B. Rose,

[17] Answer and Counter Complaint Oppenheimer Lawsuit Page 2 - Colin and French listed as Witnesses and Possible Defendants

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf

h. deprived Minor possible beneficiaries from counsel despite their need arising from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,

i. deprived Eliot's family from inheritances that has caused massive financial damages to them despite their financial damage arising from the delays in their inheritances from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,

j. forced the Creditor William Stansbury for two years to accrue hundreds of thousands of dollars of legal fees, while blocking him from being able to have his counsel file to remove Ted, while the job of removing Ted was Colin's from the moment he became aware that Ted and his counsel had committed Fraud on the Court and stated he had enough to read them all their Miranda's twice,

k. allowed a settlement with Stansbury where Ted Bernstein acting as the Trustee of the Shirley Trust and simultaneously a Defendant in the Stansbury Lawsuit with his attorney at law Rose acting as counsel to Ted in his conflicting capacities, that settled Ted personally out of the lawsuit and shifted the burden of the settlement cost entirely to the Trusts of Shirley and Simon beneficiaries and where Ted has no beneficial interests, thereby stiffing the beneficiaries with the settlement cost for acts Stansbury alleges were done primarily by Ted,

l. allowed Ted and his counsel to block the Estate and Trust of Simon to intervene in an Illinois Federal Breach of Contract Lawsuit where the beneficiaries of the Estate and Trusts of Simon have potential interest in an insurance policy, where Ted is acting in conflict to achieve this as the Plaintiff in the Breach of Contract lawsuit who stands to get one fifth of the insurance benefit, whereas if the Estate and Trusts of Simon receive the proceeds Ted again would get nothing. Colin only allowing the Estate to intervene after Stansbury, in efforts to protect the beneficiaries who were unrepresented in the Federal lawsuit and himself to pay the entire cost of the litigation expense for the Estate?

m. been rude to Petitioner repeatedly and continuously shut him down during hearings, whenever fraud on the court is brought to his attention, and,

n. interfered with Palm Beach County Sheriff investigations, having detectives told not to pursue Petitioner's criminal complaints and claiming his Court would handle the criminal matters and fraud upon his Court.

54. That from at least the September 13, 2013 hearing Judge Colin had a mandated duty to disqualify himself on his own initiative according to Judicial Cannons, Attorney Conduct Codes and Law, as he became fully cognizant that his Court had become a crime scene involving Fraud on the Court and Fraud in the Court, directly involving Judge Colin and Judge French and their court, the Officers of the Court, including Attorneys at Law practicing before them, Fiduciaries appointed by them (Personal Representatives and Trustees) and other Court employees.

55. That once it was determined that crimes had been committed in Judge Colin and Judge French's courts constituting Fraud on the Courts and Fraud in the Courts in which Judge Colin would now be a material and fact witnesses to events in the matter, to avoid the appearance of impropriety and conflicts caused due to his direct involvement as both a material and fact witness, Judge Colin should have voluntarily on his own initiative disqualified himself and distanced himself from the matters, allowing a conflict free adjudicator to replace him who could have investigated the involvement of, the Court, Judge Colin, Judge French, the Officers of the Court and the Fiduciaries of the Court and this would have eliminated the appearance of impropriety created due to Judge Colin's direct involvement in the frauds that had occurred and his subsequent handling of investigations or lack thereof of himself and his court.

56. That failing to disqualify himself on his own initiative for mandated causes by Judicial Canons, Attorney Conduct Codes and Law, Judge Colin lost jurisdiction in this case and his continued actions are all outside the color of law.

57. That Judge Colin's acts forward in these matters from the point that he had knowledge of criminal misconduct in the Court that would make him a material and fact witness constitute Fraud by the Court.

It is alleged that Judge Colin began a Pattern and Practice of Fraud by the Court by continuing to rule in a matter where disqualification was mandated on his own initiative and so each judicial ruling and proceeding is therefore void.

58. That Petitioner fears that Judge Colin's acts after having cause to disqualify himself have prejudiced and biased the case and continue to prejudice and bias the case, as they are now viewed as part of a Cover Up of the crimes committed in his Court and on his Court by Colin's court appointed Officers and Fiduciaries and the effectuation of new crimes by his Court.

59. That Petitioner fears that Judge Colin's acts outside the color of law after knowing of the causes mandating him to instantly disqualify have been prejudicial to Petitioner and favor those Court officials and fiduciaries that he appointed who committed the criminal acts in and on his Court and these acts have protected himself, his Court appointed officials, fiduciaries and employees who were involved and aid and abet them in evading prosecution and investigation in efforts to cover up criminal acts and have provided legal cover for new criminal acts to be committed under the guise of legal proceedings.

60. Colin is biased and prejudiced against Petitioner who has exposed the crimes of his Court and those committed in Judge David E. French's court in the Simon and Shirley Bernstein Estate and Trust cases and the case involving Petitioner's Minor children.

61. The Estate and Trust cases of Simon and Shirley Bernstein were improperly merged by Judge Colin and Judge French in violation of Probate Rules and Statutes as it was achieved without separate hearings by both Judges and thus improperly transferred to Colin's Court. This included a complex bait and switch, whereby once Colin had approved the transfer to himself of Judge French's case. Judge French's hearing was scheduled on the day before Christmas when the courthouse was closed entirely and Petitioner and his wife showed up to an empty building, ruining their holiday family planned trip to attend. That at the subsequent rescheduled hearing before Judge French, Judge Colin was instead presiding and when asked where Judge French was Colin stated it did not matter if he were there as he routinely handled French's cases. When Petitioner cited the rule calling for separate hearings by each

Judge, Colin proceeded ahead. That Petitioner fears that since the crimes were committed in both courts this improper merging of the cases was to cover up and protect Judge French and his court officials from investigation and possible prosecution and remove one of the crime scenes entirely since similar acts of fraud are alleged in Judge French's court and similarly all his case files should have been sealed for investigation and he and his court officials questioned as to the Fraud on the Court and Fraud in the Court.

62. Once Colin had evidence that FELONY crimes were committed in his Court and Judge French's court by Officers of their courts and fiduciaries of their courts, Colin and French had obligations under Judicial Cannons, Rules of Professional Conduct and Law to report the misconduct to the proper criminal and civil authorities for investigation and failed to do so.
63. Once Colin had evidence of Fraud on the Court, he had obligations to immediately disqualify and allow for the resetting of the proceeding by removing all elements of the fraud, removing all officers of the court involved, all fiduciaries involved and have all court and other records of those involved seized for investigation, have all assets seized and frozen and turn the case over to a new adjudicator and Judge Colin did not do any of these things, in fact, he has intentionally and with scienter done the opposite.
64. That instead of doing what was mandated when Fraud on the Court is discovered, Colin has allowed a pattern and practice of retaliation against Eliot to take place for his efforts in exposing the criminal acts and has continuously allowed conflicted attorneys at law and fiduciaries, involved with the original fraudsters, to file pleading after pleading to attempt to harm Eliot and his family, including several contempt and guardianship hearings held against Eliot, all bleeding the estates and trusts of thousands upon thousands of illegal legal billings for conflicted counsel.
65. Petitioner has blown the whistle on corruption that took place in both Judge Colin and French's courts and has also been involved in an over a decade old whistleblowing lawsuit and other actions against members of this courthouse the 15th Judicial, The Florida Bar and many Judges of the Supreme Court of

Florida and Petitioner fears this also creates prejudice and bias against Petitioner with virtually the entire State of Florida legal machine conflicted with him.

66. Petitioner's prior Federal RICO sued the following parties of the Florida Bar Association:

STATE OF FLORIDA,
OFFICE OF THE STATE COURTS
ADMINISTRATOR, FLORIDA,
HON. JORGE LABARGA in his official and individual capacities,
[this lawsuit prior to his unbelievable rise to Chief Justice of the Florida Supreme Court after the Bush v. Gore election where he aided in the failure to recount the People's vote when he was a civil circuit judge and for his effort to derail Eliot's legal rights in the first lawsuit involving Eliot and others stolen Intellectual Properties that has led to this mess filed before his court. Proskauer v. Iviewit, Case #CASE NO. CA 01-04671 AB.]
THE FLORIDA BAR.
JOHN ANTHONY BOGGS, ESQ. in his official and individual capacities,
KELLY OVERSTREET JOHNSON, ESQ. in her official and individual capacities,
LORRAINE CHRISTINE HOFFMAN, ESQ. in her official and individual capacities,
ERIC TURNER, ESQ. in his official and individual capacities,
KENNETH MARVIN, ESQ. in his official and individual capacities,
JOY A. BARTMON, ESQ. in her official and individual capacities,
JERALD BEER, ESQ. in his official and individual capacities,
BROAD & CASSEL, and, all of its Partners, Associates and Of Counsel, in their professional and individual capacities,
JAMES J. WHEELER, ESQ. in his professional and individual capacities,
FLORIDA SUPREME COURT,
Hon. Charles T. Wells, in his official and individual capacities,
Hon. Harry Lee Anstead, in his official and individual capacities,
Hon. R. Fred Lewis, in his official and individual capacities,
Hon. Peggy A. Quince, in his official and individual capacities,
Hon. Kenneth B. Bell, in his official and individual capacities,
THOMAS HALL, ESQ. in his official and individual capacities,
DEBORAH YARBOROUGH in her official and individual capacities,
DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION – FLORIDA,
CITY OF BOCA RATON, FLA., [Police Department]
DETECTIVE ROBERT FLECHAUS in his official and individual capacities,
CHIEF ANDREW SCOTT in his official and individual capacities,
CHRISTOPHER C. WHEELER, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters]
MATTHEW M. TRIGGS, ESQ. in his official and individual capacity for The Florida Bar and his professional and individual capacities as a partner of Proskauer,

ALBERT T. GORTZ, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters][18]

67. Petitioner feels that Judge Colin's acts outside the color of law have been intentional to prevent Petitioner from gaining his inheritance and having funds that could be used in this legal action against his court and Petitioner's other legal actions against members of the Florida Bar, including protecting what Judge Colin claims in a Florida Bar Publication to be his mentor[19], Chief Judge Jorge Labarga, who is a central figure in Petitioners ongoing civil and criminal complaints regarding theft of Intellectual Properties of Petitioner's and his father.

68. Judge Colin is acting outside his jurisdiction once he was mandated to disqualify on his own initiative and acting outside the color of law and therefore he should disqualify on his own initiative instantly and his orders must then be voided. Judge Colin is a disqualified judge who has not relinquished his unlawful jurisdiction.

69. Judge Colin now is also adverse to Petitioner because Petitioner has filed with the Federal Court in the Northern District of Illinois under The Honorable John Robert Blakey exposing the corruption in his Colin's court and throughout the Probate courts in Florida[20]. Petitioner is seeking to have these Probate cases transferred to the Federal Court involving estate related subject matter (the insurance breach of contract proceeds) under Blakey for investigation, review and further adjudication of the matters free

[18] Full List of Iviewit RICO Defendants @

http://iviewit.tv/CompanyDocs/Appendix%20A/index.htm

[19] Colin statement regarding Labarga as his mentor

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20061224%20Palm%20Beach%20County%20Bar%20Association%20Judge%20Martin%20Colin%20Mentor%20Judge%20Labarga.pdf

[20] Omnibus Motion Federal Court

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20FINAL%20ESIGNED%20NOTICE%20OF%20OMNIBUS%20MOTION%20ECF%20STAMPED%20COPY.pdf

of conflicts and illegal activities, once Judge Colin complies with the mandated disqualification or is forced off the case if he continues to refuse.

70. Petitioner has sought Federal Court intervention due to the fact that Petitioner is adverse to all Florida State Bar Members and where he has taken civil action and filed criminal complaints against the Florida State Bar and thus all members are technically and legally conflicted and adverse to Petitioner as members of the organization Petitioner is pursuing.

71. Petitioner has been viciously retaliated by Judge Colin by denying him due process in one manner or another, acting above the law and removing rights of Petitioner and his Minor children, **while protecting his Court and those involved in criminal misconduct from exposure of the crimes committed in his and** Judge French`s court by Officers and Fiduciaries of the Court.

72. Where it may be learned by investigation that both Judge Colin and Judge French may be involved directly in the original Frauds Upon the Court and were willing participants in such crimes against Petitioner and his family, including but not limited to, Fraud on the Court, Fraud in the Court, Fraud by the Court, Forged documents posited with the Court by officers and fiduciaries of the Court, Fraudulent Notarizations (including Post Mortem for decedents in the actions) filed and posited with the Court, Illegal Closing of an Estate using a deceased person's identity and ultimately the possible Murder of Simon Bernstein as alleged by Ted Bernstein and others (not Petitioner) on the day Simon died.

73. Judge Colin`s actions once he failed to disqualify as mandated, outside the color law and without jurisdiction, make him an accomplice to current and ongoing fraud against Eliot and Eliot`s Minor children who are beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein and it is clear that Eliot has valid fear that he has been denied due process and procedure once his mandatory disqualification was not entered on his own initiative.

Rule 2.330 (d) Grounds.
(2) That the judge before whom the case is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto or is interested in the result thereof, or that

said judge is related to an attorney or counselor of record in the cause by consanguinity or affinity within the third degree, or that said judge is a material witness for or against one of the parties to the cause.

74. Judge Colin will be a material and fact witness regarding his direct involvement in the documents used fraudulently in his Court, regarding the interaction with the Officers of his Court involved, regarding the interaction with the Fiduciaries of his Court he appointed and his interaction with the Court employees involved in this case as described above, regarding the criminal misconduct that has occurred in and on his Court and that of Judge French's court. Judge Colin's position now as a material and fact witness MANDATE under Judicial Canon his INSTANT DISQUALIFICATION.

75. Judge Colin due to his direct involvement in the matters and failure to disqualify upon mandated grounds requiring his disqualification on his own initiative will now also make him a party of interest in ongoing and future criminal and civil actions to determine if he has committed felony acts and more in so acting outside the color of law. Now there is not only an appearance of impropriety but the alleged possible criminal misconduct of Judge Colin which may constitute criminal impropriety and again cause for MANDATORY DISQUALIFICATION.

76. Judge Colin cannot investigate his own court, himself and the officers and fiduciaries of his Court, especially where he is directly involved, due to the appearance of impropriety this creates and this appearance of impropriety prejudices Petitioner from due process rights.

Rule 2.330 Grounds.
(e) Time. A motion to disqualify shall be filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c) and

promptly filed. A motion made during hearing or trial shall be ruled on immediately.

77. This Motion is being made within 10 days from Petitioner's receipt of a "FINAL ORDER GRANTING SUCCESSOR TRUSTEE'S MOTION TO APPROVE SALE OF TRUST PROPERTY signed May 06, 2015. Where this Order, as with all Orders issued after Judge Colin's Mandatory Disqualification was failed, is an illegally obtained Order and therefore legally void, other grounds for this Order mandating disqualification have also been described herein.

78. This Motion for Disqualification is timely because all actions past and future of Judge Colin are void as his disqualification from the matters should have occurred the instant he was aware that crimes occurred in his Court and on his Court by his appointed Officers and Fiduciaries and thus all judicial acts both past, present and future are all grounds for immediate investigation, disqualification, voiding of all orders and sanctions.

Rule 2.330 Gronnds.
(f) Determination - Initial Motion.
The jndge against whom an initial motion to disqnalify nnder subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.

79. Petitioner states that the Motion is legally sufficient under Rule 2.330 as it fully complies with this code and whether Petitioner has filed a legally sufficient pleading would not negate the fact that Judge Colin has to voluntarily disqualify under Judicial Canons, Attorney Conduct Codes and Law and whereby whether legally sufficient or not 2.330 allows Colin to disqualify on his own.

Rule 2.330 Grounds.
(g) Determination - Successive Motions.
If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion.

80. Petitioner states there have been no Successive Motions.

Rule 2.330 Grounds.
(h) Prior Rulings.
Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.

81. Petitioner seeks that upon disqualification of Judge Colin, that all prior factual or legal rulings be vacated by the successor judge due to the alleged criminal acts and civil torts against Petitioner. That further, Petitioner seeks a replacement Judge who is not a member of the Florida Bar to preside over the cases of Judge Colin involving the Estates and Trusts of Simon and Shirley Bernstein and the case involving the Trusts of Petitioner's minor children. That due to the fact that Petitioner does not feel he can get a fair and impartial hearing in the State of Florida by members of the Florida Bar Petitioner is seeking this Court to move the matters to a Federal Court[21]. The following cases that Judge Colin presides over are all tainted for the same reasons as stated herein and judge Colin should immediately voluntarily disqualify himself from these cases as well and save Petitioner the expense and aggravation of having to file Disqualification pleadings in each case to force his mandated disqualification:

[21] May 14, 2015 Letter to Judge Blakey

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20Letter%20Scheduling%20and%20Discovery%20to%20Hon%20Judge%20John%20Robert%20Blakey.pdf

a. Case# 502012CP004391XXXXSB – Simon Bernstein Estate

b. Case# 502011CP000653XXXXSB – Shirley Bernstein Estate

c. Case# 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children

d. Case# 502014CP003698XXXXSB – Shirley Trust Construction

e. Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD Case# 502014CA014637XXXXMB

Rule 2.330 Grounds.
(i) Judge's Initiative.
Nothing in this rule limits the judge's authority to enter an order of disqualification on the judge's own initiative.

82. Petitioner states that Judge Colin should have already entered an order of disqualification on his own initiative according to Judicial Canons, Statutes and Rules when he became aware that disqualification was mandated of him but refused to do so on the repeated requests of Petitioner. If for any reason Judge Colin finds this Motion legally insufficient for any reason, Judge Colin must disqualify himself on his own initiative as set forth under this rule 2.330 (i) and Judicial Canon, Attorney Conduct Codes and Law.

Rule 2.330 Grounds.
(j) Time for Determination.
The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.

83. Petitioner demands due to the EMERGENCY NATURE of this case where claims have been made that Petitioner's children are in life threatening dangers due to the abusive Probate rulings thus far that have interfered intentionally with their and Petitioner's expectancies that this Disqualification be made instantly as it is legally sufficient and MANDATED. Delays could cause further harm of Petitioner's minor children and Petitioner which would result in

additional damages and liabilities to those parties ultimately held accountable for the acts of Judge Colin outside the Color of Law.

84. That PRIOR to any other actions by Judge Colin, this Disqualification must first be ruled on.

Florida Statutes 38.10
Disqualification of judge for prejudice; application; affidavits; etc.— Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

85. Petitioner has supplied a legally sufficient Affidavit herein.

WHEREFORE, the PRO SE Petitioner requests that Judge Colin immediately disqualify as this is a legally sufficient pleading. In the alternative if it is determined by Judge Colin that this Pro Se pleading is legally insufficient then he must on his own motion and initiative disqualify himself as required by Judicial Cannons, Attorney Conduct Codes and Law.

Under Penalties of perjury, I swear under oath and affirm that I have read the foregoing and the facts

alleged are made in good faith and are true to the best of my knowledge and belief.

Dated this 14th day of May, 2015

Respectfully Submitted,

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

CERTIFICATE OF SERVICE

Petitioner does hereby certify that the foregoing Petition was served on all parties by e-file with the clerk of the court this 14th day of May, 2015.

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

STATE OF FLORIDA

COUNTY OF PALM BEACH COUNTY

Sworn to or affirmed and subscribed before me this 14th day of May, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification. California DL #C1695608

NOTARY PUBLIC Sarah Barnett

Print name of Notary: Sarah Barnett

Stamp

SARAH BARNETT
MY COMMISSION # EE214537
EXPIRES July 05, 2016
(407) 398-0153 FloridaNotaryService.com

My commission expires: 07/05/2016

AFFIDAVIT

Affiant, Eliot Bernstein hereby states under oath that the attached Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin is true and correct to the best of his knowledge and belief

Eliot Ivan Bernstein
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588
iviewit@iviewit.tv

May 14th, 2015

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed before me this 14th day of May, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification California DL #C6956008

Notary Public Sarah Barnett

Print name: Sarah Barnett

Stamp

My commission expires: 07/05/2016

SARAH BARNETT
MY COMMISSION # EE214537
EXPIRES July 05, 2016
(407) 398-0153 FloridaNotaryService.com

EXHIBIT 1 - URL EXHIBITS FULLY INCORPORATED BY REFERENCE HEREIN IN THE MOTION

1. **November 05, 2012 Memorandum**

   http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121105%20Court%20Memorandum%20Need%20Notarization%20Reciepts%20for%20assets%20from%20all%20of%20specific%20beneficiaries%20were%20not%20notarized.pdf

2. **Simon Bernstein un-notarized Waiver @ URL**

   http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20WAIVER%20SIMON%20UNNOTARIZED%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024%20EIB%20COMMENTS.pdf

3. **Simon Bernstein un-notarized Petition for Discharge (Full Waiver) @ URL**

   http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf

4. **Affidavit of No Florida Estate Tax Due @ URL**

   http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Affidavit%20of%20No%20Florida%20Estate%20Tax%20Due%20SIGNED%2020110409%20NOT%20FILED%20until%2020121024%20Shirley.pdf

5. **Probate Checklist**

   http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120215%20Prbate%20Checklist%20Shirley%20NOT%20FILED%20UNTIL%20OCTOBER%2024%202010.pdf

6. **Order of Discharge**

   http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130103%20Order%20of%20Discharge%20Shirley%20Signed%20Judge%20Colin%20Scratched%20Date%20no%20initials.pdf

7. **May 06, 2013 Petition @ URL**

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf

8. **Palm Beach County Sheriff and Coroner's Reports (Pages 25-28 Sheriff Report and Pages 32-41 Coroner Report)**
http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf

   The Court should note that the initial autopsy failed to run a poison heavy metal test but Petitioner upon finding out that this had not been done ordered the Coroner to test for poison and on March 10, 2014, over a year and half after Simon died, it was completed (Pages 42-44) and several poisons showed elevated levels and the deceased had morphed to a **113 year old male**.

9. **September 13, 2013 Hearing Judge Colin**

   http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20mirandas.pdf

10. **May 06, 2013 Petition - Section III "POST MORTEM AUTOPSY DEMAND AND SHERIFF DEPARTMENT INVESTIGATION OF ALLEGATIONS OF MURDER"**

11. **May 06, 2013 Petition - Section XV "The Elephant in the Room" Pages 57-82**

12. **September 13, 2013 Hearing Page 11**

    http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf

13. **October 28, 2013 Evidentiary Hearing**

    http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf

14. **Brand Pratt Letter and Conflict of Interest Disclosure Form**

    http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131109HuthPrattWithdrawalLetterandConflictDisclosure.pdf

15. **O'Connell Affirmative Defense, Ted is not a valid Trustee**

    http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf (Page 7)

16. **Peter Feaman, Esq. Letter to Brian O'Connell Regarding Ted Bernstein and Alan Rose, Esq. misconduct**

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O%27Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf

17. **Answer and Counter Complaint Oppenheimer Lawsuit Page 2 - Colin and French listed as Witnesses and Possible Defendants**

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf

18. **Full List of Iviewit RICO Defendants @**

http://iviewit.tv/CompanyDocs/Appendix%20A/index.htm

19. **Colin statement regarding Labarga as his mentor**

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20061224%20Palm%20Beach%20County%20Bar%20Association%20Judge%20Martin%20Colin%20Mentor%20Judge%20Labarga.pdf

20. **Omnibus Motion Federal Court**

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20FINAL%20ESIGNED%20NOTICE%20OF%20OMNIBUS%20MOTION%20ECF%20STAMPED%20COPY.pdf

21. **May 14, 2015 Letter to Judge Blakey**

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20Letter%20Scheduling%20and%20Discovery%20to%20Hon%20Judge%20John%20Robert%20Blakey.pdf

"Surf with Vision"

Eliot I. Bernstein
Founder & Inventor
Direct Dial: (561) 245-8588 (o)
(561) 886-7628 (c)

Thursday, May 14, 2015

The Honorable John Robert Blakey
United States District Court for the Northern District of Illinois Eastern Division
Everett McKinley Dirksen
United States Courthouse
219 South Dearborn Street
Chicago, IL 60604
Courtroom 1725 | Chambers 1046
Telephone Number: (312) 435-6058
Fax Number: (312) 554-8195

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

Dear Honorable Judge John Robert Blakey,

I write to acknowledge and express my understanding of my obligations to conform my filings to the formatting rules of the Court and matters within the Court's jurisdiction. I also write in regards to Scheduling issues after our status call this week with your Court indicating Discovery to be closed upon the taking of the Deposition of my brother, Plaintiff, Ted Bernstein.

I will respectfully be seeking leave by way of formal motion to open the Discovery not only for further examination of Ted Bernstein but also to Notice for

Deposition Judge Martin Colin of the Palm Beach Probate Court who I have just petitioned for Mandatory Disqualification on numerous grounds under the Florida Rules and Code including but not limited to being a necessary fact witness and material witness to actions of fraud upon his Court involving licensed attorneys Tescher and Spallina who have also been part of the litigation before this Court.

I have attached the Disqualification motion herein with respect to Florida Judge Colin for good faith reference and seek leave to move by way of formal motion within this Court's formatting rules to demonstrate the intertwined nature of the actions in this Court with the fraud and actions in Judge Colin's Court.

Please note that the car-bombing of my family mini-van in Boynton Beach, Florida was a very real thing and not a day goes by when I don't wonder what will happen any time my wife, children or I get in to a car. Full pictorial evidence and reports by involved authorities thus far can be found at my website at www.iviewit.tv .

This car-bombing was also reported as part of a Petition I filed with the White House to President Obama, the White House Counsel's Office, the US Attorney General, FBI, SEC and other related federal and state agencies and I have attached a link to this Petition which provides a good overview of the "elephant in the room" being the nature of my Technology which is used on the Hubble Space Telescope, for a mass of US Defense applications, across the globe for digital imaging across the internet and more and also outlines how I was directed by Harry I. Moatz of the Office of Enrollment and

Discipline of the USPTO to file a Petition claiming fraud upon the United States as well as myself and shareholders involving the Technology, which led to suspensions of the Intellectual Properties. The Technology was validated, used, tested and approved by leading engineers and computer experts on property owned by Lockheed Martin in Orlando, Florida at Real3d, Inc. which was at that time a consortium owned by the Intel Corporation, Lockheed Martin and Silicon Graphics and the technologies were valued in the hundreds of billions of dollars over the life of the IP claimed as the "holy grail" of the internet by these leading engineers. See,

http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090213%20FINAL%20SIGNED%20LETTER%20OBAMA%20TO%20ENJOIN%20US%20ATTORNEY%20FINGERED%20ORIGINAL%20MAIL%20l.pdf .

Also please note that not only is the car-bombing a very real event that occurred in my life during this ongoing Technology fraud and theft, but as noted in the White House Petition and elsewhere even a Federal Agent such as FBI Special Agent Luchessi of the Palm Beach Office of the FBI has "gone missing" according to West Palm Beach Florida FBI Office (leading to my being directed to former Inspector General Glenn Fine of the Department of Justice for resolution, which still has not occurred) while investigating the Iviewit matters leaving myself in a position of not being able to trust even federal officers and agents and thus I typically err on the side of documenting all

important information in all known places and federal state and international offices. Now as you may be aware from my prior filings, there are new frauds and criminal acts by same, similar, and/or related actors with reports that my father may have been murdered.

Since the time of the February 2009 White House Petition filing when I was personally on the phone line confirming the fax number and receipt for the White House and White House Counsel's office, not a single US Secret Service Officer, Capitol Police, US Marshall or other federal agent has shown up to say I filed a frivolous and harassing Petition to the President or to challenge the veracity of my statements in the Petition. Again, I respectfully remind the Court that I was directed by a Federal official, Harry I. Moatz, Director of the Office of Enrollment and Discipline, to file a petition for suspension claiming Fraud Upon the United States by Patent Bar Attorneys and others

Judge St. Eve had already granted me Leave to Amend my Complaint and the motion to take Florida Judge Colin's Deposition in this Court will demonstrate the relevance to these proceedings and action by the intertwined orchestration of fraud cover up by Judge Colin in his Court also involving Ted Bernstein who is a party in this action and attorney Spallina and others common in both cases also exposing the depth and breadth of the powerful financial interests at play. See the 2009 SEC Petition for general background,

http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090325%20FINAL%20Intel%20SEC%20Complaint%20SIGNED2073.pdf

Respectfully Yours,

Eliot I. Bernstein
Founder & Inventor

Iviewit Holdings, Inc. – DL
Iviewit Holdings, Inc. – DL
Iviewit Holdings, Inc. – FL
Iviewit Technologies, Inc. – DL
Uview.com, Inc. – DL
Iviewit.com, Inc. – FL
Iviewit.com, Inc. – DL
I.C., Inc. – FL
Iviewit.com LLC – DL
Iviewit LLC – DL
Iviewit Corporation – FL
Iviewit, Inc. – FL
Iviewit, Inc. – DL
Iviewit Corporation

cc/ec:

Enclosure(s)/Attachment(s)/URL's

All Uniform Resource Locators (URL's) and the contents of those URL's are incorporated in entirety by reference herein and therefore must be included in your hard copy file WITH ALL EXHIBITS, as part of this correspondence and as further evidentiary material to be Investigated. Due

to allegations alleged by New York State Supreme Court Whistleblower Christine C. Andersou and similar claims iu the Iviewit RICO & ANTITRUST Lawsuit regardiug Document Destruction and Tampering with Official Complaints and Records, PRINT all referenced URL's and their corresponding exhibits and attach them to your hard copy file, as this is now necessary to ensure fair and impartial review.

In order to coufirm that NO DOCUMENT DESTRUCTION OR ALTERCATIONS have occurred, once complete forward a copy of this correspondence with all exhibits and materials included to, Eliot I. Bernstein at the address listed herein. This will iusure that all parties are reviewiug the same documentation and no additional illegal activity is taking place. If you, for any reason, are incapable of providing this confirmation copy, please put your reasons for failure to comply in writing and send that to Eliot I. Bernstein at the address listed hereiu. Note, that this is a request only for a copy of this Correspondeuce and the referenced materials and NOT a request for any Case Investigation information, which may be protected by law.

cmb/eib

EXHIBIT B

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

CASE NO. 502014CP003698XXXXSB

TED BERNSTEIN, AS TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST AGREEMENT DATED MAY 20, 2008, AS AMENDED,
Plaintiff,

v.

ALEXANDER BERNSTEIN; ET AL.,
Defendants.
_____/

ORDER DENYING VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN

THIS CAUSE came before the Court on Eliot Bernstein's Verified Sworn Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin. It is hereby,

ORDERED AND ADJUDGED that the Eliot Bernstein Verified Sworn Emergency Petition and Affidavit for Immediate Disqualification is **Denied** as legally insufficient.

DONE AND ORDERED in chambers, at Delray Beach, Palm Beach County, Florida this 18th day of May, 2015.

SIGNED & DATED
MAY 18 2015
JUDGE MARTIN H. COLIN

MARTIN H. COLIN
Circuit Court Judge

Copies furnished:
Eliot Bernstein, individually
and Eliot and Candice Bernstein,
2753 NW 34th Street
Boca Raton, Fl. 33434

John P. Morrissey, Esquire
330 Clematis Street, Suite 213
West Palm Beach, Fl. 33401

Alan Rose, Esquire
505 South Flagler Drive, Suite 600
West Palm Beach, Fl. 33401

Pamela Beth Simon
303 East Wacker Drive, Suite 2725
Chicago, IL 60601

Brian M. O'Connell, Esquire
515 North Flagler Drive, 20th Floor
West Palm Beach, Fl. 33401

EXHIBIT C

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

CASE NO: **502011CP000653XXXXSB**
PROBATE DIVISION: **IY**

IN RE: SHIRLEY BERNSTEIN
ESTATE
_____/

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.

MARTIN H. COLIN
Circuit Judge

Copies furnished:
Eliot Bernstein
2753 NW 34th Street
Boca Raton, Fl. 33434

Alan Rose, Esquire
505 South Flagler Drive, Suite 600
West Palm Beach, Fl. 33401

Pamela Beth Simon
950 North Michigan Avenue, #2603
Chicago, IL 60611

Max Friedstein and Carley
Friedstein, Minors
c/o Jeffrey and Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035

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

CASE NO: **502015CP001162XXXXSB**
PROBATE DIVISION: **IY**

ELIOT BERNSTEIN, individually;
ELIOT BERNSTEIN as a beneficiary of the
2008 SIMON L. BERNSTEIN TRUST
AGREEMENT, as amended and restated in the
SIMON L. BERNSTEINAMENDED AND
RESTATED TRUST AGREEMENT dated
July 25, 2012 and as Legal Guardian of
JOSHUA BERNSTEIN, JACOB BERNSTEIN,
and DANEIL BERNSTEIN,
Plaintiffs,

v.

THEODORE STUART BERNSTEIN, individually;
THEODORE STUART BERNSTEIN, as Successor
Trustee of the 2008 SIMON L. BERNSTEIN TRUST
AGREEMENT, as amended and restated in the
SIMON L. BERNSTEIN AMENDED AND RESTATED
TRUST AGREEMENT dated July 25, 2012; ALEXANDRA
BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN;
MOLLY SIMON; JULIA IANTONI; MAX FRIEDSTEIN;
CARLY FRIEDSTEIN; JOHN AND JANE DOE 1-5000,
Defendants.
_____/

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a

South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.

MARTIN H. COLIN
Circuit Judge

Copies furnished:
Eliot Bernstein
2753 NW 34th Street
Boca Raton, Fl. 33434

John P. Morrissey, Esquire
330 Clematis Street, Suite 213
West Palm Beach, Fl. 33401

Alan Rose, Esquire
505 South Flagler Drive, Suite 600
West Palm Beach, Fl. 33401

Brian M. O'Connell, Esquire
515 North Flagler Drive, 20th Floor
West Palm Beach, Fl. 33401

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

CASE NO: **502014CP002815XXXXSB**
PROBATE DIVISION: **IY**

OPPENHEIMER TRUST COMPANY OF DELAWARE, in its capacity as Resigned Trustee of the Simon Bernstein Irrevocable Trusts created for the benefit of Joshua, Jake and Daniel Bernstein,
Petitioner,

vs.

ELIOT AND CANDICE BERNSTEIN, in their capacity as parents and natural guardians of JOSHUA, JAKE AND DANIEL BERNSTEIN, minors,
Respondents.
_____/

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.

MARTIN H. COLIN
Circuit Judge

Copies furnished:
Eliot and Candice Bernstein
2753 NW 34th Street
Boca Raton, Fl. 33434

Steven A. Lessne, Esquire
777 South Flagler Drive, Suite 500 East
West Palm Beach, Fl. 33401

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

CASE NO: **502012CP004391XXXXSB**
PROBATE DIVISION: **IY**

THE ESTATE OF
SIMON L. BERNSTEIN,
Deceased.
_____/

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.

MARTIN H. COLIN
Circuit Judge

Copies furnished:
Eliot Bernstein
2753 NW 34th Street
Boca Raton, Fl. 33434

John P. Morrissey, Esquire
330 Clematis Street, Suite 213
West Palm Beach, Fl. 33401

Alan Rose, Esquire
505 South Flagler Drive, Suite 600
West Palm Beach, Fl. 33401

Pamela Beth Simon
950 North Michigan Avenue, #2603
Chicago, IL 60611

Brian M. O'Connell, Esquire
515 North Flagler Drive, 20th Floor
West Palm Beach, Fl. 33401

Lisa Friedstein and Carley
Friedstein, Minors
c/o Jeffrey and Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035

Joshua, Jacob and Daniel
Bernstein, Minors
c/o Eliot Bernstein
2753 NW 34th Street
Boca Raton, Fl. 33434

Irwin J. Block, Esquire
700 S. Federal Highway, Suite 200
Boca Raton, Fl. 33432

Gary Shendell, Esquire
2700 N. Military Trail, Suite 150
Boca Raton, Fl. 33431

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

CASE NO: **502012CP004391XXXXSB**
PROBATE DIVISION: **IY**

THE ESTATE OF
SIMON L. BERNSTEIN,
Deceased.
_____/

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.

MARTIN H. COLIN
Circuit Judge

Copies furnished:
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2753 NW 34th Street
Boca Raton, Fl. 33434

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Friedstein, Minors
c/o Jeffrey and Lisa Friedstein
2142 Churchill Lane
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Bernstein, Minors
c/o Eliot Bernstein
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Boca Raton, Fl. 33434

Irwin J. Block, Esquire
700 S. Federal Highway, Suite 200
Boca Raton, Fl. 33432

Gary Shendell, Esquire
2700 N. Military Trail, Suite 150
Boca Raton, Fl. 33431

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

CASE NO: **502014CP003698XXXXSB**
PROBATE DIVISION: **IY**

TED BERNSTEIN, AS TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST AGREEMENT DATED MAY 20, 2008, AS AMENDED,
Plaintiff,

v.

ALEXANDER BERNSTEIN; ET AL.,
Defendants.
_____/

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.

MARTIN H. COLIN
Circuit Judge

Copies furnished:
Eliot Bernstein, individually
and Eliot and Candice Bernstein,
2753 NW 34th Street
Boca Raton, Fl. 33434

John P. Morrissey, Esquire
330 Clematis Street, Suite 213
West Palm Beach, Fl. 33401

Alan Rose, Esquire
505 South Flagler Drive, Suite 600
West Palm Beach, Fl. 33401

Pamela Beth Simon
303 East Wacker Drive, Suite 2725
Chicago, IL 60601

Brian M. O'Connell, Esquire
515 North Flagler Drive, 20th Floor
West Palm Beach, Fl. 33401

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

CASE NO: **502011CP000653XXXXSB**
PROBATE DIVISION: **IY**

IN RE: SHIRLEY BERNSTEIN ESTATE
_____/

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.

MARTIN H. COLIN
Circuit Judge

Copies furnished:
Eliot Bernstein
2753 NW 34th Street
Boca Raton, Fl. 33434

Alan Rose, Esquire
505 South Flagler Drive, Suite 600
West Palm Beach, Fl. 33401

Pamela Beth Simon
950 North Michigan Avenue, #2603
Chicago, IL 60611

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Friedstein, Minors
c/o Jeffrey and Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035

Irwin J. Block, Esquire
700 S. Federal Highway, Suite 200
Boca Raton, Fl. 33432

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL. 60035

Peter Feaman, Esquire
3615 Boynton Beach Blvd.
Boynton Beach, Fl. 33436

John J. Pankauski, Esquire
120 South Olive Avenue, 7th Floor
West Palm Beach, Fl. 33401

Mark R. Manceri, Esquire
2929 East Commercial Blvd., Suite 702
Fort Lauderdale, Fl. 33308

Robert Spallina, Esquire
Boca Village Corporate Center I
4855 Technology Way, Suite 720
Boca Raton, Fl. 33431

Donald Tescher, Esquire
Boca Village Corporate Center I
4855 Technology Way, Suite 720
Boca Raton, Fl. 33431

Julia Iantoni, a Minor
c/o Guy and Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035

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

PROBATE DIVISION
CASE NUMBER: **502012CP004391XXXXNB**
DIVISION: IJ

IN RE: ESTATE OF

SIMON L BERNSTEIN, Deceased

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated ***05/19/15***, the above styled case is reassigned to Division ***IJ***, Judge(s) ***JUDGE HOWARD K COATES*** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.

Sharon R. Bock
Clerk & Comptroller

BY: _____
Deputy Clerk

2015 MAY 19 PM 4:27
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CTY BRANCH FILED

cc:
CC: ALL PARTIES

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

PROBATE DIVISION 2011
CASE NUMBER: 502012CP000653XXXXNB
DIVISION: IJ

IN RE: ESTATE OF

SHIRLEY BERNSTEIN, Deceased

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated ***05/19/15***, the above styled case is reassigned to Division ***IJ***, Judge(s) ***JUDGE HOWARD K COATES*** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.

Sharon R. Bock
Clerk & Comptroller

(Seal)

BY: _____
Deputy Clerk

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BRANCH FILED
2015 MAY 19 PM 4:27

cc:
CC: ALL PARTIES

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

PROBATE DIVISION
CASE NUMBER: **502014CP003698XXXXNB**
DIVISION: IJ

IN RE: SHIRLEY BERNSTEIN TRUST AGREEMENT

DTD MAY 20, 2008, AS AMENDED

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated ***05/19/15***, the above styled case is reassigned to Division ***IJ***, Judge(s) ***JUDGE HOWARD K COATES*** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.

(Seal)

Sharon R. Bock
Clerk & Comptroller

BY: _____
Deputy Clerk

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CTY BRANCH-FILED
2015 MAY 19 PM 4:27

cc:
CC: ALL PARTIES

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

PROBATE DIVISION
CASE NUMBER: **502015CP001162XXXXNB**
DIVISION: IJ

IN RE: THE 2008 SIMON L. BERNSTEIN TRUST AGREEMENT

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated ***05/19/15***, the above styled case is reassigned to Division ***IJ***, Judge(s) ***JUDGE HOWARD K COATES*** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.

2015 MAY 19 PM 4:26
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BRANCH-FILED

(Seal)

Sharon R. Bock
Clerk & Comptroller

By: _____
Deputy Clerk

cc:
CC: ALL PARTIES

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

PROBATE DIVISION
CASE NUMBER: **502014CP003698XXXXNB**
DIVISION: IJ

IN RE: SHIRLEY BERNSTEIN TRUST AGREEMENT

DTD MAY 20, 2008, AS AMENDED

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated ***05/19/15***, the above styled case is reassigned to Division ***IJ***, Judge(s) ***JUDGE HOWARD K COATES*** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.

(Seal)

Sharon R. Bock
Clerk & Comptroller

BY: _____
Deputy Clerk

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FLA.
SOUTH CITY BRANCH-FILED
2015 MAY 19 PM 4:27

cc:
CC: ALL PARTIES

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

PROBATE DIVISION
CASE NUMBER: **502014CP002815XXXXNB**
DIVISION: IJ

IN RE: SIMON BERNSTEIN IRREVOCABLE TRUSTS CREATED FOR THE BENEFIT OF JOSHUA, JAKE & DANIEL BERNSTEIN

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated ***05/19/15***, the above styled case is reassigned to Division ***IJ***, Judge(s) ***JUDGE HOWARD K COATES*** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.

(Seal)

Sharon R. Bock
Clerk & Comptroller

BY: _____
Deputy Clerk

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BRANCH FILED
2015 MAY 19 PM 4:27

cc:
CC: ALL PARTIES

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

PROBATE DIVISION
CASE NUMBER: **502012CP004391XXXXNB**
DIVISION: IJ

IN RE: ESTATE OF

SIMON L BERNSTEIN, Deceased

CLERK'S NOTICE OF REASSIGNMENT

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated ***05/19/15***, the above styled case is reassigned to Division ***IJ***, Judge(s) ***JUDGE HOWARD K COATES*** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.

15TH JUDICIAL CIRCUIT COURT · CLERK & COMPTROLLER · PALM BEACH COUNTY · STATE OF FLORIDA

Sharon R. Bock
Clerk & Comptroller

BY: _____
Deputy Clerk

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CTY BRANCH FILED

2015 MAY 19 PM 4:27

cc:
CC: ALL PARTIES

APPENDIX 22

Filing # 34739423 E-Filed 11/20/2015 05:05:03 PM

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

TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust Agreement Dated May 20, 2008, as Amended

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F.,

Defendants.
_____/

Case No.: 502014CP003698XXXXNBIJ
Probate Division

PLAINTIFF'S WITNESS LIST

Plaintiff, Ted S. Bernstein (the "Trustee"), hereby files his list of witnesses for the trial scheduled for December 15, 2015, by Order of this Court dated September 24, 2015, and states as follows:

1. Ted S. Bernstein
   c/o Alan B. Rose, Esq.
   Mrachek, Fitzgerald, Rose et al
   505 South Flagler Drive, Suite 600
   West Palm Beach, FL 33401

2. Donald Tescher
c/o Ken Pollock, Esq.
Shendell & Pollock P L
2700 N Military Trl Ste 150
Boca Raton, FL 33431

3. Robert Spallina
c/o Ken Pollock, Esq.
Shendell & Pollock P L
2700 N Military Trl Ste 150
Boca Raton, FL 33431

4. Kimberly Moran
c/o Ken Pollock, Esq.
Shendell & Pollock P L
2700 N Military Trl Ste 150
Boca Raton, FL 33431

5. Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

6. Pamela Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601

7. Lisa Friedstein
2142 Churchill Lane
Chicago, IL 60035

8. Jill Iantoni
2101 Magnolia Lane
Chicago, IL 60035

9. Bruce Stone, Esq. Expert Witness
Goldman Felcoski & Stone P.A.
95 Merrick Way, Suite 440
Coral Gables, Florida 33134

10. Any and all witnesses listed by any other party to this litigation, subject to objections.

11. Impeachment and rebuttal witnesses

The Trustee reserves the right to amend or supplement this Witness List as discovery progresses.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to all persons on the Service List set forth below by email electronic transmission this 20th day of November, 2015.

MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone
(561) 655-5537 Facsimile
email: arose@mrachek-law.com
email: mchandler@mrachek-law.com
Attorneys for Plaintiff, Ted Bernstein

By: */s/ Alan B. Rose*
Alan B. Rose (Florida Bar No. 961825)

SERVICE LIST
CASE NO.: 502014CP003698XXXXNBIJ

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra
Bernstein, Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.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;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

APPENDIX 23

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE No. 502014CP003698XXXXNB

TED BERNSTEIN,

Plaintiff,

-vs-

DONALD R. TESCHER, ELIOT IVAN BERNSTEIN,
LISA SUE FRIEDSTEIN, JILL MARLA IANTONI, et al.,

Defendants.

TRIAL BEFORE THE HONORABLE
JOHN L. PHILLIPS
VOLUME 1 PAGES 1 - 114

Tuesday, December 15, 2015
North County Courthouse
Palm Beach Gardens, Florida 33410
9:43 a.m. - 4:48 p.m.

Reported By:
Shirley D. King, RPR, FPR
Notary Public, State of Florida
West Palm Beach Office Job #1358198 - VOL 1

APPEARANCES:

On behalf of the Plaintiff:

ALAN ROSE, ESQUIRE
GREGORY WEISS, ESQUIRE
MRACHEK FITZGERALD ROSE KONOPKA
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
Phone: 561.655.2250
E-mail: Arose@mrachek-law.com

On behalf of the Defendant:

ELIOT IVAN BERNSTEIN, PRO SE, ESQUIRE
2753 NW 34th Street
Boca Raton, Florida 33434
Phone: 561.245.8588
E-mail: Iviewit@iviewit.tv

On behalf of Molly Simon, Alexandra, Eric & Michael Bernstein:

JOHN P. MORRISSEY, ESQUIRE
LAW OFFICE OF JOHN P. MORRISSEY, P.A.
330 Clematis Street
Suite 213
West Palm Beach, Florida
Phone: 561.833.0866
E-mail: John@jmorrisseylaw.com

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I N D E X

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P R O C E E D I N G S

- - -

THE COURT: We're here on the Bernstein case. Everybody ready to go?

MR. ROSE: Good morning, Your Honor. Yes. Alan Rose on behalf of the plaintiff, Ted S. Bernstein, as successor trustee.

THE COURT: Okay.

MR. ROSE: And with me is my partner, Greg Weiss. May not be for the whole trial, but he is with us for the beginning.

THE COURT: Okay. Well, great. Thanks for coming.

And who's on the other side?

MR. BERNSTEIN: Eliot Bernstein, pro se, sir.

THE COURT: Okay. You're not going to have any counsel? Who's with you at the table?

MR. BERNSTEIN: That's my lovely wife, Candice.

THE COURT: All right. And why are you at the table?

MR. BERNSTEIN: That's one of the questions I would like to address. I'm here individually.

THE COURT: Right.

MR. BERNSTEIN: And I was sued individually.

But I'm also here on behalf, supposedly, of my minor children, who aren't represented by counsel. And I'm sued as a trustee of a trust that I've never possessed.

THE COURT: Are you asking me a question?

MR. BERNSTEIN: Yes.

THE COURT: What's the question?

MR. BERNSTEIN: Well, my children are being sued.

THE COURT: What's the question?

MR. BERNSTEIN: And I was sued as their trustee, but I'm --

THE COURT: Stop, please.

MR. BERNSTEIN: Yes, sir.

THE COURT: I would love to talk with you all day --

MR. BERNSTEIN: Okay.

THE COURT: -- but we're not going to have that happen.

MR. BERNSTEIN: Okay.

THE COURT: This is not a conversation. This is a trial. So my question is, What is your question? You said you had a question.

MR. BERNSTEIN: I tried to get counsel for my children who was willing to make a pro hoc vice --

THE COURT: When will you ask me the question? Because this is all --

MR. BERNSTEIN: Well, I'd like to stay the proceeding.

THE COURT: Okay. The request for a continuance is denied. Thank you.

MR. BERNSTEIN: Have you read the filing I filed? Because my children are minor --

THE COURT: Was that your question?

MR. BERNSTEIN: Well, my children are minors --

THE COURT: Please stop.

MR. BERNSTEIN: -- and they're not represented here.

THE COURT: What is your name again, sir?

MR. BERNSTEIN: Eliot Bernstein.

THE COURT: Okay. Mr. Bernstein, I'll be courteous, unless it doesn't work; then I'll be more direct and more aggressive in enforcing the rules that I follow when I conduct trials.

I've asked you several times if you had questions. You finally asked me one, and it was, Did you read my filing? No, I did not. You asked for a continuance. I have denied that because it's untimely.

Now I'm turning back to the plaintiff, and we're going forward with this trial. That is one day set on my docket. We're going to have this trial done by the end of the day. You'll have half the time to use as you see fit; so will the other side. I'll not care if you waste it, but I'll not participate in that. Thank you.

Now, from the plaintiff's side, what is it that the Court is being asked to decide today?

MR. ROSE: Before I answer, could Mr. Morrissey make an appearance, sir?

THE COURT: All right.

MR. MORRISSEY: Yes, I'm here on behalf of four of the defendants, Judge, four adult grandchildren, Alexandra Bernstein, Eric Bernstein Michael Bernstein and Molly Simon, all of whom have joined in the plaintiff's complaint today.

THE COURT: Okay. Last time I'll ask this question of the plaintiff. What is it that I'm asked to decide today?

MR. ROSE: We are asking you to decide whether five testamentary documents are valid, authentic and enforceable. And that is set forth in count two of the amended complaint in this action. The five documents are a 2008 will of Shirley

Bernstein, a 2008 trust of Shirley Bernstein, and an amendment by Shirley Bernstein to her 2008 trust.

THE COURT: When was the amendment?

MR. ROSE: Amendment was in November of 2008.

THE COURT: All right. So there's also a 2008 amendment?

MR. ROSE: Yes, sir. In fact, I have a -- I don't know if you can read it, but I did put up here on the -- there are seven testamentary documents. We believe five of them to be valid and operative, and two of them to have been with -- revoked by later documents.

So for Shirley, there are three documents that count two seeks you to determine are valid, authentic and enforceable according to their terms.

And for Simon Bernstein, he has a 2012 will, and a 2012 amended and restated trust agreement. And we're asking that these five documents be validated today.

There also is a 2008 will and trust that you'll hear testimony were prepared, but have been revoked and superseded by later documents.

THE COURT: Does everybody agree that Simon's 2008 will and trust are invalid or is there some

claim that they're valid?

MR. ROSE: I can't answer.

THE COURT: All right. I'll ask.

Are you claiming that the Simon Bernstein 2008 will or 2008 trust are valid, or do you agree that they are invalid?

MR. BERNSTEIN: Well, I individually disagree.

THE COURT: Okay. Thank you.

MR. BERNSTEIN: And my children --

THE COURT: I just wanted to know --

MR. BERNSTEIN: -- aren't represented by counsel, so they can't have an opinion --

THE COURT: Okay.

MR. BERNSTEIN: -- even though they're parties to the case.

THE COURT: Okay. Like I say, you can waste all your time you want. I won't object to it, but I won't participate in it.

You can put on your first witness.

MR. ROSE: Thank you. Plaintiff will call Robert Spallina.

Thereupon,

(ROBERT SPALLINA)

having been first duly sworn or affirmed, was examined and testified as follows:

THE WITNESS: I do.

MR. ROSE: May I approach, Your Honor?

THE COURT: Sure. All approaches are okay.

MR. ROSE: Okay. I brought for Your Honor -- would you like a book instead of the exhibits?

THE COURT: Nothing better than a huge book.

MR. ROSE: We may not use all of them, but we'll adjust it later.

THE COURT: All right.

MR. ROSE: And then I was going to hand the witness the original for the admission into the court file as we go.

THE COURT: All right.

MR. ROSE: I have a book for Mr. Eliot Bernstein.

DIRECT EXAMINATION

BY MR. ROSE:

Q. Would you state your name for the record?

A. Robert Spallina.

Q. Did you know Simon and Shirley Bernstein, Mr. Spallina?

A. Yes, I did.

Q. And when did you first meet Simon and Shirley Bernstein?

A. In 2007.

Q. What was your occupation at the time?
A. I was working as an estate planning attorney.
Q. With a law firm?
A. Yes.
Q. And what was the name of the law firm?
A. Tescher, Gutter, Chaves, Rubin, Ruffin and Forman and Fleisher.
Q. And did Simon and Shirley Bernstein retain your law firm?
A. Yes, they did.
Q. I'm going to approach with Exhibit No. 9 -- Plaintiff's Exhibit 9. Ask if you'd identify that document?
A. This was an intake sheet to open up the file, dated November 16th of 2007.
Q. And the clients are Simon and Shirley Bernstein?
A. The clients were Simon and Shirley Bernstein, yes.
MR. ROSE: I would move Exhibit 9 into evidence, Your Honor.
THE COURT: Any objection?
[No verbal response]
THE COURT: No objection being stated, I'll receive that as Plaintiff's 19.

(Plaintiff's Exhibit No. 9 was received into evidence.)

BY MR. ROSE:

Q. Now, what was the purpose of Simon and Shirley Bernstein retaining your law firm?

A. They wanted to review and go over their existing estate planning and make changes to their documents.

Q. I'm going to hand you Exhibit No. 10, and ask you if you can identify for the record Exhibit 10.

A. These are meeting notes, my meeting notes, and -- and then partner Don Tescher's meeting notes from several different meetings that we had with Si and Shirley during the time following them retaining us as clients.

Q. And is it your standard practice to take notes when you're meeting with clients?

A. Yes.

Q. And were these notes kept in your company's files and were they produced with Bates stamp numbers?

A. Yes, they were.

MR. ROSE: I would move Exhibit 10 into evidence, Your Honor.

THE COURT: Is there any objection to the exhibit?

[No verbal response].

THE COURT: No objection being stated, they'll be received as Plaintiff's 10.

(Plaintiff's Exhibit No. 10 was received into evidence.)

BY MR. ROSE:

Q. Now, for today's purposes, are those notes in chronological or reverse chronological order?

A. This is reverse chronological order.

Q. Okay. Can you go to the bottom of the stack and start with the earliest notes. Do they reflect a date?

A. Yes. 11/14/07.

Q. And if you'd turn to the last page, is that your partner's notes that are in evidence?

A. Yes. We both would always take notes at the meetings.

Q. And so the first -- was that the first meeting with Mr. Simon or Shirley Bernstein?

A. I believe so, yes.

Q. Now, before you met with Simon and Shirley Bernstein, did you have any prior relationship with them?

A. No, we did not.

Q. Did you personally know either of them before

that date?

A. No, I did not.

Q. 11/14/2007. Okay. And if you'd just flip back to the client intake. I think that was dated November the 26th?

A. It was two days later, 11/16. The file was opened two days later.

Q. So file open.

Now, did you know in advance of the meeting what they were coming in to talk about?

A. Yeah. They were coming in to talk about their estate planning.

Q. And did they provide you in advance of the meeting with any of their prior estate planning documents?

A. I believe we had copies of documents. I don't know if they provided them at that meeting or if they provided them before for us to look at, or after, but I know that there were existing documents that were in our file.

Q. Okay. Let me approach and hand you Exhibit 40A, which is -- bears Tescher Spallina Number 1.

Does that appear to be an envelope from Stephen Greenwald --

A. Yes.
Q. -- directed to Simon Bernstein?
A. Yes, it is.
Q. And copy of this was in your files when they were produced?
A. Yes.
Q. And was Stephen Greenwald the prior lawyer that represented Simon and Shirley Bernstein, as far as you know?
A. Yes. Yes, he was.
Q. I'm going to hand you Exhibit 40B, which is a letter from Mr. Greenwald to Simon and Shirley Bernstein.
Is that also -- is that also provided in your files?
A. Yes, sir.
Q. Does it bear a Bates stamp of your law firm?
A. Yes, it does.
Q. Okay. And does Mr. Greenwald, in that letter, disclose what he is sending to Simon -- Mr. and Mrs. Simon L. Bernstein?
A. Yes, he did. Their estate planning documents, including their ancillary documents, their wills, their trusts, health care powers, durable powers and living wills.

Q. And if -- I'll show you 40C, D, E and F, and ask if you can identify these as some of the documents that were included with the letter from Mr. Greenwald?

A. We have each of the first codicils to Mr. and Mrs. Bernstein's wills, and we have each of their wills.

MR. ROSE: I would move Exhibit 40A through F into evidence, Your Honor.

THE COURT: Any objection?

[No response.]

THE COURT: No objection being stated, I'm going to receive this as Plaintiff's 40A through F.

(Plaintiff's Exhibit Nos. 40A-F were received into evidence.)

BY MR. ROSE:

Q. Within Exhibit 40, is there a will and a -- for Simon and a will for Shirley?

A. Yes, there is.

Q. And could you tell the Court the date of those documents?

A. August 15, 2000.

THE COURT: Are both documents the same date?

THE WITNESS: Yes, they are, Your Honor.

THE COURT: All right. Thanks. I just wanted to make sure I don't get confused.

BY MR. ROSE:

Q. Can you generally describe what the estate plan reflected in Exhibit 40 would be, who are the beneficiaries and what percentages?

A. Okay. Just give me a minute. I haven't seen these in...

The plan under the documents -- and let me just make sure it's the same under both documents. The plan under the documents was to provide all the assets to the survivor of Shirley and Si, and that at the death of the survivor of the two of them, assets would pass to -- it appears to be Ted, Pam, Eliot, Jill and Sue and Lisa -- and Lisa. So it looks to be a typical estate plan; everything would pass to the survivor at the first death, and then at the second death everything to the children.

Q. How many of the children under the 2000 documents?

A. This shows all five. The will shows all five.

Q. What page are you looking at?

A. The first page of the will. Is this -- oh, no. That's just as to tangible personal property. I'm sorry.

Q. That's okay. Are you on -- are you in Simon's or Shirley's?

A. I'm in -- on both documents, to make sure the disposition was the same.

Q. Okay. So on the page -- the first page, it talks under --

A. It speaks to tangible personal property.

Q. Split equally among the five children?

A. Among the five children.

Q. Let me just stop you one second right there. If you would, turn --

MR. ROSE: This might help, Your Honor, if you'd turn to Tab 7. It may be out of order. Might be a good time just to go over the family tree and let -- get everyone on the same page of...

We prepared a chart, and I'm going to put the -- it lists Simon and Shirley and the names of their children on the second line, and then under each child with arrows, the names of the grandchildren and which parents they belong to.

THE WITNESS: This looks accurate.

MR. ROSE: I would move Exhibit 7 into evidence, Your Honor.

THE COURT: Any objection?

[No response.]

THE COURT: No objection being stated, that's in evidence as Plaintiff's 7.

(Plaintiff's Exhibit No. 7 was received into evidence.)

BY MR. ROSE:

Q. So under the 2000 documents, for personal property, it's split among the five children.

And when you get to the residuary estate or the amount that was put into trusts, who are the beneficiaries?

A. Again, at the death of the survivor of the two of them, tangible personal property would go to the five children, and the residuary of the estate would go to four of the five children. It appears that Pam is cut out of these documents. And I recall that now, yes.

Q. Okay. So under the 2000 documents, Eliot Bernstein would get 25 percent of the residuary?

A. Correct.

Q. Now, if you look at page 5, it talks about -- page 5, near the top, it says "upon the death of my husband," then "the principal of his trust shall pass," and then the next sentence says "to the extent that said power of appointment -- oh, "and such shares equal or unequal and subject to such lawful trust terms and conditions as my husband shall by will appoint."

Do you see what I'm talking about?

A. Yes, I do.

Q. That's a power of appointment?
A. Correct.
Q. And then it says, the next sentence, To the extent the power of appointment is not effectively exercised, then it goes to the four of the five children?
A. Correct.
Q. So under the 2000 documents, the survivor would have the power to give it all to one?
A. Correct.
Q. And theoretically change it and give some to Pam?
A. That's true, by the language of this document.
Q. Okay. So I'm just going to write. We have a power of appointment, which we don't need to belabor, in favor of the survivor; and then if it's not exercised, Eliot gets 25 percent, and three other siblings get the balance?
A. 25 percent each.
Q. Okay.
A. Equal shares.
Q. Now, when Simon and Shirley came to you, did they give you an indication whether they wanted to keep in place the 2000 structure?
A. No. They wanted to change the dispositions

under their documents.

Q. Okay. So if we work through your notes now, which are in evidence as Exhibit No. 10, the first meeting was November the 14th, 2007. You had a discussion about Simon's net worth -- Simon and Shirley's net worth, how much money they had at that time?

A. Yes.

Q. Okay. I'm going to show you Exhibit No. 12 before we --

Do you recognize the handwriting on Exhibit 12?

A. No.

Q. Okay. I believe it's Simon Bernstein's statement of his net worth.

But you have seen this document before?

A. I don't recall.

Q. Okay. And you're not familiar with his handwriting to --

A. No. Other than his signature.

Q. That's fine.

But during the discussion, did you discuss Simon's net worth?

A. Yes. Both my partner and I.

Q. And if I look at Mr. Tescher's notes, which

are a little easier to read, he lists the joint brokerage account, some money for Simon, Simon, a house -- the house appears to have a million dollar mortgage -- a condo, some miscellaneous and some life insurance. And he totals -- that totals to 13 million, and then he lists 5 million for 33 shares of the company.

Do you see that?

A. Yes, I do.

Q. Okay. So if I add up what Mr. Tescher wrote in his notes, I get to about $18 million.

And this is on November the 14th of '07, around 18 million, but that includes life insurance?

A. Yes, it does.

Q. Okay. Now, did you meet with them -- how long were these meetings with Simon and Shirley Bernstein?

A. They could be an hour; sometimes more.

Q. Now, if we flip through your notes, does it reflect a second meeting?

A. Yes, it does.

Q. And what's the date of the second meeting?

A. 12/19/07.

Q. And do you have any -- I'm sorry. 12/19?

A. 12/19/07.

Q. Okay. And what's the -- let's just put all

the dates up here. That was the second meeting.

Are there notes from a third meeting?

A. The next meeting was January 31, '08.

Q. Okay. Is there a fourth meeting?

A. March 12 of '08.

Q. Now, just to put this in perspective, the document that we are going to -- well, the document that's been admitted into probate in this case is a will of Shirley Bernstein that bears a date of May 20, 2008.

Does that sound consistent with your memory?

A. Yeah, it was clearly 2008.

MRS. CANDICE BERNSTEIN: Excuse me. Can you turn that so we can see it?

THE WITNESS: Sure. Sorry.

THE COURT: Ma'am, you are not a party. You are not an attorney. And you are not really supposed to be sitting there. I'm letting you sit there as a courtesy. If you ask for and inject yourself any further in the proceeding than that, I'll have to ask you to be seated in the gallery. Do you understand?

MRS. CANDICE BERNSTEIN: Yes, sir.

THE COURT: Thank you.

BY MR. ROSE:

Q. So you have four meetings with Simon and

Shirley Bernstein.

And did it take that long to go over what they wished to do with their estate planning documents?

A. It was more of us, you know, trying to get a handle on everything that they had, the business, prior planning. From the first meeting to the March meeting, it was only a couple of months. The holidays were in there. So it wasn't uncommon for us to meet with a client more than once or twice when they had a sophisticated plan and asset schedule.

Q. At this time --

A. By the last meeting, we knew what we needed to do.

Q. And around this -- based on your notes, did Simon Bernstein believe he had a net worth all in of about 18 million when he met with you?

A. Yeah, it appears that way, 18, 19 million dollars.

Q. And did he discuss at all with you that he was involved in a business at that time, an insurance business?

A. Yes.

Q. And did he give you an indication of how well the business was doing at around the times of these meetings between November 2007 and March or May of 2008?

A. Yeah, the business was doing well at that time. He was -- he was very optimistic about the future of the business.

Q. Now, did you do any -- did you prepare any documents before the will was signed in May? Did you prepare drafts of the documents?

A. Yes, we did. We always prepare drafts of documents.

Q. And did you share the drafts with Simon and Shirley?

A. Yes, we did.

Q. Okay. I'm going to hand you Exhibit 11, and ask if you can identify that for the record?

A. This is a letter from our firm dated April 19 of 2008. It's transmitting the documents to the client, with an explanation that they could follow, better than reading their documents -- a summary of the documents.

Q. Is that a true and authentic copy of a document that you created?

A. Yes, it appears to be.

MR. ROSE: I would move Exhibit 11 into evidence, Your Honor.

THE COURT: All right. Any objection?

[No response.]

THE COURT: All right. Then that's in

evidence as Plaintiff's 11.

(Plaintiff's Exhibit No. 11 was received into evidence.)

BY MR. ROSE:

Q. And if I read Exhibit 11, the first three words say, "Enclosed are drafts of each of your wills and revocable trusts, the children's family trust, each of your durable powers of attorney, designations of health care surrogate and living wills," correct?

A. Yes.

Q. So about a month and 11 days before anything was signed, documents were sent by Federal Express to Simon and Shirley Bernstein?

A. Correct.

Q. And it appears to have gone to Simon's business?

A. Yes.

Q. Now, if you look at -- does your -- does your letter, sort of in laymen's terms, rather than reading through the legalese of a will, explain what the estate planning was under the documents that have yet to be signed but that you were preparing?

A. Yes, it does, as much as possible in laymen's terms.

Q. Can you just give us a short -- well, the will

itself for both Simon and Shirley was a relatively simple will that poured over into a revocable trust, one for each?

A. Yes, poured over wills for both.

Q. And whoever died first would inherent the personal property?

A. All tangible personal property under the will would pass to the survivor.

Q. So assuming Simon survived Shirley, he would be the sole beneficiary of her estate?

A. Correct.

Q. And then any of her residuary would go into a trust?

A. That's correct.

Q. And he, in fact, outlived Shirley?

A. He did.

Q. Okay. Now, if you go to the second page, at the top, you describe the will of Shirley Bernstein. It's essentially identical to Si -- it says "Si."

Just for the record, that's Simon shorthand?

A. Yes.

Q. Si is the personal representative of Shirley's estate, and Ted is designated as successor if Simon is unable to serve.

That was what was in the document you sent in

April?

A. Yes. I believe so, yes.

Q. And that provision remained in the final documents you signed?

A. Yes.

Q. Now, did Ted eventually become a successor personal representative upon Simon's death?

A. Yes, he did.

Q. Then you next start to talk about the Simon L. Bernstein trust agreement.

And theoretically, that was going to be the primary testamentary document?

A. Correct, it was.

Q. And that's fairly standard?

A. Yes. When a client wants to avoid probate, we use a revocable trust to title assets in prior to death. Those assets remain confidential; they're not part of the court record. And the trust is also used to avoid the need for the appointment of a guardian in the event of incapacity, because there's a successor trustee mechanism.

Q. Okay. Now, under Simon's trust agreement, moving down to the third paragraph, under that heading, it says that both trusts provide for mandatory income distributions. And then the next sentence starts, "Upon

Shirley's death, she has been given a special power to appoint the remaining assets of both the marital trust and the family trust to any of your lineal descendants and their spouses, a power to redirect and reallocate."

Do you see that?

A. Yes.

Q. Now, is that consistent with the way the documents were intended to be drafted?

A. Yes, it is.

Q. And I guess it's sort of similar to what existed in the 2000 wills?

A. Yes. Typically, you give the survivor of the spouse a power to appoint in the event that they want to change any of the estate planning of the first to die. Found in most first marriage documents with only children from that marriage.

Q. And this is a first marriage with all five children being the product of the same marriage --

A. Yes.

Q. -- as far as you know?

A. As far as I know.

Q. And as far as you know, Simon and Shirley Bernstein, they each married only once in their lifetime, to each other?

A. That's all I know.

Q. If you flip to the next page, there's a shorter paragraph for Shirley.

It basically says -- it's virtually identical, except that Simon is the initial successor, and after that, Ted would be Simon's replacement if he passed away?

A. Correct.

Q. And is that the mechanism by which Ted Bernstein became the successor trustee in this lawsuit?

A. Yes, it is.

Q. Now, if Shirley died first, then did the documents give Simon the same power of appointment over the assets in her trust that was provided for in the Simon document if he died?

A. Same power of appointment was in both documents. They were identical documents, with one exception.

Q. And what was the exception; the name of the successor trustee?

A. The name of the successor trustee.

Q. And then Simon wanted his then business partner, Bill Stansbury, to be his successor trustee in both his will and his trust, and Shirley wanted her oldest son, Ted, to be her successor in both documents?

A. Correct. The signer, non-survivor.

Q. Okay. And Shirley, I guess it says here, also made a specific gift of $200,000 to someone named Matthew Logan?

A. Correct.

Q. If you look at our family tree chart, I think Matthew Logan is under Ted.

He is the son of Ted's second wife, Deborah?

A. Correct.

Q. Okay. So there was a $200,000 special gift to Matthew that was in the documents that you sent on April 9th?

A. Correct.

Q. Then you prepared family trusts for the children.

Were those trusts created at the time?

A. Yes, they were.

Q. Now, after you sent your letter on April 9th, did you have a further discussion with Simon and Shirley before the documents were signed?

A. I can't recall, but we probably -- we probably did, to set up a meeting and talk -- you know, either, A, talk about the documents, the draft documents, any changes that they wanted to make on the draft documents. It would be typical of us to do that, although I don't have any meeting notes that showed that, so...

Q. Now, under -- we'll talk -- let's talk about the ones that matter.

Because Shirley died first, her 2008 trust became the beneficiary of her estate?

A. Correct.

Q. And then Simon had a power of appointment, correct?

A. Um-hum.

Q. And if -- you have to say yes or no.

A. Yes.

Q. And if he didn't exercise the power of appointment, was there a default set of beneficiaries that were designated in the documents you drafted in 2008?

A. Yes.

Q. And what was the default set of beneficiaries?

A. Simon had and Shirley had in their documents excluded Pam and Ted at the death of the survivor of the two of them.

Q. Okay. So if the power of appointment was not properly exercised, it would just go to three, and Eliot would end up with 33 and a third percent and two of the other sisters would get the balance?

A. That's correct.

Q. Did Simon and Shirley eventually execute

documents in 2008?

A. Yes, they did.

Q. I'm going to hand you Exhibit No. 1, which is --

A. A copy of Si's will from --

Q. Do you have Exhibit 1?

A. Excuse me. Sorry. Shirley's will.

Q. Is that a conformed copy of the document?

A. Yes, it is.

MR. ROSE: I would move Exhibit 1 into evidence.

THE COURT: Any objection?

[No response.]

THE COURT: That's in evidence as Plaintiff's 1.

(Plaintiff's Exhibit No. 1 was received into evidence.)

BY MR. ROSE:

Q. Now, that says "conformed copy." If I turn to the last page, there's no handwritten signatures.

A. Correct.

Q. Do you know where the original of that document sits today?

A. It was filed with the court.

Q. Okay. So somewhere in the courthouse, the

original goes.

And that's something that the client would keep?

A. Correct. This is what we would send to the client to include with their files.

Q. When you filed the original with the court, did anyone object while Simon was alive?

A. No.

Q. Okay. I'm going to hand you Exhibit No. 2.

Do you recognize that document?

A. Yes. This is Shirley's trust agreement that she executed in 2008.

Q. Now, does that document have copies of her signature?

A. Yes. These are actual copies of the signing parties and their signatures.

Q. And how many originals would have been created of this document?

A. We always created three originals of the trust agreements.

Q. Okay. Now, if you turn to the next -- if you turn to the last page, it says that Shirley put a dollar into her trust when it was created.

A. Yes.

Q. And that's to make it a valid trust?

A. Yeah, I mean, it's not required today, but it's pretty much just form to show a dollar. She had certainly funded it more than that.

Q. And eventually Shirley put some assets into the trust?

A. Yes.

Q. Okay. And if you go to the page before that, page 27, it appears to be a signature page, correct?

A. Yes.

Q. Now, were you one of the witnesses to the signature of Shirley Bernstein on Exhibit 2?

A. Yes, I was.

Q. And were you present with Shirley Bernstein and the other witness, Traci Kratish, at the time of the execution of the documents?

A. Yes, I was.

Q. And they're notarized by someone named Kimberly Moran.

Does she work for your office?

A. Yes, she did.

Q. And through her involvement with your firm and -- did she personally know Shirley and Traci Kratish, as well as yourself?

A. Yes, she did.

Q. Now, at the same time that Shirley signed her

documents, did Simon sign a similar set of 2008 will and trust, similar to the drafts that were sent in April?

A. Yes, he did. We were all sitting in the main conference area in their offices together.

Q. In Simon's office or your office?

A. In Simon's offices.

Q. Okay. So why would someone from your office come to Simon's office rather than rely on the notary that they have there?

A. Because we wanted to accommodate Shirley and Si in their offices and not have them travel.

Q. You personally went there. Did you personally go through to make sure that the documents were signed with all the formalities required under Florida law to make them valid and enforceable?

A. Yes, we did. That's why we were there.

Q. And if Simon did not have a 2008 will and -- sorry.

If Simon did not have a 2002 will and trust, would it be your belief that the 2008 will and trust would be valid?

A. Yes.

Q. Were they properly signed with all the same testamentary formalities required by Florida law?

A. Yes, they were.

Q. Okay. Did Shirley at some point amend her trust agreement?

A. Yes, she did.

Q. And do you recall why she amended it?

A. She amended it to remove Matt Logan from the document that she had included previously as a specific device.

Q. Do you know why Matt was removed?

A. It's attorney-client privilege.

Does it matter?

Q. I'll withdraw the question.

Was Matthew removed at the direction of Shirley?

A. Yes.

Q. I'll withdraw --

A. Yes. Yes. Yes.

Q. Did Shirley sign a document that effectively removed Matthew?

A. Yes, she did.

Q. Let me hand you Exhibit No. 3, and ask you if you recognize that document?

A. Yes, I do.

Q. Now, was this document signed with the same testamentary formalities as the 2008 trust?

A. Yes, it was.

MR. ROSE: We would move Exhibit 3 into evidence, Your Honor.

THE COURT: Any objection?

[No response.]

THE COURT: All right. That's in evidence as Plaintiff's 3.

(Plaintiff's Exhibit No. 3 was received into evidence.)

BY MR. ROSE:

Q. Now, if you look -- there's a paragraph 1 and a paragraph 3, but no paragraph 2.

Do you know why that is?

A. It's just a mistake in drafting.

Q. And did you specifically discuss with Shirley, whose privilege I technically would control -- my client would control --

Did you specifically discuss with Shirley the fact that the effect of the first amendment would be to remove the specific gift that she had made for Matthew Logan?

A. Yes. Even prior to the signing of the document.

Q. And is this the last relevant testamentary document that Shirley ever signed that you're aware of?

A. Yes, it is.

Q. Did you meet with Simon and Shirley in person to talk about this amendment?

A. Si had called me and said that Shirley had a change to her documents, and asked me to give her a call and have lunch with her. I called her. We arranged for a meeting in her house to execute the document.

Q. Now, you brought your -- you brought Kimberly with you to get -- for convenience and to make sure the documents were properly executed?

A. Correct. She had -- she had her personal assistant that was there, Rachel Walker, to serve as another witness.

Q. Just so I don't have to go back, what's the date of the amendment?

A. November 18th, 2008.

Q. So now we five documents that exist; 2008, will, trust, will, trust, and an amendment to Shirley's trust.

Did you share any of those documents with any of Simon and Shirley's children at that time?

A. No, we did not.

Q. Did any of the -- did any of the children play any role in bringing Simon or Shirley to your offices?

A. Not that I'm aware, no.

Q. Did any of the children accompany them

to -- any time they came to visit you, did any of the children come with them, drag them along?

A. No.

Q. So you prepared -- did you do some other estate planning in addition to the 2008 testamentary documents?

A. Yes, we did.

Q. Can you briefly describe some of the things you did?

A. We had set up a Florida limited partnership. We created a general partner entity for that partnership, a limited liability company.

Q. What's the name of the Florida limited partnership?

A. Bernstein Family Investments, LLLP.

Q. Was that an entity that was in existence or was it created under your direction?

THE COURT: Can I stop you a second? Is this going to help me figure out the validity of the testamentary documents?

MR. ROSE: Only in the very narrowest sense. I'm just trying to establish that they had a very lengthy and extensive relationship, and they did a lot of estate planning for Simon and Shirley. But I'll be very brief.

THE COURT: Well, if that becomes relevant later, perhaps you could come back to it. But I don't see the relevance at this point, so I'll ask you to move on.

MR. ROSE: Yes, sir.

BY MR. ROSE:

Q. Now, was Simon concerned at all about asset protection as part of some of the things you discussed?

A. Yes, he was.

Q. Now, we have -- did you have any discussion with him about who was expected to live longer or if either of them had health problems that you had any knowledge of?

A. Si was not -- he was in good health, but he had had some heart issues. And Shirley had had other issues as well. And I think it -- early on, he didn't know, but as the relationship went on, we kind of knew that Shirley was sicker than him and would probably pass first.

Q. So Shirley died -- it's in the public record -- but December --

A. 2010, yeah.

Q. -- 8th. So Simon was her -- he survived her; he becomes the sole beneficiary as far as tangible personal property under her will?

A. Yes, he does.
Q. The residuary goes into the Shirley Bernstein Trust?
A. That's correct.
Q. He's the sole successor trustee and the sole beneficiary --
A. Yes, he is.
Q. -- during the term of his life?
A. Correct.
Q. Now, was there a great deal of effort put into inventorying the assets, things like that?
A. No, there wasn't. For purposes of opening up Shirley's probate, we had asked Si to estimate the value of, you know, her tangible personal property. And that's what we included on the inventory that was filed in the probate.
Q. Now, if I'm correct, 2010 was the year there were no estate taxes at all?
A. No estate taxes.
Q. Simon's the sole beneficiary?
A. Sole beneficiary. Even if there were taxes, there wouldn't have been any tax on the first death, because everything went to Si, and there was a marital deduction.
Q. While Simon was alive, did Ted have any access

to the documents, as far as you know? Did you ever send the testamentary documents of Simon or Shirley to Ted?

A. No, we did not.

Q. Did Ted play any role in the administration of the estate while Simon was alive?

A. No, he did not.

Q. Did any of the other children play any role in the administration of the estate while Simon was alive?

A. No, they did not.

Q. Now, did you have to -- well, strike that.

Because it was only Simon, was it sort of the decision by Simon, That I don't want to spend a lot of time and money in this estate because it's just wasting my own money?

A. Yes.

Q. And that's not unusual in a situation where you have a surviving spouse that's the sole beneficiary?

A. Correct.

Q. Now, did there come a point in time when Pam, who was not a named beneficiary of the -- Shirley's documents, learned of the fact that she had been excluded?

A. Yes, there was.

Q. Okay. And did you get involved with discussions with Pam or her lawyer?

A. She had hired an attorney, who had made a request to get a copy of her mother's documents. And I called Si, spoke to Si about it, and he authorized me giving Pam those documents -- or her attorney those documents.

Q. Were they provided to any of the other children; that would be Ted or his brother, Eliot, or his two sisters, Lisa or Jill?

A. No, they were not.

Q. And did Simon Bernstein at some point decide to change his testamentary documents?

A. Yes, he did.

Q. Do you recall approximately when that happened?

A. Early 2012, he called and requested that we meet to go over his documents.

Q. I'm going to hand you an exhibit marked Exhibit 13, and ask you if you recognize those as your own notes?

A. Yes. These are my notes from that meeting in 2012.

MR. ROSE: I would move Exhibit 13 into evidence, Your Honor.

THE COURT: Any objection?

[No response.]

THE COURT: All right. That's in evidence as Plaintiff's 13 then.

(Plaintiff's Exhibit No. 13 was received into evidence.)

BY MR. ROSE:

Q. Now, during this meeting, did Simon discuss the possibility of altering his estate plan?

A. Yes, he did.

Q. Did you also go over his current finances?

A. Yes, we did.

Q. Now, we've seen from 2007 that he had disclosed about $18 million.

As part of the meeting in February of 2012, he gave you sort of a summary of where he stood at that time?

A. Yes, he did.

Q. And what was the status of the Shirley Bernstein probate administration in early 2012, about 13 months after she passed away?

A. It was still not closed.

Q. Do you know why it was not closed?

A. I think that we were still waiting -- I'm not sure that -- we were still waiting on waivers and releases from the children to close the estate, to qualify beneficiaries under the estate if Si were to

die. We had to get waivers and releases from them.

Q. Standard operating procedure?

A. Standard operating procedure.

Q. Okay. So Simon here, it says -- it says at the top "SIPC receivable."

Do you know what that is?

A. Yes, I do. That was -- Si had made an investment in a Stanford product that was purported to be a CD; it was an offshore CD. And when the Stanford debacle hit, I guess he filed a claim with SIPC to get those monies back, because it was supposedly a cash investment.

Q. And so he invested in a Ponzi scheme and lost a bunch of money?

A. Correct.

Q. Some of the 18 million he had in 2007 he lost in the next four and a half years in investing in a Ponzi scheme?

A. That's correct.

Q. And then the maximum that the SIPC -- which is like the FDIC for investments.

You're familiar with that, correct?

A. Yes.

Q. The maximum is 500,000.

You don't actually necessarily recover

500,000? You have a receivable, right?

A. Yes.

Q. Do you know how much he actually realized from the SIPC?

A. I believe he never received anything.

Q. Okay. And then it said, LIC receivable, $100,000.

Am I reading that correct?

A. Yes.

Q. And LIC was the company he was involved, with others?

A. Yes.

Q. Okay. So I put here 600 that he put, but the 600 is really probably closer to 100 if you didn't get the SIPC money?

A. Correct.

Q. So I'm going to just put a little star here and put it's really 100,000, and sort that out.

So then he says -- he has -- Si's estate, this would be his personal assets. He's got an interest in the LLLP.

That is not relevant to discuss how it was formed, but there was an LLLP that was owned, some by Si's trust, some by Shirley's trust?

A. Correct.

Q. And at the time, he thought the value was 1,150,000 for his share?

A. That's correct.

MR. BERNSTEIN: Can I object, Your Honor?

THE COURT: What's the objection?

MR. BERNSTEIN: Relevance.

THE COURT: Overruled.

MR. BERNSTEIN: Okay.

BY MR. ROSE:

Q. And then he had an IRA that says 750,000.

A. Correct.

Q. And those two things totaled 1,550,000?

A. No. They totaled one million nine. Right?

Q. Okay. You're right.

You wrote next to it "estate tax."

What does that mean, on the side next to it?

A. I think what I had done was offset the value of the assets in his estate by the loans that were outstanding at the time.

Q. And it shows a million seven in loans?

A. A million seven in loans.

Q. So we had loans back in 2008 -- I'm sorry. November of 2007 time period -- or 2008, which were only -- so we have loans now, you said, a million seven?

A. Well, he had a $1.2 million loan with

JP Morgan that was collateralized with the assets of the LLLP.

Q. And then you list -- just to speed up, then you have -- underneath that, it says Shirley's asset was empty, right? Because whatever was in had gone to Simon?

A. Yeah, her estate had nothing in it.

Q. She had a Bentley, I think, when she died.

Do you know what happened to the Bentley?

A. I wasn't aware that she had a Bentley.

Q. Did you come to learn that she had a Bentley and Simon gave it to his girlfriend, and she traded it in at the dealership and got a Range Rover?

A. Much, much, much later on --

Q. But you know --

A. -- after Si's death.

Q. But you know that to be the case?

A. I wasn't aware that it was traded for the Range Rover. I thought he bought her the Range Rover. I didn't realize he used a Bentley to do it.

Q. Okay. Somehow you know the Bentley became something for Maritza?

A. Yes.

Q. That's the name of his girlfriend?

A. Yes.

Q. Okay. Then it says, in Shirley's trust, condo, one million -- I'm sorry. I should go to the next column. It says "FMV."

That would be shorthand for Fair Market Value?

A. Yes.

Q. So condo, 2 million, which is here; house, 3 million; half of the LLLP, which is Shirley's half after -- I assume, after the deduction of the loan, was 800,000?

A. Um-hum.

Q. Then it says "LIC." That's the company Life Insurance Concepts that Mr. -- that Simon, his son Ted, and a gentleman named Bill Stansbury had formally been involved, another attorney, shares by then. Because we're in February of 2012.

But, in any event, that's Simon's company?

A. Correct.

Q. And he told you in 2007 it was worth -- Mr. Tescher's -- notes, like -- his interest was worth 5 million.

What did he tell you it was worth in 2012?

A. Zero.

Q. Then underneath that -- I put zero here, so zero today.

So his net worth -- and then there was a home

that he owned for -- that Eliot lives in, right? He didn't really own it, but he controlled it, Simon?

A. Yes.

Q. Okay. Did you set up the entity that owned the home?

A. Yes, I did.

Q. Just to save time, there's an entity called Bernstein Family Realty that owns the house.

Simon controlled that entity while he was alive?

A. Yes, he did.

Q. And his estate holds a mortgage on the house for 365,000?

A. Correct.

Q. So there's some interest there.

He didn't put it on his sheet when he talked to you, but that still would have existed in some form, right?

A. Yes.

Q. And it still exists to this day.

We don't know the value of it, but there still is a mortgage, right?

A. Yes.

Q. Okay. But either way, the point of this whole story is, his net worth went down significantly between

2007 and 2012?

A. Yes, it did.

Q. And in your world, that's not uncommon, with the stock market crash, the depression, things like that, that a lot of clients with high net worth would have suffered losses during that time?

A. Many, many of them did. And even the values that are on this sheet were not the real values.

Q. We know that the --

A. Clients have a tendency to overstate their net worth.

Q. All right. And we know the Ocean Drive house sold for about a million four?

A. Correct.

Q. And the Court -- there's an order that approved the sale, the gross sale price of a million one for St. Andrews?

A. Correct.

Q. Okay. So that's still -- that's less than half, even then, Simon thought he would get.

Now, if you look at the bottom of the Exhibit No. 13, it says a word, begins with an "I." I can't really read it.

Can you read that?

A. Insurance.

Q. Well, did you have some discussions with Simon about his insurance?

A. Yes, we did.

Q. In fact, I think -- Mr. Spallina, we talked about he had -- I'm sorry.

Mr. Tescher's notes had a $2 million life insurance?

A. Correct.

Q. Okay. Is this the same life insurance?

A. Yes, it is.

Q. And was there a discussion about -- I guess it says 1 million --

That's one million seven-fifty?

A. A million 75 -- yeah, one million seven-fifty was the value of the policy.

Q. And the death benefit was a million six?

A. Million six. There was a small loan or something against the policy.

Q. Okay. And then it says "Maritza."

What was Maritza down there for?

A. Si was considering changing -- the purpose of the meeting was to meet, discuss his assets. And he was, you know, having a lot of, I guess, internal -- he had received another letter from his daughter -- he asked me to read the letter from Pam -- that she still

was not happy about the fact that she had been disinherited under her mother's documents if the assets were to pass under the documents and he didn't exercise his power of appointment. And this meeting was to kind of figure out a way, with the assets that he had, to take care of everybody; the grandchildren, the children, and Maritza.

And so he thought maybe that he would change the beneficiary designation on his life insurance to include her. And we had talked about providing for her, depending on -- an amount -- an increasing scale, depending on the number of years that he was with her.

Q. So if you look at the bottom, it says 0 to 2 years, 250.

Is that what you're referring to?

A. Yes. Two to four years, 500,000. And then anything over plus-four years would be -- I think that's 600,000.

Q. Now, during this discussion, was Simon mentally sharp and aware of what was going on?

A. Oh, yeah. Yeah, he was -- he was the same Simon. He was just -- you know, he was struggling with his estate now. He was getting -- he felt -- I guess he was getting pulled. He had a girlfriend that wanted something. He had his daughter who, you know, felt like

she had been slighted. And he wanted to try to make good by everybody.

Q. And at that point in time, other than the house that he had bought that Eliot lived in, were you aware that he was supporting Eliot with a very significant amount of money each year?

A. I was not.

MR. BERNSTEIN: Object to the relevance.

THE COURT: Overruled.

BY MR. ROSE:

Q. Okay. So that's February.

A. Yes.

Q. What happens next in relation to Simon coming in to meet with you to talk about changing his documents?

A. He had called me on the phone and he -- we talked again about, you know, him changing his documents. He had been thinking about giving his estate and Shirley's estate to his grandchildren. And at the February meeting, I did not think it was a great idea for him to include his girlfriend, Maritza, as a beneficiary of the life insurance policy.

Q. He took your advice? He didn't change that, as far as you know?

A. He did not.

Q. Okay. I'm sorry. Continue.

A. He did not.

I had suggested that he provide for her in other ways; a joint account that would pass to her at his death, but not to mix her in with his family in their dispositive documents. And he ultimately took that advice and decided that he wanted to give his estate to his ten grandchildren, and that the policy -- which I had never seen a copy of the policy, but, you know -- he had had. And I knew that he was paying for it, because -- it almost lapsed, or did lapse at one point, and it got reinstated -- that that policy was to pass to an insurance trust that named his five children as beneficiaries.

Q. And that's something Simon specifically discussed with you when you were going over his estate planning in 2012?

A. Correct -- or something that we had known about before that meeting. But he was -- at the meeting, he was starting to talk about doing a change to the beneficiary designation to include Maritza, and I wanted to talk him out of that.

Q. And at some point, he made a decision to actually change his documents, correct?

A. He did. He did.

Q. And did he direct you to set up any kind of a communication with his children?

A. Yes. He said, I want you to get -- put together a conference call with me and you and my five children so I can talk to them about what I want to do with my estate and Shirley's estate.

THE COURT: All right. This would be a good time for us to take a pause for a morning break. We'll be in session again in 10 minutes.

As far as time use goes, so far Plaintiff's side has used 60 minutes. So you have 90 remaining in your portion of the day. And that's where we stand.

MR. ROSE: We'll be well within our time, sir.

THE COURT: Great. Okay.

We'll be in recess for ten minutes. Is ten minutes enough time for everybody? That's what it'll be then.

(A break was taken.)

THE COURT: We're ready to proceed. Please continue.

MR. ROSE: Thank you.

BY MR. ROSE:

Q. I think we were when Shirley died in December of 2010, and you meet with Si, according to

Plaintiff's 13, on February 1st of 2012.

I think by May of 2012 was when this conference call that you mentioned was?

A. Yes, it was.

Q. Okay. And did the five children attend the conference call?

A. Yes, they all did.

Q. Were you present on the call?

A. Yes, I was.

Q. Was Simon present?

A. Yes, he was.

Q. Where was Simon physically during the call?

A. His office -- I believe his office.

Q. Were you in the same room as Simon?

A. No, I was not.

Q. You were in your office?

A. I was in my office.

Q. Okay. Generally, what was discussed during this conference call?

A. Simon wanted to talk to his children about providing for his estate and his wife's estate to go to the ten grandchildren; wanted to have a discussion with his children and see what they thought about that.

Q. And was he asking them for their approval or permission or...

A. Well, I think he wanted to see what they all thought, you know, based on things that had happened in the past and documents that had been created in the past. And I don't know that it was going to sway his opinion, but when he told me, you know, to -- you know, to have the conference call, to contact his -- he said, This is what I'm going to do, so...

Q. During the call, did Simon ask his children if anybody had an objection to him leaving his and Shirley's wealth to the ten grandchildren?

A. Yes. He asked what everybody thought.

Q. Did Eliot respond?

A. Yes, he did.

Q. What did he say?

A. I'm paraphrasing, but he said something to the effect of, Dad, you know, whatever you want to do, whatever makes you happy, that's what's important.

Q. Did you also discuss during that call the need to close Shirley's estate?

A. Yes, we did. We had told Si that we needed to get back the waivers of accounting, the releases, and we asked -- he asked them to get those back to us as soon as possible.

Q. Okay. If I hand you Exhibit 14, it appears to be an email from Eliot Bernstein to you addressing the

waiver that he needed to sign?

A. Yes, it is.

MR. ROSE: I move Exhibit 14 into evidence.

THE COURT: Any objection?

[No response.]

THE COURT: All right. That's in evidence then as Plaintiff's 14.

(Plaintiff's Exhibit No. 14 was received into evidence.)

MR. ROSE: As a matter of housekeeping, Your Honor, I think I might have failed to move in Exhibit 2, which is Shirley Bernstein's 2008 trust agreement, which I would move, to the extent it's not in evidence, 1, 2 and 3, which are the operative documents Mr. Spallina's already testified about.

THE COURT: Any objection?

MR. BERNSTEIN: What was that? I'm sorry.

THE COURT: Is there any objection to Plaintiff's 1, which is the will of Shirley Bernstein, Plaintiff's 2, which is the Shirley Bernstein Trust Agreement, and Plaintiff's 3, which is the First Amendment to the Shirley Bernstein Trust Agreement?

MR. BERNSTEIN: No.

THE COURT: All right. Those are all in evidence then as Plaintiff's 1, 2 and 3.

(Plaintiff's Exhibit No. 2 was received into evidence.)

BY MR. ROSE:

Q. Okay. This email is dated May -- May 17, 2012, from Eliot, correct?

A. Yes, it is.

Q. This would have been after the conference call?

A. This, I believe, was after the conference call, yep.

Q. And he says he's attached the waiver accounting and portions of petition for discharge, waiver of service for a petition for discharge, and receipt of beneficiary and consent to discharge that he had signed.

Did you receive those from Eliot?

A. Yes, I did. We received -- that was the first waivers that we received.

Q. Then it says "as I mentioned in the phone call."

Did you have any separate phone calls with Eliot Bernstein, you and he, or is he referring to the conference call?

A. I think he's referring to the conference call.

Q. Okay. I have not yet -- "I have not seen any of the underlying estate documents or my mother's will at this point, yet I signed this document after our family call so that my father can be released of his duties as personal representative and put whatever matters that were causing him stress to rest."

Do you see that?

A. Yes, I do.

Q. Now, while Simon was alive, did you ever get authorization to share the testamentary documents with Eliot Bernstein?

A. I did not.

Q. Now, after the call and after the discussion with the siblings, did you prepare a draft of -- of new documents for Simon?

A. Yes, I did.

Q. I'm going to hand you Exhibit 15; ask if that's a letter that you sent to Simon Bernstein enclosing some new drafts?

A. Yes, it is.

Q. Now, what's the date of that?

A. May 24th, 2012.

Q. And what's -- what is the summary -- well, strike that.

You sent this letter to Simon Bernstein?

A. Yes, I did.

Q. By FedEx to his home?

A. Yes, I did.

MR. ROSE: I would move Exhibit 15 in evidence.

THE COURT: Any objection?

[No response.]

THE COURT: All right. That's in evidence as Plaintiff's 15.

(Plaintiff's Exhibit No. 15 was received into evidence.)

BY MR. ROSE:

Q. Okay. So then first page says, "Dear Si, we have prepared drafts of a new will and an amended and restated trust agreement."

Are those the 2012 documents that were his final ones?

A. Yes, they are.

Q. Okay. Then you sort of do the same thing you did in 2008; you give a little summary of what the estate plan is.

"Your amended and restated trust provides that on your death, your assets will be divided among and held in separate trusts for your then living

grandchildren," correct? I was reading paragraph -- the middle paragraph.

A. Yes, I see that. Yes.

Q. I actually skipped the part above, which is probably more important, which says -- in the middle of the first paragraph, it says, "In addition, you have exercised the special power of appointment granted to you under Shirley's trust agreement in favor of your grandchildren who survive you."

Do you see that?

A. Yes.

Q. Okay. And so that was Simon's intent as discussed on the conference call?

A. Yes, it was.

Q. Do you know if you made any changes to these draft documents from May 24th until the day they were signed?

A. I don't believe so. If I did, it was for grammar or something else. The dispositive plan that was laid out in this memo was ultimately the subject of the documents that he executed in July.

Q. I'm going to hand you Exhibit 16, which is a durable power of attorney.

If you flip to Exhibit 16, the last page, does it bear a signature of Simon Bernstein?

A. Yes, it does.
Q. And it indicates you were a witness to the signature?
A. Yes.
Q. Along with Kimberly Moran, who is someone from your office?
A. Correct.
Q. And someone named Lindsay Baxley notarized the documents?
A. Yes, she did.
Q. Do you know who Lindsay Baxley was?
A. Lindsay Baxley worked in Ted and Si's office.
Q. She was like a secretary?
A. Assistant to Ted, I believe, maybe.
Q. Okay. And if you look at --
MR. ROSE: Well, first of all, I'll move Exhibit 16 into evidence.
THE COURT: Any objection?
[No response.]
THE COURT: No objection made, then I'll receive this as Plaintiff's 16.
(Plaintiff's Exhibit No. 16 was received into evidence.)
BY MR. ROSE:
Q. If you look at the last page where the notary

block is there, it says "personally known" with an underline, or "produced identification" with an underline. And she's checked the box "personally known" -- or she's checked the line.

Do you see that?

A. Yes.

Q. So do you believe that -- did you know Lindsay Baxley by that point in time?

A. Yes, I did.

Q. And you believe -- she obviously knew Simon, she knew Kim Moran from other dealings between your offices?

A. Yes.

Q. Okay. And did you all sign this durable power of attorney with testamentary formalities?

A. Yes, we did.

Q. And what's the date of that?

A. July 25, 2012.

Q. I'm going to approach with Exhibit 4, and ask you if you recognize Exhibit 4?

A. Yes, I do.

Q. Okay. And what is Exhibit 4?

A. This is Si's new will that he executed in 2012, on July 25th, the same day as that durable power of attorney.

Q. Now, were you present when Simon executed his new will, which is Exhibit 4?

A. Yes, I was.

Q. If you turn to the last page --

Well, actually, if you turn to the first page, does it say "copy" and bear a clerk's stamp?

A. It does.

Q. Okay.

MR. ROSE: I would represent to the Court that I went to the clerk's office -- unlike with Shirley's will, I went to the clerk's office and obtained a -- like, a copy made by the clerk of the document itself, rather than have the typewritten conformed copy.

MR. BERNSTEIN: Can I object to that?

THE COURT: What's the objection?

MR. BERNSTEIN: Is he making a statement? I'm not sure --

THE COURT: You're asking me a question. I don't know.

MR. BERNSTEIN: I'm objecting. Is that a statement?

THE COURT: The objection is? What are you objecting to?

MR. BERNSTEIN: With the statement being

from --

THE COURT: Okay. That was a statement by somebody who's not a sworn witness, so I'll sustain the objection.

MR. BERNSTEIN: And the chain of custody of the document, I'm just trying to clarify that. Okay.

THE COURT: The objection was to the statement. I've sustained the objection.

Next question, please.

BY MR. ROSE:

Q. Unlike the trust, how many originals of a will do you have the client sign?

A. There's only one.

Q. And then you give the client the one with the typewritten -- you call it conformed copy?

A. We conform the copy of the will.

Q. And after Simon died, was your law firm counsel for the personal representative of the Estate of Simon Bernstein?

A. Yes, we were.

Q. Did you file the original will with the court?

A. Yes, we did.

Q. Is it your belief that the original of this document is somewhere in the Palm Beach County Court

system with the clerk's office?

A. Yes, I do.

MR. ROSE: I'd move Exhibit 4 in evidence, Your Honor.

THE COURT: All right. Any objection?

[No response.]

MR. BERNSTEIN: No objection stated, I'll receive this as Plaintiff's 4.

(Plaintiff's Exhibit No. 4 was received into evidence.)

BY MR. ROSE:

Q. Now, if you turn to the next to the last page of Exhibit --

A. Yes.

Q. -- Exhibit 4, you'll see it bears a signature of Simon Bernstein and two witnesses, yourself and Kimberly Moran, who all assert that you signed in the presence of each other?

A. Yes.

Q. And then in the next page, it has what would be a self-proving affidavit?

A. Correct.

Q. Now, if you look at the signature block where the notary signed, where it says "who is personally known to me," it doesn't seem to have a check box there.

It just says "who is personally known to me or who has produced [blank] as identification," right?

A. Correct.

Q. Is this the same person who notarized the exhibit we just put in evidence, Exhibit 15, the durable power of attorney -- 16, the durable power of attorney?

A. Yes.

Q. Okay. And again, with regard to Exhibit 4 -- strike that.

Do you recall where you signed Exhibit 4?

A. Yes.

Q. In whose office?

A. This was also done in Si's office.

Q. Okay. So you took -- you went personally again, along with Kim Moran, as your practice, to make sure that the documents were signed properly; true?

A. Correct.

Q. And that's important because, if the documents aren't properly signed, they might not be valid and enforceable?

A. That's correct.

Q. And I'm going to hand you Exhibit 5. This is the Simon L. Bernstein Amended and Restated Trust Agreement.

Was that signed the same day, at the same

time, with the same procedures?

A. Yes, it was.

Q. And would this have been signed with three originals?

A. Yes, it would be.

MR. ROSE: I would move Exhibit 5 into evidence, Your Honor.

THE COURT: Any objection?

[No response.]

THE COURT: All right. That's in evidence as Plaintiff's 5.

(Plaintiff's Exhibit No. 5 was received into evidence.)

BY MR. ROSE:

Q. Now, we looked at the history when you did the first set of documents. In the second set, you started in February through July.

Did you have a number of telephone conferences with Simon during that time?

A. Yes, we did.

Q. And at least a couple of face-to-face meetings?

A. Yes, we did.

Q. Did at any time Simon give you any indication that he was not fully mentally sharp and aware and

acting of his own volition?

A. Nope. He was Si that we had known since 2007.

Q. I'll close with Exhibit 17. This is a letter you sent to Simon Bernstein, enclosing a copy of his conformed will for him.

A. Yes, it is.

Q. And it's dated the 26th, the day after he signed the documents?

A. Correct.

Q. And did you also leave him with two of the originals of his trust?

A. Yes, we did.

MR. ROSE: I move -- did I move 17 in? Or I will move it in.

THE COURT: Number 7, is it?

MR. ROSE: Seventeen, sir.

THE COURT: Oh, I'm sorry.

Any objection?

[No response.]

THE COURT: All right. Then that's in evidence as Plaintiff's 17.

(Plaintiff's Exhibit No. 17 was received into evidence.)

BY MR. ROSE:

Q. Now, Simon passed away on September 13, 2012.

Does that sound right?

A. Yes, it does.

Q. I have Exhibit 18 as his death certificate.

MR. ROSE: I'll just move 18 into evidence.

THE COURT: Any objection?

[No response.]

THE COURT: All right. That's in evidence as Plaintiff's 18.

(Plaintiff's Exhibit No. 18 was received into evidence.)

BY MR. ROSE:

Q. So that's the death certificate for Simon Bernstein.

Did you have any further discussions or meetings with Simon after he signed the will and trust in 2012 and before he died?

A. Not that I recall, no.

Q. And you filed a notice of administration, opened an asset, published it in the Palm Beach Daily Review, did what you had to do?

A. Yes, we did.

Q. And you and Mr. Tescher were the personal representatives of the estate?

A. Yes, we were.

Q. And you and Mr. Tescher became the successor

trustees of Simon's amended trust after he passed away?

A. Yes, we did.

Q. I guess while he was still alive, he was still the sole trustee of his trust, which was revocable still?

A. Correct.

Q. And then upon his death, at some point, did Ted Bernstein become aware that he was going to become the successor trustee to the Shirley trust?

A. Yes. We had a meeting with Ted.

Q. And that was the first time he learned about the contents of her trust, as far as you know?

A. Correct.

Q. Initially, did anybody object to the documents or the fact that the beneficiaries were supposed to be the 10 grandchildren?

A. No.

Q. When was there first some kind of an objection or a complaint?

A. I can't recall exactly when it happened.

Q. Okay. Did you at some point get a letter from a lawyer at the Tripp Scott firm?

A. Yes, we did.

Q. Okay. I think she was asking you about something called the status of something called I View

It Company? Do you recall that?

A. Vaguely.

Q. Did you know what the Iviewit company was before you received a letter from the Tripp Scott lawyer?

A. I'm not sure. I'm not sure. I know today. I can't tell if I'm answering because I know about it today or if I knew about it at that time.

Q. Okay. And did -- was she asking for some documents from you?

A. Is this Ms. Yates?

Q. Yes.

A. Yes.

Q. And did you provide her with certain documents?

A. She had asked for copies of all of Shirley's and Si's estate planning documents.

Q. And did you provide her with all of the documents?

A. Yes, we did.

Q. Was one of the documents that you provided her not an accurate copy of what Shirley had executed during her lifetime?

A. That is true.

Q. Okay. And I guess I'll hand you Exhibit 6,

and this -- is Exhibit 6 a document that is not a genuine and valid testamentary document of Shirley Bernstein?

A. That's correct.

Q. Can you explain to the Court why Exhibit 6 was prepared and the circumstances?

A. It was prepared to carry out the intent of Mr. Bernstein in the meeting that he had had with his five children, and perhaps a vague -- or a layman -- a layman can make a mistake reading Shirley's documents and not understand who the intended beneficiaries were or what powers I had. So this document was created.

Q. Is it your belief that under the terms of Shirley's document from -- the ones she actually signed, that Simon had the power to appoint the funds to the ten grandchildren?

A. Yes. We -- we prepared the documents that way, and our planning transmittal letter to him reflected that.

Q. And this document is, I think you said, to explain it to a layperson in simpler fashion?

A. It was created so that the person that, you know, didn't read estate planning documents and prepare estate planning documents for a living -- you know, there was no intent to cut out Pam and Ted's children,

basically.

Q. Now, did you ever file this exhibit in the courthouse?

A. No, we did not.

Q. Did you ever use it for any purpose?

A. No, we did not.

Q. Was it at one point provided to Eliot's counsel?

A. Yes, it was.

Q. Now, the fact -- putting aside this document, were any of the other documents that we're talking about in any way altered or changed from the ones that were signed by Shirley or Simon?

A. No, they were not.

Q. Now, after these issues came to light, did Mr. Eliot Bernstein begin to attack you through the internet and through blogging and things like that?

A. He was doing that long before this document came to light.

Q. Okay. What was Eliot doing?

A. His first thing that he did was -- with respect to the courts, was to file an emergency petition to freeze assets and after his brother as successor trustee of his mother's trust had sold the condo.

MR. BERNSTEIN: Your Honor, can I object to

this line of questioning for relevance to validity?

THE COURT: What's the line of questioning you're talking about?

MR. BERNSTEIN: The slander defamation going on about me with, you know, what I do and --

THE COURT: Well, I wasn't aware there's a line of questioning going on. There is a question. You've objected to it.

MR. BERNSTEIN: Yes.

THE COURT: What's the objection to that question?

MR. BERNSTEIN: The relevancy to a validity hearing.

THE COURT: Okay. Can I have the court reporter read the question back?

(A portion of the record was read by the reporter.)

THE COURT: What is the relevance of whether this guy's posting on Facebook that's negative or not?

MR. ROSE: Well, a couple of things, but, primarily, we're just trying to determine whether these documents are valid.

THE COURT: Right.

MR. ROSE: And he is the only one who's saying

they're not valid, so I want to give some explanation as to why he's saying they're not valid, as opposed to --

THE COURT: I don't care why he's saying they're valid or invalid. I'll wait to see what the facts are. So I'll sustain the objection.

MR. ROSE: That's fine.

BY MR. ROSE:

Q. Did Simon Bernstein make any special arrangements, other than -- strike that.

Did Simon or Shirley make any special arrangements, other than the testamentary documents that are admitted into evidence, for special benefits for Eliot Bernstein and his family?

A. No, they did not.

Q. Any special education trusts, other than the -- these five documents? And I believe there was some shares of stock that were put in trust for all ten grandchildren, right?

A. There was no special arrangements made other than the estate planning documents.

Q. After Simon died, did Eliot claim to you that Simon was supposed to have made some special arrangements for him?

MR. BERNSTEIN: Object to the relevancy again.

THE COURT: Overruled.

THE WITNESS: Yes, he did.

BY MR. ROSE:

Q. Did he ever give you an indication how much money he thought he was going to inherent when his father died, or his children would inherent when his father died?

A. Through his subsequent attorney, yes, he did.

Q. And how much money did he indicate he thought there should be?

A. I heard a number from one of his attorneys of 40- to a $100 million.

Q. Are you aware of any assets that Simon Bernstein had other than what he disclosed to you at the two times that we've looked at in 2007 and again in February of 2012?

A. No, I am not.

MR. ROSE: No further questions, Your Honor.

THE COURT: All right. Thanks.

Is there any cross?

MR. BERNSTEIN: Yes.

MR. MORRISSEY: Judge, I have questions as well.

THE COURT: Okay. Well, then, let me have the direct finished. That way, all the

cross-examination can take place without interruption. So everybody make sure you're fitting within the Plaintiff's side of the room's time limitations. We'll strictly obey those.

CROSS (ROBERT SPALLINA)

BY MR. MORRISSEY:

Q. Good afternoon, Mr. Spallina. My name's John Morrissey. I represent four of the adult grandchildren of Simon Bernstein.

And since we're here today about validity, I'm just going to go over, and try to be very brief, concerning the execution of these documents and your knowledge about the execution.

Exhibit 1, which has been entered as the will of Shirley Bernstein, I'd ask you to direct your attention to that document. And I'm looking here at page 7. I ask that you turn to page 7 of Exhibit 1.

Were you a witness of this document, this will that was executed by Shirley Bernstein on May 20th of 2008?

A. Yes, I was.

Q. And was Diana Banks the other witness?

A. Yes, she was.

Q. And did you and Diana witness Mrs. Bernstein's execution of this document?

A. Yes, we did.
Q. You were present during her execution?
A. Yes, we were.
Q. And was she present during your execution of this document as a witness?
A. Yes, she was.
Q. And was she, Shirley Bernstein, present during Diana Banks' execution of this document?
A. Yes, she was.
Q. Okay. And I'm again focused on this Exhibit No. 1, this will of Shirley Bernstein dated May 20th of 2008.
Is it your opinion that at the time Shirley Bernstein executed this document she understood generally the nature and extent of her property?
A. Yes, she did.
Q. Okay. And at the time Shirley Bernstein executed Exhibit 1, did she have a general understanding of those who would be the natural objects of her bounty?
A. Yes, she did.
Q. Okay. And at the time she -- Shirley Bernstein executed Exhibit 1, did she have a general understanding of the practical effect of this will?
A. I believe she did.
Q. Okay. And in your opinion, was Shirley

Bernstein unduly influenced by any beneficiary of Exhibit 1 in connection with its execution?

A. Not to my knowledge.

Q. Okay. And do you have any knowledge of any beneficiary or anyone actively procuring Exhibit 1?

A. No, I do not.

Q. Okay. Moving on to Exhibit 2, which is Shirley Bernstein's trust executed on the same date, that is May 20th of 2008, I'll direct your attention to page 27 of Exhibit No. 2. And it appears that Shirley Bernstein executed that document on May 20th of 2008. And the witnesses were yourself and Traci -- I can't read her last name.

A. Traci Kratish.

Q. Okay. Did Shirley Bernstein execute Exhibit No. 2 in the presence of both you and Traci Kratish?

A. Yes, she did.

Q. Okay. And did you execute Exhibit No. 2 in the presence of Shirley Bernstein and Traci Kratish?

A. Yes, I did.

Q. Okay. And did Traci Kratish execute Exhibit No. 2 in your presence and Shirley Bernstein's presence?

A. Yes, she did.

Q. Okay. And at the time Shirley Bernstein executed Exhibit No. 2, which is her 2008 trust, is it your opinion that she had a general understanding of the nature and extent of her property?

A. Yes, she did.

Q. Okay. And at the time that Shirley Bernstein executed Exhibit No. 2, is it your opinion that she understood generally the relationship of those who would -- were the natural objects of her bounty?

A. Yes.

Q. Okay. And at the time Shirley Bernstein executed Exhibit No. 2, is it your opinion that she generally understood the practical effect of this document?

A. I believe she did.

Q. Okay. And did you have any belief that Shirley Bernstein was unduly influenced in connection with -- by any beneficiary in connection with her execution of Exhibit No. 2?

A. Not to my knowledge.

Q. Okay. And do you know or have any information about any beneficiary or anyone else actively procuring Exhibit No. 2?

A. I do not.

Q. Okay. And with respect -- now we'll move on

to Exhibit No. 3, which is the first amendment of Shirley Bernstein's trust, executed on November 18th of 2008. And I'll direct your attention on that Exhibit 3 to Page No. 2. And on Page No. 2 --

Well, let me ask this question. Did Shirley Bernstein execute Exhibit No. 3 in the presence of both you and Rachel Walker?

A. Yes, she did.

Q. Okay. And did you execute Exhibit No. 3 in the presence of Shirley Bernstein and Rachel Walker?

A. Yes, I did.

Q. And did Rachel Walker execute this document, Exhibit No. 3, in the presence of Shirley Bernstein and yourself?

A. Yes, she did.

Q. Okay. And at the time Exhibit No. 3 was executed, is it your opinion that Ms. Bernstein understood generally the nature and extent of her property?

A. Yes, I believe so.

Q. And is it your opinion that at the time Shirley Bernstein executed Exhibit No. 3, she generally understood the relationship of those who would be the natural objects of her bounty?

A. Yes, I believe so.

Q. Okay. And at the time Shirley Bernstein executed Exhibit No. 3, is it your opinion that she generally understood the practical effect of this trust amendment?

A. Yes, I believe so.

Q. Okay. And do you have any knowledge or information about any beneficiary or any other person unduly influencing Shirley Bernstein to execute Exhibit No. 3?

A. I do not.

Q. Okay. And do you have any knowledge or information about any person, beneficiary or otherwise, actively procuring Exhibit No. 3?

A. I do not.

Q. Okay. Moving on to Exhibit No. 4 then, which is the will of Simon Bernstein, and that is a will that Mr. Bernstein executed on July -- yes, July 25 of 2012. And let me direct your attention to page 7 of that will, Exhibit No. 4.

And did Simon Bernstein execute this document in the presence of you and Kimberly Moran on July 25, 2012?

A. Yes, he did.

Q. And did you execute this document, Exhibit No. 4, as a witness in the presence of Simon

Bernstein and Kimberly Moran on that date?

A. Yes, I did.

Q. And did Kimberly Moran execute Exhibit No. 4 as a witness in the presence of Simon Bernstein and yourself?

A. Yes, she did.

Q. Okay. And on this date -- or at the time of execution on this date of July 25, 2012, did Simon Bernstein understand in a general way the nature and extent of his property?

A. Yes, he did.

Q. Okay. At the time that Exhibit No. 4 was executed, did Simon Bernstein generally understand the relationship of those who would be the natural objects of his bounty?

A. Yes, he did.

Q. And at the time Exhibit No. 4 was executed, did -- in your opinion, did Simon Bernstein understand the practical effect of this will?

A. Yes, he did.

Q. Okay. And do you have any knowledge or information about any person, whether beneficiary or otherwise, actively procuring this Exhibit No. 4?

A. No, I do not.

Q. Do you have any information about any person,

beneficiary or otherwise, unduly influencing Simon Bernstein to execute Exhibit No. 4?

A. I do not.

Q. Okay. And moving on to the last document then, Exhibit No. 5, which is the Simon Bernstein Amended and Restated Trust Agreement, and I'll direct your attention to page 24 of that Exhibit No. 5.

On July 25, 2012, did Simon Bernstein execute this trust agreement in the presence of you and Kimberly Moran?

A. Yes, he did.

Q. And did you execute this trust, Exhibit No. 5, as a witness in front of Simon Bernstein and Kimberly Moran?

A. I did.

Q. And did Kimberly Moran execute Exhibit No. 5 as a witness in front of Simon Bernstein and yourself?

A. She did.

Q. Okay. And at the time Simon Bernstein executed Exhibit No. 5, in your opinion, did he generally understand the nature and extent of his property?

A. He did.

Q. And at the time Exhibit No. 5 was executed, did Simon Bernstein, in your opinion, generally

understand the relationship of those who would be the natural objects of his bounty?

A. He did.

Q. And did Simon Bernstein, when Exhibit No. 5 was executed, understand generally the practical effect of this trust agreement?

A. Yes, he did.

Q. And at the time Exhibit No. 5 was executed, do you have any knowledge about any person, whether beneficiary or otherwise, unduly influencing Mr. Bernstein, Simon Bernstein, to execute this Exhibit No. 5?

A. Nothing that I'm aware of.

Q. Okay. And do you have any knowledge or information about any person, whether beneficiary or otherwise, actively procuring Exhibit No. 5?

A. I do not.

MR. MORRISSEY: I have no further questions, Judge.

THE COURT: All right. Thanks.

Now, is there any cross? You're not required to ask any questions, but you just need to let me know if you're going to.

MR. BERNSTEIN: Oh, are you asking me? I had no idea.

THE COURT: I'm not asking you. I'm just telling you, if you have questions for the witness, this is your opportunity to ask them; if you don't have any questions, you don't have to ask any. But if you're going to, you have to start now.

CROSS (ROBERT SPALLINA)

BY MR. BERNSTEIN:

Q. Mr. Spallina, you were called today to provide some expert testimony, correct, on the --

A. No, I was not.

Q. Oh, okay. You're just going based on your doing the work as Simon Bernstein's attorney and Shirley Bernstein's attorney?

A. Yes.

Q. Okay. Are you still an attorney today?

A. I am not practicing.

Q. Can you give us the circumstances regarding that?

A. I withdrew from my firm.

Q. Are you under a consent order with the SEC?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Did you sign a consent order for insider trading --

A. Yes, I did.

Q. -- with the SEC?

You did. Can you give us the circumstances of your consent order?

MR. ROSE: Objection. Relevance.

THE COURT: That won't be relevant. Please move on to the next question.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Were you -- did you plead to a felony crime?

MR. ROSE: Objection. Relevance.

THE COURT: Overruled.

MR. BERNSTEIN: Well, it's relevant as to --

THE COURT: I didn't ask for argument.

MR. BERNSTEIN: Well, what did you say?

THE COURT: I didn't ask for argument. I sustained the objection -- no, I sustained the last objection. This one I'm overruling.

You can answer.

MR. BERNSTEIN: I can't ask him if he's a felon?

THE COURT: You're asking the wrong guy.

MR. BERNSTEIN: Okay. Are --

THE COURT: The witness is -- you asked the question.

BY MR. BERNSTEIN:

Q. Are you a convicted felony?

THE COURT: Let's back up a second.

MR. BERNSTEIN: Yes, sir.

THE COURT: When you're asking for a ruling, and I make one, then we're going to have the witness answer.

MR. BERNSTEIN: Okay.

THE COURT: I made my ruling. I'm letting the witness answer your earlier question, unless you're withdrawing it. Are you withdrawing your earlier question?

MR. BERNSTEIN: No.

THE COURT: You can answer the question, which is, did you plead to a felony?

MR. BERNSTEIN: Sorry, sir.

THE WITNESS: I have not.

THE COURT: Okay. Next question.

BY MR. BERNSTEIN:

Q. Have you pled guilty to a misdemeanor?

A. I have not.

Q. Were you involved in a insider trading case?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained. Next question.

MR. BERNSTEIN: Does that mean he doesn't have

to answer that?

THE COURT: How many times have you been in court?

MR. BERNSTEIN: Just a few where I've had to do this.

THE COURT: You know how this works.

MR. BERNSTEIN: I really don't.

THE COURT: All right. If I sustain an objection, that's means he does not answer the question.

MR. BERNSTEIN: Okay. And overruled?

THE COURT: If I overrule an objection, that means the witness does answer the question.

MR. BERNSTEIN: Okay.

THE COURT: And I've asked you to ask your next question.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Is that your picture on the Florida Law Review, SEC case settled against Florida attorneys?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

Do you have any questions on the issues that I have to decide in this case?

MR. BERNSTEIN: Well, his testimony is based

on his truthfulness.

THE COURT: My question is, do you have any questions you want to ask about the issues relevant to this case?

MR. BERNSTEIN: Yes. This is relevant to this case.

THE COURT: I disagree.

MR. BERNSTEIN: Oh, okay.

THE COURT: I thought I made that very clear in my ruling. You probably want to move on to a relevant issue.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Mr. Spallina, have you been in discussion with the Palm Beach County Sheriff's Office regarding the Bernstein matters?

MR. ROSE: Objection. Relevance.

THE COURT: Overruled.

You can answer that.

THE WITNESS: Yes, I have.

BY MR. BERNSTEIN:

Q. And did you state to them that you fraudulently altered a Shirley trust document and then sent it through the mail to Christine Yates?

A. Yes, I did.

Q. Have you been charged with that by the Palm Beach County Sheriff yet?

A. No, I have not.

Q. Okay. How many times were you interviewed by the Palm Beach County Sheriff?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Did you mail a fraudulently signed document to Christine Yates, the attorney for Eliot Bernstein's minor children?

MR. ROSE: Objection. Relevance.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. BERNSTEIN:

Q. And when did you acknowledge that to the courts or anybody else? When's the first time you came about and acknowledged that you had committed a fraud?

A. I don't know that I did do that.

Q. Well, you just said you went to the Palm Beach County Sheriff and admitted altering a document and put it in the mail.

THE COURT: Let me stop you there. If you want to ask the witness questions, you're permitted to do that. If you would like to argue with the

witness, that's not -- do you have any questions you want to ask?

MR. BERNSTEIN: Yes.

BY MR. BERNSTEIN:

Q. So you sent a fraudulent document to Eli Bernstein's minor children's counsel.

Can you tell us what that document did to affect the dispositive Shirley trust document?

A. It has no effect.

Q. What was its intended effect of altering the document?

A. To carry out your father's wishes in the agreement that he had made with the five of you for a layperson that would be reading the documents.

Q. You were carrying out his wishes by fraudulently altering a document?

MR. ROSE: Objection.

THE COURT: Sustained.

That's argumentative. I don't want you to argue with the witness. That's an argument.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Did the fraudulently altered document change the beneficiaries that were listed in Shirley's trust?

A. They did not.

Q. Who are the beneficiaries of Shirley's trust?

A. It depends on -- under the trust instrument, in the absence of Si exercising his power of appointment, it would be yourself and your two sisters, Lisa and Jill.

Q. Oh. So the only beneficiaries in Shirley's trust are me, Lisa and Jill.

Is that directly or through a family trust?

A. Your father had established -- your parents had established family trusts for the three of you to receive assets from the trust.

Q. Okay. So in that document that you sent to Christine Yates, did you include Ted and Pam's lineal descendants under the amendment that you fraudulently drafted and sent to her?

MR. ROSE: Objection. Argumentative.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Did in any way the document that you fraudulently altered and sent to Yates change the beneficiaries from Eliot, Lisa and Jill and their lineal descendants to anybody else?

THE COURT: May I ask a question?

MR. BERNSTEIN: Yes, sir.

THE COURT: This document that you're

referring to, is anybody asking me to probate that document?

MR. BERNSTEIN: Well, it's part of the estate plan. It's part --

THE COURT: Is anybody seeking relief, either you or the other side, under that document?

MR. BERNSTEIN: Yeah. They're seeking to change the beneficiaries of my mom's trust through that document and others.

THE COURT: You're misperceiving my question.

MR. BERNSTEIN: Oh, okay. Sorry.

THE COURT: That document, which is -- nobody's put it in evidence; I don't know what it is, but it's -- that thing that you're asking the witness about, is somebody seeking relief based upon that document?

MR. ROSE: Absolutely not. The opposite.

THE COURT: All right. Are you seeking relief based upon that document?

MR. BERNSTEIN: Yeah. Oh, absolutely.

THE COURT: All right. Are you claiming that that document is subject to probate?

MR. BERNSTEIN: Yeah.

THE COURT: Is the lady who's giving you advice your attorney?

MR. BERNSTEIN: No.

THE COURT: Ma'am, are you admitted to the bar in Florida? Remember what I told you earlier. I've let you sit there as a courtesy. Generally, I don't let wives or friends or anybody else sit at the table where the parties are because it confuses me. But you're giving that guy advice and you're also not listening to me, which I find odd, because I'm going to have you move you back to the gallery now. Please have a seat in the gallery. Please have a seat in the gallery. Please have a seat in the gallery. Soon. When courtesy is not returned, courtesy is withdrawn. Please have a seat in the gallery. Thank you.

Do you have any other questions of the witness?

MR. BERNSTEIN: Can I submit this as evidence to the Court?

THE COURT: Is that the document you've been asking the witness about?

MR. BERNSTEIN: Yeah.

THE COURT: All right. Any objection to it being received as an exhibit?

MR. ROSE: I don't have any objection to it being received as an exhibit. But as Your Honor

noted, we aren't seeking to probate it, and we're not suggesting it's valid in the first place.

THE COURT: All right. Well, let me see what that document is, so then I'll see if I can make some sense out of it.

You can't -- Gary's always afraid that if somebody's not a member of the bar, they might do something bad to me. Officers of the court aren't allowed to do things bad to the judge. Other folks don't know that. And so Gary watches out carefully for my well-being.

MR. BERNSTEIN: Gotcha.

THE COURT: Okay. So this is a document that's titled "First Amendment to Shirley Bernstein Trust Agreement."

MR. BERNSTEIN: Correct.

THE COURT: And it's in the book that I've been given earlier by the plaintiff as Tab 6. You're seeking to put it into evidence as Defendant's 1?

MR. BERNSTEIN: Okay.

THE COURT: Right?

MR. BERNSTEIN: Sure. Yes, sir.

THE COURT: You're offering it as an exhibit?

MR. BERNSTEIN: No, Evidence 1.

THE COURT: The objection to it is that it's not relevant?

MR. ROSE: Not relevant. Right, relevance. And it's also not something we're seeking to be probated or treated as authentic and genuine.

THE COURT: Well, the other side is seeking to use the terms of this document instead of the terms of the amendment that's in evidence, right?

MR. ROSE: I don't believe that's what he's doing.

THE COURT: I'm not sure what he's doing, but in an abundance of caution, I'm going to receive it for what relevance it might have. I don't perceive any yet, but we'll see what happens.

So this is Defendant 1.

(Defendant's Exhibit No. 1 was received into evidence.)

THE COURT: Any other questions of the witness?

MR. BERNSTEIN: Sure.

BY MR. BERNSTEIN:

Q. You've testified here about Kimberly Moran.

Can you describe your relationship with her?

A. She's been our long-time assistant in the office.

Q. Was she convicted of felony fraudulent notarization in the Estate of Shirley Bernstein?

MR. ROSE: Objection. Relevance.

THE COURT: Overruled.

You're asking if she was convicted of a felony with respect to the Estate of Shirley Bernstein?

You can answer the question.

MR. BERNSTEIN: Correct.

THE WITNESS: I believe she was.

BY MR. BERNSTEIN:

Q. And what was she convicted for?

A. She had notarized the waiver releases of accounting that you and your siblings had previously provided, and we filed those with the court.

Q. We filed those with the court.

Your law firm submitted fraudulent documents to the court?

A. No. We filed -- we filed your original documents with the court that were not notarized, and the court had sent them back.

Q. And then what happened?

A. And then Kimberly forged the signatures and notarized those signatures and sent them back.

Judge Colon has a rule in his court to have those documents notarized, even though that's not the

requirement under the Florida Probate Code.

Q. So when you didn't follow the rule, you frauded [sic] and forged the document?

MR. ROSE: Objection. Argumentative.

THE COURT: Sustained.

THE WITNESS: I had nothing to do with that.

THE COURT: You've got to stop a second.

MR. BERNSTEIN: Yes, sir.

THE COURT: If you continue to argue with the witness, then I'll assume you don't have any more questions. I sustained that last objection to argumentative.

MR. BERNSTEIN: I'm a little confused --

THE COURT: I'm sorry about your confusion, but there are ways you could have dealt with that before this trial. If you are confused during the trial, you better get unconfused as quickly as you can because bad things will happen. And I don't want bad things to happen. I want to get the facts so that I can accurately decide the case on its merits.

Stop arguing, ask questions, let the witness answer, and listen to any rulings that I make on the objections. That's the last time I'll repeat that advice to you. Thank you.

BY MR. BERNSTEIN:

Q. What law firm submitted those documents to the court?

A. Tescher & Spallina, P.A.

Q. Are you a partner in that firm?

A. I was.

Q. So your firm that you were a partner with sent in documents that were fraudulent to the court?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Did Tescher & Spallina law firm submit Kimberly Moran's forged and fraudulent document waivers to the court?

MR. ROSE: Objection. Cumulative.

THE COURT: He already said he did.

MR. BERNSTEIN: What is that?

THE COURT: Cumulative means you've already had that answer given.

MR. BERNSTEIN: No, I didn't have that.

THE COURT: He's already said that he did.

MR. BERNSTEIN: I'm asking if they deposited them with the court.

THE COURT: And he said they didn't.

MR. BERNSTEIN: Well, I asked him, and he

said --

THE COURT: I won't argue with you. Do you want to go on to the next item or not?

MR. BERNSTEIN: Oh, okay, I do.

THE COURT: Okay. Next question, please.

BY MR. BERNSTEIN:

Q. Did your office -- did you submit documents to close the estate of Shirley with Simon as the personal representative at a time Simon was dead?

A. We did.

Q. You did? Excuse me? I didn't hear an answer.

A. I said yes.

Q. So Shirley's estate was closed by a dead personal representative.

Can you give me the time that the estate was closed by Simon while he was dead?

MR. ROSE: Objection. Argumentative.

THE COURT: Overruled.

You can answer.

THE WITNESS: I believe it was October, November 2012.

BY MR. BERNSTEIN:

Q. Do you want to check your records on that?

A. I believe it was after his death. I know he died September 13, 2012. And we had received late from

one of your sisters the signed waiver. So it was probably in November, somewhere around there.

Q. You stated that Simon -- that Kimberly did five waivers for the siblings that she sent back in fraudulently to the court through your law firm.

Did she also do a fraudulent forged signature of a waiver for Simon?

A. I'm not sure. I guess if you're saying she did --

Q. Well, the court has on file a waiver of Simon's that she's admitted to.

A. We filed all of the waivers originally with the court all signed by the appropriate parties, and the court kicked those back. And she forged and notarized new documents and sent them to the court. She felt she had made a mistake.

Q. Okay. Are you aware of an April 9th full waiver that was allegedly signed by Simon and you?

A. Yeah. That was the waiver that he had signed. And then in the May meeting, we discussed the five of you, all the children, getting back the waivers of the accountings.

Q. Okay. And in that April 9th full waiver you used to close my mother's estate, does Simon state that he has all the waivers from all of the parties?

A. He does. We sent out -- he signed that, and we sent out the waivers to all of you.

Q. Okay. So on April 9th of 2012, Simon signed, with your presence, because your signature's on the document, a document stating he had all the waivers in his possession from all of his children.

Had you sent the waivers out yet as of April 9th?

THE COURT: What is it that you want the witness to answer? There was several questions.

MR. BERNSTEIN: Oh, compounded a little bit?

THE COURT: Yes.

MR. BERNSTEIN: Sorry.

THE COURT: So you even --

MR. BERNSTEIN: I'll kick that back.

THE COURT: So you even know the lingo of the objections.

MR. BERNSTEIN: I'll kick that back to one at a time, because it's an important point.

BY MR. BERNSTEIN:

Q. April 9th, 2012, you have a signed full waiver of Simon's that says that he is in possession of all of the signed waivers of all of the parties?

A. Standard operating procedure, to have him sign, and then to send out the documents to the kids.

Q. Was Simon in possession -- because it's a sworn statement of Simon saying, I have possession of these waivers of my children on today, April 9th, correct, the day you two signed that?

Okay. So if you hadn't sent out the waivers yet to the --

A. I'm not certain when the waivers were sent out.

Q. Were they sent out after the --

A. I did not send them out.

Q. Okay. More importantly, when did you receive those? Was it before April 9th or on April 9th?

A. We didn't receive the first one until May. And it was your waiver that we received.

Q. So how did you allow Simon, as his attorney, to sign a sworn statement saying he had possession of all of the waivers in April if you didn't get mine 'til May?

MR. ROSE: Objection. I think it's relevance and cumulative. He's already answered.

THE COURT: What's the relevance?

MR. BERNSTEIN: Oh, this is very relevant.

THE COURT: What is the relevance on the issue that I have to rule on today?

MR. BERNSTEIN: On the validity? Well, it's

relevant. If any of these documents are relevant, this is important if it's a fraud.

THE COURT: I'll sustain the objection.

MR. BERNSTEIN: Okay. Can I -- okay.

BY MR. BERNSTEIN:

Q. When did you get -- did you get back prior to Simon's death all the waivers from all the children?

A. No, we did not.

Q. So in Simon's April 9th document where he says, he, Simon, on April 9th has all the waivers from his children while he's alive, and you didn't even get one 'til after he passed from one of his children, how could that be a true statement?

MR. ROSE: Objection. Relevance. Cumulative.

THE COURT: Sustained.

Here's what I'm going to decide at the end of the day; I'm going to decide whether Shirley's 2008 will and trust and 2008 amendment are valid and enforceable. I'm going to decide whether Simon's 2012 will and 2012 trust documents are valid and enforceable. You have a lot more on your mind than I have on mine. You do. Right? But those are the things that I'm working on. So I'm focused like a laser and you're focused more like a shotgun. I'm telling you this so that you can focus more tightly

on the questions you're asking and the facts you're developing so they'll help me make an accurate decision on those things that I'm going to decide today. You can keep asking questions that don't go anywhere, but I would hope that you'll adjust your approach so that you'll help me make an accurate decision.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. And on validity, let's just get right to that real quick. You've testified to a lot of documents here today, correct, of the estate documents you drafted, correct?

A. Yes, I did.

Q. Did you gain any pecuniary interest, did you gain any titles in those documents?

A. Pecuniary interest? No. I was named by your father as personal representative and trustee of his trust.

Q. And so you executed -- you drafted the documents, you signed them as a witness, and you gained interest in the documents, correct?

A. No, I did not.

Q. You didn't gain interest as a trustee --

MR. ROSE: Objection.

BY MR. BERNSTEIN:

Q. -- or a personal representative of those documents?

MR. ROSE: Objection. Cumulative. Asked and answered.

THE COURT: Overruled.

THE WITNESS: I was named as his personal representative and trustee, along with my partner.

BY MR. BERNSTEIN:

Q. Did you witness the document?

A. I did.

Q. Did you draft the document?

A. I did.

Q. Okay. You mentioned there was Kimberly Moran there at the signing of these documents, correct?

A. She was.

Q. Okay. Can you point her out, because I'm going to need her to testify as to the validity?

A. I do not see her in the courtroom.

Q. Okay. You mentioned a Traci Kratish. Can you point her out in the courtroom today to validate the documents?

A. I don't see Traci in the room either.

Q. So she was another witness that is not here present to validate the documents today? Well, it's

awful -- okay.

Is Kimberly Moran here who notarized the documents.

MR. ROSE: Objection. Cumulative. Asked that a minute ago.

MR. BERNSTEIN: I didn't -- did I? Was it Moran --

THE COURT: No, I thought it was some other name.

MR. BERNSTEIN: So did I.

THE COURT: Is Kimberly here?

THE WITNESS: She's not.

THE COURT: Okay. Next question.

BY MR. BERNSTEIN:

Q. Okay. Being a former estate planning attorney. To validate a document, wouldn't you have the parties who witnessed and notarized and signed present?

MR. ROSE: Objection. Relevance. Misstates --

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Is it necessary to validate documents with the necessary notaries and witnesses present?

MR. ROSE: Objection. Calls for a legal conclusion.

THE COURT: Well, I'm the one that's going make that decision. I don't care what the witness says about the law.

MR. BERNSTEIN: I gotcha. Okay.

THE COURT: So this would be a good time for us to take a pause. We're not making headway.

You ever here of cavitation when it comes to boat propellers?

MR. BERNSTEIN: No.

THE COURT: Okay. I don't know a lot about the physics of it, but a boat goes forward based on a propeller spinning in the water. And it happens sometimes in racing boats, maybe other boats too, that you get the propeller going so fast or you do something so much with the propeller that it cavitates, which means that it's not actually pushing in the water. It's making a lot of noise. It's spinning like crazy. It's furiously working, but it's not propelling the boat forward. I want to suggest to you that you've hit a point of cavitation. So this would be a good time for us to take our lunch break so that when we get back we'll go forward with this ship that is our trial.

MR. BERNSTEIN: How long?

THE COURT: It'll be until 1:30.

MR. BERNSTEIN: Okay.

THE COURT: That'll give everybody a time to revive, if necessary, and we'll reconstitute ourselves at 1:30. Thanks.

(A break was taken.)

(Proceedings continued in Volume 2.)

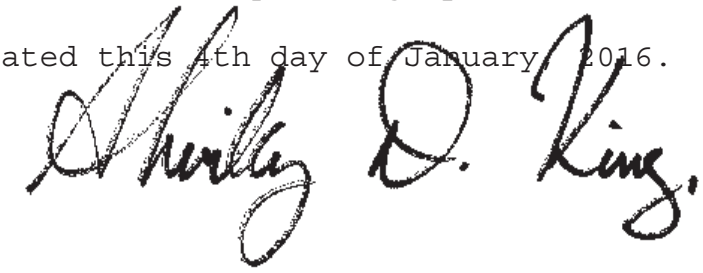
C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Shirley D. King, Registered Professional Reporter, State of Florida at large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 4th day of January, 2016.



Shirley D. King, RPR, FPR

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE No. 502014CP003698XXXXNB

TED BERNSTEIN,

Plaintiff,

-vs-

DONALD R. TESCHER, ELIOT IVAN BERNSTEIN, LISA SUE FRIEDSTEIN, JILL MARLA IANTONI, et al.,

Defendants.

TRIAL BEFORE THE HONORABLE
JOHN L. PHILLIPS
VOLUME 2 PAGES 117 - 260

Tuesday, December 15, 2015
North County Courthouse
Palm Beach Gardens, Florida 33410
9:43 a.m. - 4:48 p.m.

Reported By:
Shirley D. King, RPR, FPR
Notary Public, State of Florida
West Palm Beach Office Job #1358198- VOL 2

APPEARANCES:

On behalf of the Plaintiff:

ALAN ROSE, ESQUIRE
GREGORY WEISS, ESQUIRE
MRACHEK FITZGERALD ROSE KONOPKA
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
Phone: 561.655.2250
E-mail: Arose@mrachek-law.com

On behalf of the Defendant:

ELIOT IVAN BERNSTEIN, PRO SE, ESQUIRE
2753 NW 34th Street
Boca Raton, Florida 33434
Phone: 561.245.8588
E-mail: Iviewit@iviewit.tv

On behalf of Molly Simon, Alexandra, Eric & Michael Bernstein:

JOHN P. MORRISSEY, ESQUIRE
LAW OFFICE OF JOHN P. MORRISSEY, P.A.
330 Clematis Street
Suite 213
West Palm Beach, Florida
Phone: 561.833.0866
E-mail: John@jmorrisseylaw.com

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P R O C E E D I N G S

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THE COURT: We're ready to resume. Our witness is still under oath.

Is there any further cross-examination?

MR. BERNSTEIN: Yes.

THE COURT: Okay.

CROSS (ROBERT SPALLINA) (Cont'd)

BY MR. BERNSTEIN:

Q. Mr. Spallina, just to clarify --

MR. ROSE: Your Honor, can he just stand at the podium?

THE COURT: Okay. Well, use the podium. Your microphone will help explain your questions. But you can walk up there. If you need to show the witness a document or something, that's fine.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Did you -- are you a member of the Florida Bar?

A. Yes, I am.

Q. Currently?

A. Yes, I am.

Q. Okay. You said before you surrendered your

license.

A. I said I withdrew from my firm. It wasn't that I was not practicing.

Q. Okay. In the chain of custody of these documents, you stated that there were three copies made?

A. Yes.

Q. Do you have those three original trust copies here?

A. I do not.

MR. BERNSTEIN: Does anybody?

THE COURT: Do you have any other questions of the witness?

MR. BERNSTEIN: Yeah. I wanted to ask him some questions on the original documents.

THE COURT: Okay. Keep going.

BY MR. BERNSTEIN:

Q. Okay. So the original documents aren't in the court?

A. I don't have them.

Q. Your firm is not in possession of any of the original documents?

A. I'm not sure. I'm not at the firm anymore.

Q. When you left the firm, were there documents still at the firm?

A. Yes, there were.

Q. Were you ordered by the court to turn those documents over to the curator, Benjamin Brown?

A. I don't recall.

MR. ROSE: Objection. Can he clarify the question, which documents? Because I believe the curator was for the estate, and the original will was already in file, and the curator would have no interest in the trust --

THE COURT: Which documents? When you say "those documents," which ones are you referring to?

MR. BERNSTEIN: Any of the trusts and estate documents.

THE COURT: Okay. That's been clarified.

You can answer, if you can.

THE WITNESS: I believe that he was given -- I believe all the documents were copied by Mr. Pollock's office, and that he was given some type of zip drive with everything. I'm not sure, though. I couldn't --

BY MR. BERNSTEIN:

Q. Did the zip drive contain the original documents?

A. Did not. I believe the original documents came back to our office. Having said that, we would only have -- when we made and had the client execute

three documents, two originals of those documents would remain with the client, and then we would keep one original in our file, except -- including, most of the time, the original will, which we put in our safe deposit box. So we would have one original of every document that they had executed, including the original will, and they would keep two originals of everything, except for the will, which we would give them conformed copies of, because there was only one original will.

Q. Okay. I asked a specific question. Did your firm, after the court order of Martin Colin, retain documents, original documents?

MR. ROSE: Objection. Sorry. I should have let him finish.

MR. BERNSTEIN: -- original documents?

THE WITNESS: I believe --

MR. ROSE: Relevance and misstates the -- there's no such order.

THE COURT: Well, the question is, Did your firm retain the original documents?

Is that the question?

MR. BERNSTEIN: Yes, sir.

THE COURT: Overruled.

Answer, please.

THE WITNESS: I believe we had original

documents.

BY MR. BERNSTEIN:

Q. After the date you were court ordered to produce them to the curator?

MR. ROSE: Object -- that's the part I object to.

THE COURT: Sustained.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. To your knowledge -- so, to your knowledge, the documents can't all be here since they may be at your firm today?

A. I don't practice at the firm anymore, so I'm not sure where the documents are.

Q. Okay. And you said you made copies of all the documents that you turned over to the curator? Did you turn over any original documents as ordered by the court?

MR. ROSE: Objection. Same objection. There's no court order requiring an original document be turned over.

THE COURT: What order are you referring to?

MR. BERNSTEIN: Judge Colin ordered when they resigned due to the fraudulent alteration of the documents that they turn over --

THE COURT: I just said, what order are you referring to?

MR. BERNSTEIN: It's an order Judge Colin ordered.

THE COURT: All right. Well, produce that order so I can see it, because Judge Colton's [sic] been retired for six or seven years.

MR. BERNSTEIN: Okay. I don't have it with me, but...

THE COURT: Well, Judge Colton's a retired judge. He may have served in some other capacity, but he doesn't enter orders, unless he's sitting as a replacement judge. And that's why I'll need to see the order you're talking about, so I'll know if he's doing that. Okay. Thanks. Next question.

BY MR. BERNSTEIN:

Q. Okay. Has anyone, to the best of your knowledge, seen the originals while you were in custody of them?

A. Yes.

Q. Okay. Who?

A. I believe Ken Pollock's firm was -- Ken Pollock's firm was the firm that took the documents for purposes of copying them.

Q. Did anybody ask you, refer copies to inspect

the documents?

A. Other than Ken Pollock's office, I don't recall.

Q. Did I ask you?

A. Perhaps you did.

MR. BERNSTEIN: Okay. I'd like to go through some of the documents with him real quick. But I don't have my wife to hand me the documents, so it's going to take me incredibly long. These are just copies I have. Can I approach him?

THE COURT: All approaches are okay.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Are these the documents that you drafted, Shirley's will and Shirley's trust agreement?

MR. ROSE: Your Honor, could I see what he's handing the witness before he hands it to them?

THE COURT: Say again.

MR. ROSE: I don't know what he's handing the witness.

THE COURT: All right. You'll need to show the other side the documents that you're handing to the witness so that they're looking at the same thing you're talking about.

MR. ROSE: These are not accurate. These are

multiple things stapled together. I'd object to the exhibit -- or the use of it.

THE COURT: Ma'am, if you come back up past that bar one more time, you'll be in contempt of court. I don't want you to be in contempt of court. Do you understand my instruction?

MRS. BERNSTEIN: Yes.

THE COURT: Thank you.

MR. ROSE: I don't know if that's filed with the court and I don't know that these are genuine. And the second document has attached to it --

THE COURT: Well, you don't need to tell me what the papers are. The thing that the person who's asking the questions has to do is show you the documents that he's going to show the witness.

MR. ROSE: Okay.

THE COURT: Then I intend to move forward. I expect he'll show the witness the documents and then he'll probably ask a question.

Am I right?

MR. BERNSTEIN: Do you want to see those?

THE COURT: Nope.

So then if there's an objection to the documents coming in, if at some time they're proffered as an exhibit, then I'll take the

objection.

Have you seen the documents that are in his hand that are going to be shown to the witness?

MR. ROSE: Oh, yes, sir. I'm sorry.

THE COURT: Okay. That's fine.

Proceed.

BY MR. BERNSTEIN:

Q. Okay. Can you look at the initials on the pages of that document and describe them -- describe what they look like?

A. The initials?

Q. Yes.

A. On each page, there's an SB --

Q. Okay.

A. -- for your mother's initials.

Q. And it's clearly SB?

A. Is it clearly SB?

Q. Yeah. Looks like SB?

A. Yes, it's clearly SB.

Q. Okay. And on this will signed on the same date by my mother in your presence, is that my mom's initials? And does it look like an SB? Do they even look similar?

A. Well, your mother was asked to sign these documents.

Q. Okay.

A. When we execute a will, unlike the bottom of the trust agreement where we initial the trust pages, on the bottom of the will, she's supposed to sign her signature. And which she has done at the bottom of each page, is sign her signature consistent with the signature page that she signed.

Q. So what you're saying is, she signed this document, that she initialed this document?

A. Right. We only ask that for purposes of the trust that they initial each page. For purposes of the will, that they sign each page.

So this is the signature that she has -- this is her signature on the bottom of this document.

Q. Well, there's no line saying that's her signature, correct? There would be --

A. But that was our practice.

Q. Okay.

A. That was our practice, to have --

Q. Okay. You testified to my dad's state of mind that he was fine.

Si was usual when you saw him from May through his death; is that correct?

A. Are you speaking about 2012?

Q. Yes.

A. Correct.

Q. Are you aware of any medical problems my father was having at that time?

A. No, I'm not.

Q. Are you aware of any stress he was under?

A. No, I was not.

Q. Mr. Rose had you read into or -- read into the record a letter that I wrote with my waiver, saying, anything -- I haven't seen the dispositive documents, but I'll do anything, 'cause my dad is under stress, to relieve him of his stress.

Do you know what stress I was referring to?

A. I don't.

Q. Were you in the May meeting with my father, May 10, 2012?

A. I was -- are you talking about on the telephone call?

Q. Correct.

A. I wasn't together with him.

Q. Okay. Were you together with anybody on that call?

A. No. I was on -- in my -- my office phone.

Q. Okay. And at that meeting, did Si state that he was having this meeting to end disputes among certain parties and himself?

A. I don't recall.
Q. Were there any disputes you were aware of?
A. The only thing that he ever brought to my attention was the letter that Pam had sent him.
Q. And what did Pam's letter state, basically?
A. I can't remember it. I mean, it was the letter that he showed me in February of 2012. But the general gist of that letter was that she was unhappy about not being part of their estates.
Q. Just her or her and her children?
A. She may have spoke to her children.
Q. Was there anybody else who was left out of the wills and trusts?
A. That was causing him stress?
Q. No. Just anybody at this point that was left out, other than Pam.
A. Yes. Ted.
Q. And are you aware of anything Ted and Pam were doing to force upon Si changes?
A. Not to my knowledge, other than the letter that Pam had sent to him just expressing her dissatisfaction.
Q. You said you talked to her attorney?
A. I talked to her attorney.
Q. And you told her attorney, while Si was

living, that she had been cut out of the estates and trusts with her brother Ted?

A. I don't recall the conversation with the attorney, but, ultimately, Si gave me authorization to send documents to the attorney. So we may have had a conversation about it.

Q. So you're stating that Si told you to -- he authorized you to tell his daughter that she had been cut out of the estates and trusts?

A. He authorized me to send documents to the attorney.

Q. Did you send those documents to the attorney?

A. I believe we did, yes.

Q. Okay. Was Ted and his lineal descendants disinherited?

A. They were, under the original documents.

Q. Well, under Shirley's document that's currently theirs, Ted considered predeceased for all purposes of disposition according to the language in the document you drafted?

A. To the extent that assets passed to him under the trust.

Q. Well, the document says, for all purposes of disposition, Ted Bernstein is considered predeceased, correct?

A. You'll have to state the question again.

Q. Does the document you drafted say that Ted Bernstein is both considered predeceased under the beneficiary definition with his lineal descendants and considered predeceased for all purposes of dispositions of the trust?

MR. ROSE: Objection. Best evidence. The document's in evidence.

THE COURT: Sustained.

MR. BERNSTEIN: I'll have him read it.

THE COURT: Well, I mean, I can read it. It's in evidence. So when it comes time, just point me to the part that you want me to read, and I'll read it. But I don't need to have the witness read it to me. That's of no benefit.

MR. ROSE: Your Honor, and for the record, those issues are part of the other counts and aren't being tried today.

MR. BERNSTEIN: Page 7, Your Honor, of the Shirley trust.

THE COURT: What exhibit number is that?

MR. BERNSTEIN: You want me to enter it as my exhibit?

THE WITNESS: Plaintiff's Exhibit 2, Your Honor.

THE COURT: All right. Let me go to page 7 of Plaintiff's 2.

MR. BERNSTEIN: Can I enter this one into the record?

THE COURT: Is it the same as the one I already have?

MR. BERNSTEIN: According to Alan, it's not.

THE COURT: According to who?

MR. BERNSTEIN: Mr. Rose.

THE COURT: All right. Well, if it comes time for you to put any exhibits in on your case, if that's not a duplicate of an exhibit that's already in, you're welcome to put it into evidence. But this is not the time when you put evidence in. This is the time when you're cross-examining the plaintiff's witness.

MR. BERNSTEIN: Okay.

THE COURT: So on Page 7 of Plaintiff's 2, you can go on with your questioning.

BY MR. BERNSTEIN:

Q. Are you there and are we on the same page? Yes?

A. Yes, I am.

Q. Okay. In the definition of -- under E1, do you see where it starts "notwithstanding the foregoing"?

A. Yes.

Q. Okay. Can you read that?

A. "Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this trust to my children, Ted S. Bernstein and Pamela B. Simon and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children Eliot Bernstein, Jill Iantoni and" --

Q. Okay, that's -- you can stop there.

Would you consider making distributions a disposition under the trust?

A. It would it depend on other factors.

Q. What factors?

MR. ROSE: Objection. Relevancy.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Is a validity hearing a disposition of the trust?

MR. ROSE: Objection. Calls for a legal conclusion.

THE COURT: Sustained.

MR. BERNSTEIN: Well, he drafted the document, so I'm trying to get what his meaning was when he

put it in. And it's relevant to the hearing today.

THE COURT: I ruled it's not relevant.

MR. BERNSTEIN: Oh, you did rule that?

THE COURT: Do you have another question of the witness? Or we're moving on.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. So for purposes of disposition, Ted, Pam and her lineal descendants are considered predeceased, correct?

MR. ROSE: Objection. Relevancy, cumulative and best evidence.

THE COURT: Sustained.

The document says what it says.

MR. BERNSTEIN: Okay.

THE COURT: When you ask a witness if it says what it says, I don't pay any attention to his answer, because I'm reading what it says.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Did you produce a fraudulent copy of the Shirley trust agreement?

A. No, I did not.

Q. So when you sent to Christine Yates this trust agreement with the attached amendment that you've

already admitted you fraudulently altered, was that producing a not valid copy of the trust that was distributed to a party?

A. We've already talked about the amendment was not a valid amendment.

Q. No, I'm asking, did you create a not valid trust of my mother's and distribute it to Christine Yates, my children's attorney?

MR. ROSE: Objection. Cumulative. He's covered this.

MR. BERNSTEIN: Well, it has to go to the validity, Your Honor, because --

THE COURT: The question I'm figuring out is, have we already covered this?

MR. BERNSTEIN: We touched on a piece of it. The more important part --

THE COURT: Okay. Then I'll let you reask your question to cover something that we've not already covered.

MR. BERNSTEIN: Okay. And we covered that the --

THE COURT: You don't have to remind me.

MR. BERNSTEIN: Oh, okay.

THE COURT: Listen, see, this -- look at this. I take notes. I write stuff down. Now, a lot of

times, if you see me not writing and I'm doodling, that means you're not scoring any points.

MR. BERNSTEIN: You've got to show me --

THE COURT: The point is, I should be writing notes. So that means you're not doing any good.

MR. BERNSTEIN: Gotcha.

THE COURT: So, please, the reason I write it is so we don't have to repeat things.

BY MR. BERNSTEIN:

Q. Okay. You've already stated that you created a fraudulent amendment.

Did you attach it to a Shirley trust document?

A. No. We included the amendment with the documents that we transmitted to her.

Q. So it was included as part of the Shirley trust document as an amendment, correct?

A. It was included as an amendment.

Q. To the Shirley trust document.

Thereby, you created a fraudulent copy, a not valid copy of the Shirley trust, correct?

MR. ROSE: Objection. Argumentative. Cumulative.

THE COURT: Overruled.

You can answer. Did that create a fraudulent version of the trust?

THE WITNESS: It could have, yes, Your Honor.
BY MR. BERNSTEIN:
Q. Can you explain why it couldn't have?
A. Because Si ultimately exercised his power of appointment, which was broader than the definitional provision in the document.
Q. That's not my question. I'll just say it was asked and not answered.
Okay. So there are not validly -- not valid Shirley trust agreements in circulation, correct?
A. That's not true.
Q. Well, the Shirley trust agreement you said sent to Christine Yates you've just stated was invalidly produced.
A. To Christine Yates.
Q. Yeah, okay. So I said "in circulation."
Is Christine Yates out of circulation?
A. I don't know what Christine Yates did with the documents.
Q. Well, I got a copy, so they're even more in circulation.
So my point being, you sent from your law firm fraudulent -- a non-valid copy of the document --
A. Which document?
Q. -- the Shirley trust and her amendment to

Christine Yates, right?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

MR. BERNSTEIN: Okay. We'll move on from that.

BY MR. BERNSTEIN:

Q. Would you know about when you did that fraudulent alteration of the document?

A. January 2013.

Q. And you were a fiduciary -- or you were counsel to the alleged fiduciary, Ted Bernstein, of the Shirley Bernstein trust, correct?

A. Yes, we were.

Q. And you were counsel to Ted Bernstein as the alleged personal representative of Shirley's estate?

A. Yes, we were.

Q. And as Ted's counsel in the Shirley trust, can you describe what the not valid trust agreement that was sent to Ms. Yates did to alter the beneficiaries of the document?

MR. ROSE: Objection. Cumulative.

THE COURT: Overruled.

What alterations did that make to the beneficiaries?

THE WITNESS: It didn't make any alterations

to the beneficiaries. The document's not a valid document and so it couldn't have made any changes to the estate planning.

BY MR. BERNSTEIN:

Q. Okay. But what did it intend to do?

MR. BERNSTEIN: Sorry. Excuse me, Your Honor. What did you say?

THE COURT: Next question.

BY MR. BERNSTEIN:

Q. Okay. What did it intend to do?

A. I answered that question earlier.

THE COURT: I can't let the witness object to questions. That won't work.

THE WITNESS: I'm sorry, Your Honor. Earlier you asked me the question, and I responded to you that it was to carry out your father's intent and the agreement that you all had made prior to his death, on that telephone call, and to have a document that would provide, perhaps, clarity to a vague misinterpretation of your mother's document.

BY MR. BERNSTEIN:

Q. So instead of going to the court, you just frauded a document to an attorney, who's representing minor children in this case -- produce a fraudulent copy of the trust document, making us have total trouble

understanding what's real and not, especially with your firm's history of fraudulent and forged documents submitted to the court in this case.

THE COURT: Okay. Thanks. You're just ranting. Ranting is not allowed.

MR. BERNSTEIN: Sorry.

THE COURT: If you'd like to ask a question, I'll let you do that. If I have to call you on this too many more times, I'm going to assume that you're done questioning the witness.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. When did you first meet my parents?

A. 2007.

Q. And how did you meet them?

A. I met them through someone that made a referral to them to our office.

Q. You didn't know Ted Bernstein prior to meeting Si?

A. I don't recall who we met first. I'm not sure.

Q. What firm were you with at the time?

A. Tescher, Gutter, Chaves, Josepher, Rubin and Ruffin and Forman.

Q. And how long were you with them?

A. Five-plus years.
Q. And where were you before that?
A. I was in school.
Q. Okay. Did you work at Sony Digital ever?
A. I did.
Q. You did. And when was that, before school or after?
A. That was from 1994 to '96.
Q. So after school?
A. After college.
Q. Okay. So that was -- you just forgot about that one in your history.
Is there any other parts of your biography I'm missing?
MR. ROSE: Objection. Argumentative.
THE COURT: Sustained.
BY MR. BERNSTEIN:
Q. Can you repeat, since I'm -- there was a little clarification error there. Your history, you started --
THE COURT: That's not necessary to repeat the history. Do you have a new question?
MR. BERNSTEIN: Well, I'm trying to get the history.
THE COURT: I don't want him to repeat what

he's already said. That moves the case backwards. I want to go forward. You're cavitating.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Did the altered trust document sent to Christine Yates attempt to convince Yates and others she sent that document to that Ted and Pam's lineal descendants were actually inside the document?

A. Say the question again.

Q. Well, we read the section where they're considered predeceased, Ted and Pam and their lineal descendants.

When you altered that amendment that you said you were just doing Si's wishes postmortem by altering a document, my question is, did you put language in there that would have made Ted and Pam's lineal descendants now beneficiaries of Shirley's trust?

MR. ROSE: Objection. I think it's cumulative. We've covered this.

THE COURT: Sustained.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Can the beneficiary of Shirley's trust be Ted, Pam or their lineal descendants?

A. If the assets of her trust were to pass under

the trust, no --

Q. Okay.

A. -- under the trust.

Q. So in the trust language of the Shirley trust document, Ted's lineal descendants and Pam's lineal descendants can get no dispositions, distributions, whatever you want to call it?

A. You have to ask the question in a different way, because I answered the question. I said, if it passes under the trust, that they would not inherent. If.

Q. Okay. When Shirley died, was her trust irrevocable at that point?

A. It was.

Q. Who were the beneficiaries?

A. Simon Bernstein.

Q. And who were the beneficiaries -- well, Simon Bernstein wasn't a beneficiary. He was a trustee.

A. No, he became the beneficiary of her trust when she died. He was the sole beneficiary of her trust when she died.

Q. Okay. And then who would it go to when he died?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Okay. When Simon died, who would the benefits of Shirley's trust go to?

MR. ROSE: Objection. Cumulative.

THE COURT: Are you asking him to tell you what would happen if the mother died first, then the father died second, and we have the trust documents and the wills that are in place so far that have been testified to at the trial?

MR. BERNSTEIN: Correct.

THE COURT: I already know all that stuff.

MR. BERNSTEIN: Well --

THE COURT: So what is the new question you want to ask that's not cumulative?

MR. BERNSTEIN: Okay. Well, I'm trying to get to a very significant point there.

THE COURT: Get there. Just go there and see what happens.

MR. BERNSTEIN: I just have to learn to ask these questions a little more like a lawyer.

THE COURT: Yes.

MR. BERNSTEIN: So I have to rethink how to ask that.

BY MR. BERNSTEIN:

Q. Do you recall talking to Detective Ryan

Miller?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Can you tell me all the roles you had in these estates and trusts, and your partner, Don Tescher?

A. We were the attorneys to your parents. Upon your dad's death, we became counsel to his estate and served as co-PRs and co-trustees under his documents.

Q. Any other roles?

A. Served as counsel for -- we served as counsel for Ted as fiduciary under your mother's documents.

Q. And who served as your counsel as trustee PR -- co-trustee, co-PR?

A. Mark Manceri.

Q. Mark Manceri submitted that he was your attorney?

A. I believe so, yes.

Q. Did you take a retainer out with him?

MR. ROSE: Objection. Relevance.

THE WITNESS: I'm sorry.

THE COURT: What's the relevance of the retainer question?

THE WITNESS: I'm sorry. I take that back. Mark Manceri was not counsel to us with respect to

the estate, except on a very specific matter.

THE COURT: The question that was objected to was, did you take out a retainer? What's the relevance of that?

MR. BERNSTEIN: Well, I'm trying to figure out if he was properly representing before the court these documents, and to his credibility, meaning his --

THE COURT: I'll sustain the objection.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. And a question about the court. How long before you notified the court as a personal representative fiduciary that you had produced a fraudulent trust of Shirley's?

A. To whom? I don't know that we ever represented the document to the court, and I don't know that anyone ever came to the court and said that we did.

Q. Well, I did in a petition I filed and served on you --

MR. ROSE: Objection.

BY MR. BERNSTEIN:

Q. -- of January -- excuse me -- petition that I served on you exposing a fraud of what happened with Christine Yates after you admitted that to the police.

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Okay. How many times have you spoken with Alan Rose in the last three months?

A. Twice.

Q. Did you prepare for this hearing in any way with Alan Rose?

A. I did.

Q. Okay. Was that the two times you spoke to him?

A. Yes.

Q. Do you see any other of the parties that would be necessary to validate these trust documents in the court today?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. And you gave testimony to the total net worth of Simon today, when you were asked by Mr. Rose; is that correct?

A. Yes.

Q. How long did you serve as the co-trustee and co-personal representative?

A. Of your father's estate? Since the date of

his death.

Q. And his trust?

A. Same.

Q. Okay. Did you produce an accounting to support those claims you made today?

MR. ROSE: Objection. Relevancy.

THE COURT: Sustained.

MR. BERNSTEIN: Well, can I argue that or --

THE COURT: No.

MR. BERNSTEIN: Not even close. Does that mean I have to ask it a different way?

THE COURT: Well, I can't answer questions. I'm not allowed to give anybody legal advice.

MR. BERNSTEIN: Okay. That was procedural, I thought. But okay.

THE COURT: Well, that's legal advice. Procedure is a legal issue.

BY MR. BERNSTEIN:

Q. As a fiduciary of the estate of Simon and the trust of Simon, did your law firm produce a accounting?

MR. ROSE: Objection. Relevance.

MR. BERNSTEIN: Well, it's relevant to, if he's a fiduciary, his conduct. I mean, there's --

THE COURT: Here's the way I handle objections --

MR. BERNSTEIN: Okay.

THE COURT: -- somebody asks a question, and somebody in the courtroom says objection, and then I have them state the legal objection and stop. The other side doesn't say anything, unless I say, Is there any argument one side or the other? Because usually I can figure this stuff out without having to waste time with arguments.

I didn't ask for any argument, right? Okay. Sustained. Next question.

BY MR. BERNSTEIN:

Q. Mr. Rose asked you about Shirley's Bentley.

Are you aware -- you became aware of Shirley's Bentley, correct?

A. Yes.

Q. When you became aware of Shirley's Bentley, did you put in an amended inventory to account for it?

THE COURT: What's this going to help me decide on the validity of the wills or trusts?

MR. BERNSTEIN: I'm just responding to the statements that were brought up.

THE COURT: I wish you would have objected to the relevancy then, but you didn't.

MR. BERNSTEIN: I did.

THE COURT: I don't think so.

MR. BERNSTEIN: No?

THE COURT: I'm a car guy, so I pay attention if somebody's asking questions about Bentleys just because it's interesting.

MR. BERNSTEIN: Well, it's so important, Your Honor, because --

THE COURT: No, it's not. Right now what is tied is, are the wills and trusts bound?

MR. BERNSTEIN: We have to question his competency.

THE COURT: And so what's in the estate or what's in the trust is not of any interest to me right now. So if that Bentley should have been in the estate or should not have been in the estate, it should have been accounted for, not accounted for, I'm not going to figure out today. But I want to get all the evidence I possibly can to see whether these wills and trusts that are in front of me are valid or not valid. And I'm hoping that you'll ask some questions that'll help me figure that out.

MR. BERNSTEIN: Are those originals that you have?

THE COURT: See, I'm not the witness. I'm the judge. So I'm not sworn in and I have no knowledge

of the facts of this case, other than what the witnesses tell me.

MR. BERNSTEIN: I'm winding down. I'll check my list.

THE COURT: All right.

BY MR. BERNSTEIN:

Q. Are you familiar with a document the Bernstein Family Realty LLC agreement?

A. Yes, I am.

Q. Did you draft that document?

A. Yes, I did.

Q. Was it part of Simon's estate planning?

A. It was part of his estate planning -- well, yes --

Q. And what was --

A. -- in a roundabout way.

Q. What was it designed to do?

A. It was designed to hold title to the home that you and your family live in.

Q. Oh, okay. And so it was -- who's the owners of that?

A. The three kids -- your three kids, Josh, Daniel -- your three kids' trusts that your father created -- and Jake -- that he created in -- I believe he created those trusts in 2006.

Q. And the prior testimony was, there were no special documents under Simon's estate plan for my family; is that correct?

A. Right. None that we prepared. Those were not documents that we prepared.

Q. Okay. I think he asked you if you knew of any.

So you knew of these, correct?

A. You're making me recall them. Yes.

Q. Oh, okay. Because you answered pretty affirmatively no before, that you weren't aware of any special --

THE COURT: Do you have any questions for the witness?

MR. BERNSTEIN: Okay. I get it.

BY MR. BERNSTEIN:

Q. You referenced an insurance policy.

MR. BERNSTEIN: Can I -- well, I can't ask him anything.

BY MR. BERNSTEIN:

Q. You referenced an insurance policy earlier, life insurance policy, that you said you never saw; is that correct?

A. Yes.

Q. And was that part of the estate plans?

A. We never did any planning with that. That was an insurance policy that your father had taken out 30 years before. He had created a trust in 1995 for that. That was not a part of any of the planning that we did for him.

Q. Did you file a death benefit claim on behalf of that policy?

MR. ROSE: Objection. Relevancy.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Is Christine Yates, who you sent the fraudulently altered Shirley trust document that's not valid, a layman?

MR. ROSE: Objection. Argumentative.

MR. BERNSTEIN: Excuse me.

BY MR. BERNSTEIN:

Q. Is she an attorney at law?

THE COURT: Now you're asking a different question.

MR. BERNSTEIN: Okay.

THE COURT: Thanks.

BY MR. BERNSTEIN:

Q. Is she a layman, as you described prior?

A. She's an attorney.

Q. Okay. So you were sending that document that

you said you altered to make a layman understand the language in the trust better?

MR. ROSE: Objection. Cumulative.

THE COURT: Let me have you finish your questioning.

BY MR. BERNSTEIN:

Q. But you sent it to Christine Yates, an attorney, who's not a layman?

A. We did.

Q. Okay. So it could be that you sent that document to an attorney to commit a fraud upon her clients, my children, minor children, correct?

A. The intent was not to commit a fraud.

Q. Okay.

A. Again, the intent was to carry out your dad's wishes.

Q. By fraudulently altering documents?

MR. ROSE: Objection. Argumentative.

THE COURT: Sustained.

If you ask one more argumentative question, I will stop you from asking the other things, because I'll figure that you're done. Is that clear?

MR. BERNSTEIN: Yes.

THE COURT: I'm done warning you. I think that's just too much to have to keep saying over

and over again.
BY MR. BERNSTEIN:
Q. When Shirley died, were her wishes upheld?
A. Your dad was the sole survivor of her estate -- he was the sole beneficiary of her estate and her trust.
Q. So her wishes of her trusts when Simon died were to make who the beneficiaries?
MR. ROSE: Objection. Cumulative.
THE COURT: Sustained.
BY MR. BERNSTEIN:
Q. Who did Shirley make -- are you familiar with the Eliot Bernstein Family Trust?
A. I am.
Q. And is that trust under the Shirley trust?
A. No, it's not.
Q. It's a separate trust?
A. It is.
Q. Is it mentioned in the Shirley trust?
A. It may be.
Q. As what?
A. As a receptacle for Shirley's estate.
Q. Her trust?
A. A potential receptacle for Shirley's trust.
Q. So there were three, the Eliot Bernstein

Family Trust, Lisa Friedstein and Jill Iantoni Family Trust, that are mentioned as receptacles. I would assume that's the word, beneficiary --

MR. ROSE: Objection.

BY MR. BERNSTEIN:

Q. -- of the Shirley trust, correct?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Okay. On Simon's medical state eight weeks before he died, when these documents of the Simon trust are alleged by you to have been signed, are you aware of any conditions of Simon's at that time medically?

A. I was not.

Q. Were you aware of any medicines he was on?

A. I was not.

Q. Were you aware he was seeing a psychiatrist?

A. I was not.

Q. Were you aware that he was going for a brain scan?

A. I was not.

Q. Were you aware that he was brought in to multiple doctors during that time for brain problems; that they ended up doing a brain biopsy at Delray Medical right around that time that he's said to sign

these documents?

A. He did not make us aware of any medical issues that he had.

Q. Okay. Did you ask him at the time you were signing those amended documents if he was under any medical stress?

A. No, I did not.

Q. Okay.

A. He --

MR. BERNSTEIN: Can I ask him to read that?

BY MR. BERNSTEIN:

Q. Can you look at that document and --

MR. BERNSTEIN: Judge, would you like a look at this?

THE COURT: I don't look at anything that's not an exhibit.

MR. BERNSTEIN: I'm exhibiting it to him.

THE COURT: Okay. Well, that's fine, but I want you to go ahead and ask your question. I don't look at things that aren't exhibits in evidence --

MR. BERNSTEIN: Okay.

THE COURT: -- unless I have to mark them. But no, I don't have a curiosity to look at pieces of paper.

MR. BERNSTEIN: Should I exhibit it as evidence -- can I exhibit it as --

THE COURT: If it comes into evidence, I'll look at it.

MR. BERNSTEIN: Okay. Can I submit it as evidence?

THE COURT: Well, have you asked any questions to establish what it is?

BY MR. BERNSTEIN:

Q. Is this a letter from your law firm -- prior law firm?

A. I did not prepare this letter --

Q. Okay.

A. -- but it appears to be, yes.

Q. Prepared by?

A. Donald Tescher.

MR. BERNSTEIN: Okay. Now can I submit it?

THE COURT: So you're offering it as an exhibit --

MR. BERNSTEIN: Please.

THE COURT: -- as Defendant's 2.

Is there any objection?

MR. ROSE: No objection.

THE COURT: All right. I'll take a look at it. And that'll be in evidence as Defendant's 2.

Thank you.

(Defendant's Exhibit No. 2 was received into evidence.)

BY MR. BERNSTEIN:

Q. Can you just read into the record paragraph 2 --

THE COURT: Well, I'm reading it. The document is in the record.

MR. BERNSTEIN: Oh, okay.

THE COURT: I'm reading paragraph 2 even as we speak, so I don't need the witness to read it for me. But if you want to ask him a question, you can go ahead with that.

BY MR. BERNSTEIN:

Q. Okay. That letter states that Si's power of appointment for Simon could not be used in favor of Pam, Ted and their respective children; is that correct?

A. Yes. Don appears to have written that.

Q. Did you get a copy of this letter?

A. I don't recall getting a copy of it, but doesn't mean that I didn't.

Q. But you are partners in that firm?

A. Yes, we were partners in that firm.

Q. Now, that -- this document --

MR. ROSE: Your Honor, can I just -- I don't

want to go out of order, but this is only relevant if the documents are valid. And if he's -- the whole point is the documents are valid. And he wants to argue the second part, of what they mean, then we should not have wasted a whole day arguing over the validity of these five documents.

THE COURT: Well, waste of time is what I do for a living sometimes. Saying we shouldn't be here doesn't help me decide anything.

I thought I was supposed to decide the validity of the five documents that have been pointed out; some of them might be valid and some of them might be invalid. And I'm struggling to decide what's relevant or not relevant based upon the possibility that one of them might be invalid or one of them might not. And so I'm letting in a little bit more stuff than I normally think I would.

MR. ROSE: I'm concerned we're arguing the second -- the second part of this trial is going to be to determine what the documents mean and what Simon's power of attorney could or couldn't do. And this document goes to trial two and not trial one, although I didn't object to its admissibility.

THE COURT: Well, since it's in evidence,

we'll leave it there and see what happens next.

Do you have any other questions of the witness?

MR. BERNSTEIN: Yeah.

BY MR. BERNSTEIN:

Q. It says that the document that you fraudulently altered creating the invalid copy of the Shirley trust had some kind of paragraph 2 that was missing from the original document --

MR. ROSE: Objection. Argumentative.

BY MR. BERNSTEIN:

Q. -- from my understanding.

THE COURT: You may finish your question. And make sure it's a question and not an argument. Because you know what happens if this is an argument.

MR. BERNSTEIN: I'm not arguing. I'm just asking --

THE COURT: I want you to ask your question.

BY MR. BERNSTEIN:

Q. It says here that there was a blank spot that you -- a Paragraph No. 2 which modified the definitional language by deleting words.

According to this document, the power of appointment by Simon could not alter the Shirley trust

agreement, correct?

A. Don seems to be suggesting that in the second paragraph. I don't necessarily believe that that's the case.

Q. Did you review this document with Don?

MR. ROSE: Objection. Cumulative.

THE COURT: The question is, Did you go over this document with Don?

MR. BERNSTEIN: Correct.

THE COURT: Overruled.

You can answer.

THE WITNESS: No.

BY MR. BERNSTEIN:

Q. So he's -- Don, in this letter, is describing your actions, correct?

A. Yes.

Q. Okay. Did you write a letter to anybody describing your actions?

A. I did not.

Q. You did not.

And what have you done to correct the damages caused by that to my family?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. And are you aware of an autopsy that was done on my father the day -- or ordered the day he died?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Are you aware -- well, are you aware of a heavy metal poison test that was done by the Palm Beach County coroner?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

MR. BERNSTEIN: Well, it's --

THE COURT: Next question.

MR. BERNSTEIN: I'm trying to figure that out.

Your Honor, is -- I can't ask you that question.

BY MR. BERNSTEIN:

Q. Competency. Based on everything you know about Simon, when he signed those documents, he was competent?

A. To my knowledge, he was of sound mind and body.

Q. Now, are you a medical expert?

A. I'm not.

Q. Are you aware of any other fraudulent activity that took place in anything in the estate and trusts of

Simon Bernstein by yourself or your employees?

A. Are you referring back to the closing of your mother's estate?

Q. I'm referring to any other --

A. -- we've talked about.

Q. So can you list those and then just say that's all that you're aware of?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Other than the fraud that you've admitted to in the documents of Shirley, the Moran forged and fraudulent waivers, the April 9th waiver that you and Si signed stating he had all the waivers when he couldn't have, are there any other frauds that you're aware of that took place with these estate and trust documents?

A. Not to my knowledge.

Q. When you were first interviewed by the Palm Beach County Sheriff with Kimberly Moran, did you notify them at that first interview that you had fraudulently altered a document?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. When did you notify the sheriff that you

fraudulently altered a document?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. You have these exhibits. This will says "conformed copy" on Exhibit 1 of their exhibits; is that correct?

A. Yes, it does.

Q. Does a conformed copy have to have the clerk of the court's signature on it?

A. Conformed copy would not be sent to the clerk of the courts.

Q. Conformed copy -- okay.

Is that your signature on the document? This is Exhibit 2, Shirley trust agreement, of the plaintiff's exhibit book, 2, page 27.

A. Yes, it appears to be.

Q. It appears to be?

A. Yes.

Q. All right. And is that Traci Kratish's signature?

A. She was there. I can't speak to her signature.

Q. Did you witness her sign it?

A. I did.

Q. Okay. Is that my mom's signature on page 28?
A. Yes, it is.
Q. On this first amendment to Shirley's trust --
MR. BERNSTEIN: Exhibit 3, Your Honor, page 1 of 3, I guess. It's the first page in that exhibit.
BY MR. BERNSTEIN:
Q. Is that document -- do you recall that document?
A. Yes.
Q. Okay. And you recall the day it's signed and notarized, allegedly?
A. November 18th, 2008.
Q. On the front page of that document, what day is the document dated?
A. It's not dated.
Q. Is that typical and customary in your office?
A. Sometimes clients forget to put the date at the top.
Q. You forget?
A. I said, sometimes clients forget to put the date at the top.
Q. Well, did you check the document before making it a part of a will and trust?
A. It was notarized as a self-proving document.

Q. Are you aware that Kimberly Moran's notarization of the Simon trust has been found by the Governor Rick Scott's notary public division to be deficient?

MR. ROSE: Objection. Hearsay.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Are you aware of Kimberly Moran of your office being contacted by the governor's office in relation to these wills and trusts?

MR. ROSE: Objection. Hearsay.

THE COURT: Sustained.

What do I care if he's aware of that or not? How does that help me decide the validity of these documents?

MR. BERNSTEIN: Well, the governor's already made a claim that --

THE COURT: But you're asking the witness if he's aware of. Are you aware the sky is blue right now? It doesn't matter to me if he's aware of it or not. Are you aware Rick Scott has started an investigation of a moon landing? It doesn't matter to me if he knows that or not. You asked him are you aware of somebody from Rick Scott's office doing something. It doesn't matter to me if he's

aware of that or not. I've got to figure out the validity of these documents, so I need to know facts about that, please. Any other questions of the witness on that?

MR. BERNSTEIN: Yes.

BY MR. BERNSTEIN:

Q. Is that my father's signature?

A. I'm not an expert on your father's signature. But if it's on his will, at the bottom of his will, that must have been a copy that was obtained from the clerk of the courts, because that will was filed, and we would have conformed copies in our file, which would not have his signature at the bottom. Apparently, it is.

Q. But it does say on the document that the original will's in your safe, correct?

A. For your mother's document, it showed that.

Q. Oh, for my father's -- where are the originals of my father's?

A. Your father's original will was deposited in the court. As was your mother's.

Q. How many copies of it were there that were original?

A. Only one original. I think Mr. Rose had stated on the record that he requested a copy from the clerk of the court of your father's original will, to

make a copy of it.

Q. Certified?

A. I'm not sure if he said it was certified or not.

Q. Is that your signature on my father's will?

MR. BERNSTEIN: This is Exhibit 4, Your Honor, Page 7.

THE WITNESS: Yes, it is.

BY MR. BERNSTEIN:

Q. Okay. Is that my father's signature?

A. Appears to be.

Q. Whose signature is that?

A. That's my signature.

Q. Oh, okay. So the only two witnesses you see on this document are you and Kimberly Moran; is that correct?

A. On that page.

Q. And both you and Kimberly Moran have had misconduct in these cases?

MR. ROSE: Objection. Relevance.

THE COURT: Overruled. But it's cumulative.

MR. ROSE: It's cumulative.

THE COURT: How many times do I need to know this?

MR. BERNSTEIN: What does that mean exactly,

cumulative? I don't get that. I'm sorry.

THE COURT: Let's say you hit me over the head with a two-by-four. That's one time. If you do it twice, that's cumulative. Cumulative's not allowed.

MR. BERNSTEIN: That's an objection, is that I've asked it --

THE COURT: Yes.

MR. BERNSTEIN: -- and it was answered? Is that what it's kind of saying?

THE COURT: Yes, asked and answered. That's another way of saying it.

MR. BERNSTEIN: Now I got it.

THE COURT: Asked and answered is a similar way to say it.

MR. BERNSTEIN: Okay. Sorry.

BY MR. BERNSTEIN:

Q. Is that my father's signature, to the best of your knowledge?

A. Appears to be, yes.

Q. And is that your signature?

A. Yes, it is.

Q. And here, did Kimberly Moran properly notarize this document?

A. Kimberly did not notarize the document.

Q. Or Lindsay Baxley, did she check one -- either the person was personally known or produced identification?

A. No. This is what Mr. Rose had gone over earlier.

Q. No, those, I believe, are in other documents we'll get to.

So this notarization, as far as you can tell, is incomplete?

MR. ROSE: Objection. Are we on Exhibit 2?

MR. BERNSTEIN: No.

THE COURT: We're on Exhibit 4, as far as I recall.

MR. BERNSTEIN: He does not miss a thing. Your Honor, page 8.

THE WITNESS: This is Si's documents.

MR. ROSE: Got it.

BY MR. BERNSTEIN:

Q. Okay. So on Simon's trust, weeks before he dies, the notarization's improper?

A. This was the same document we spoke about before. Yes, she did not circle "known to me," although...

Q. So she didn't know you or Simon?

A. No, she knew all of us. She just neglected to

circle "known to me."

Q. And that's one of the three functions of a notary, to the best of your knowledge, to determine the person is in the presence that day by some form of I either know you or you gave me a license; is that correct?

A. Yes.

Q. So your firm -- have you done anything since knowing this document's improperly notarized to correct it with the courts?

MR. ROSE: Objection. It misstates facts. He didn't say it was improperly notarized.

THE COURT: Just state the objection, please.

MR. ROSE: Well, calls for a legal conclusion.

THE COURT: Sustained.

MR. MORRISSEY: Another objection. It misstates the law.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Is that Lindsay -- oh, you can't answer that.

So, to the best of your ability, regarding your signature, Kimberly or Lindsay Baxley has failed to state that you either were known to her or produced identification?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

MR. BERNSTEIN: Okay. We'll go on to document 5.

BY MR. BERNSTEIN:

Q. Is that my father's initials, to the best of your knowledge?

A. Appears to be, yes.

Q. Do these initials look similar to you, this one on page 2, next to this one on page 3, next to that thing on page 4?

A. Initials typically don't look perfect page to page, and they don't necessarily look similar page to page. I have seen clients execute a lot of documents, and by the time they get to, you know, the second and third document, their signatures and their initials do not necessarily look --

Q. Look at page 13, for example. I mean, this is almost -- if we go through page by page, tell me if you see any that are even similar. On page -- let's start back at the beginning, if that'll help you.

That? Do those look similar to you as you're flipping through those?

A. Yeah, they have a lot of the same -- similar ending marks. Your father's ending mark was that line. I mean, it's on every single solitary page.

Q. Okay. So your testimony today is those are my father's initials?

A. That they were.

Q. Okay.

A. I was there when he was...

Q. And you've looked at all of these, page 19, page 20? Those look similar to what you're saying -- or why don't you just look at them. If you go through them all, they all look different. But okay.

A. They all look different, and they all look consistent at the same time.

Q. Okay. Is that -- on page 24, is that my father's signature?

A. Appears to be.

Q. Is that your signature?

A. Yes, it is.

Q. Okay. Now, this is another trust document that Lindsay Baxley did that's supposed to be notarized, a will and trust, I believe, and the amended and restated.

Can you tell that Simon Bernstein was present or produced -- or present that day by the notarization?

A. She again failed to mark that he was personally known, but she worked for him.

Q. So these dispositive documents are improperly

notarized?

MR. ROSE: Objection. Cumulative. Legal conclusion.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Okay. And then let's go to the first amendment to Shirley Bernstein's trust. Is this a document prepared --

MR. BERNSTEIN: Your Honor, that would be 6.

THE COURT: All right.

BY MR. BERNSTEIN:

Q. Is that a document prepared by your law firm?

A. Yes, it is.

Q. And do you see where it's, "Now therefore by executing this instrument I hereby amend the trust agreement as following"? And what is it -- what are the numbering sequences there?

A. It says, I hereby delete a paragraph of article --

Q. What number is that?

A. Paragraph B -- it's number 1.

Q. Okay. And what's Number 2?

MR. ROSE: Objection. Best evidence. It's in evidence. And it's cumulative.

THE COURT: Two is in evidence, as is

paragraph one and paragraph three. And I've read --

MR. BERNSTEIN: Oh, no. But Number 1, Your Honor, take a look real quick. Number 1; there's no Number 2.

THE COURT: The objection came on your next question, and that was dealing with paragraph 2, which says it's already in evidence. And it is.

MR. BERNSTEIN: No, no, not paragraph 2. Look at down below. Under the "now therefore," there's a Number 1, and I was asking him what Number 2 reads.

THE COURT: I know you were.

MR. BERNSTEIN: And there is no Number 2.

THE COURT: You've asked me to look at Exhibit No. 6, right? Plaintiff's Exhibit 6 has, under the therefore clause, a one, a two and a three. Are you asking me to look at a different document?

MR. BERNSTEIN: Can I approach?

THE COURT: Sure. All right. So that's a different Number 6 than I have. So let's see your Number 6.

MR. BERNSTEIN: What do I do on that?

THE COURT: That's not my decision.

MR. BERNSTEIN: That's his book, not my book, just so you know.

THE COURT: Well, that Tab 6 is different than my Tab 6. So there you go.

MR. BERNSTEIN: Okay. Well, which -- what do I go off there?

THE COURT: I have no --

MR. BERNSTEIN: Can I submit that into evidence?

THE COURT: I have no preference.

MR. BERNSTEIN: Okay. I'd like to submit this, because I'm not sure if the other one is in evidence wrong.

THE COURT: All right. Any objection?

MR. ROSE: Could I just see the book? Would you mind?

THE COURT: Here, I'll show you my book. You can look at that book and see what's going on.

And this will be a good time for us to take a short break, and let you all straighten it out. So we'll be back in session in 15 minutes. And then we'll go to the bitter end. Each of you has about 60 minutes remaining.

MR. BERNSTEIN: Your Honor, when you say "60 minutes remaining," we haven't got through all

the witnesses yet.

THE COURT: Well, we will have by the end of 60 minutes on each side.

This trial is over at five o'clock. I told you when we started each of you has half of the time; please use it wisely; use it as you wish. I've tried to encourage both sides to be efficient. When your time is gone, that's the end of the trial for you.

MR. BERNSTEIN: Well, the case manager --

THE COURT: When their trial is gone --

MR. BERNSTEIN: At the case management, they said it would take a day. I argued and said to you it would take days. I mean, they've got 10 witnesses. I need to have all the people who witnessed these documents here.

THE COURT: Remember when I said a moment ago we're in recess? I was serious. Thanks. We'll go back in session 15 minutes from now.

(A break was taken.)

THE COURT: We're ready to resume. Are there any further questions for the witness on cross?

MR. BERNSTEIN: Okay. We were just working out that 1, 2, 3, Exhibit No. 6, so that we get the record straight.

THE COURT: Okay.

MR. BERNSTEIN: Shall I get a copy of yours, you get a copy of mine? Or how do you want to do that?

MR. ROSE: Your Honor, I tried to work it out.

THE COURT: Listen, I don't have any preference as to how we do anything. You all tell me how you've worked it out, and if I agree with it, I'll accept it.

MR. ROSE: The copy that's been marked for the witness, the copy in my book and the copy in your book are all identical. I don't know what's in his book, and he wouldn't show me his book on the break.

THE COURT: Okay.

MR. ROSE: But I'm fine. It's a three-page document. And if he wants to put it in evidence, even though it's not operative, I have no objection.

THE COURT: Okay. So are you putting something into evidence?

MR. BERNSTEIN: Yeah. The one that I --

THE COURT: Have you showed it to the other side yet? You can't put secret documents into evidence, only after they've been seen by everyone.

Let's at least show it to the other side so they know the document that's being proffered as an exhibit. If they still have no objection, I'll receive it as Defendant's 3.

MR. ROSE: This is in evidence already as Exhibit No. -- as Plaintiff's No. 3.

MR. BERNSTEIN: So what's 6? So now I don't even have the right 6 document.

MR. ROSE: The 6 that the witness has is three pages. It's the same 6 that's in your book and it's in my book. It's three consecutive pages of the production from Tescher & Spallina law firm. It has the inoperative first amendment as page 1, then it has the operative first amendment as page 2, and the signature page as page 3. It's the same document in everybody's book. That's all I can tell you.

THE COURT: Okay.

MR. BERNSTEIN: Your Honor, in my book, 3 and 6 are the identical documents --

THE COURT: Okay.

MR. BERNSTEIN: -- so I would need --

THE COURT: Are there any other questions of the witness?

MR. BERNSTEIN: Well, I was going to ask him

questions on this document.

THE COURT: All right. Well, then, let's go.

MR. BERNSTEIN: Okay. I need a -- I don't have the 6 that everybody else is referring to. My sinks is the same as --

THE COURT: There you go. Take whatever you need.

MR. BERNSTEIN: Okay. Thank you. I think we missed 6. It's just short on 6.

THE COURT: All right. Then here's my Tab 6.

MR. BERNSTEIN: Thank you, sir.

THE COURT: The idea is to keep moving.

MR. BERNSTEIN: Okay. I'll move on. I'm almost done here.

BY MR. BERNSTEIN:

Q. Okay. So on Exhibit 3, can you list the numbers there?

MR. ROSE: Objection. Best evidence. Cumulative.

THE COURT: Sustained.

You need to refer to which page. That's a multi-page document, and both pages have numbered paragraphs on them.

MR. BERNSTEIN: Page 1 of 2.

BY MR. BERNSTEIN:

Q. The Roman Numeral -- or the numerals, can you give the sequence of those numbers?

A. One and three. It's skipping two.

Q. And this is a document you allege to be part of the Shirley trust that you're claiming is valid?

A. That's the amendment that Shirley executed in November of 2008.

Q. And would there be a reason why your law firm numbers one, three?

MR. ROSE: Objection. Cumulative.

THE COURT: Overruled.

You can answer.

THE WITNESS: Human error.

BY MR. BERNSTEIN:

Q. Okay. But it is an error in the document that you're claiming is valid Shirley trust?

A. It's a numbering error.

Q. In the document, you're claiming this is a valid amendment, correct?

A. Correct.

Q. Okay. And then in number 6 from the judge, what's the numbering sequence?

A. One, two, three.

Q. Okay. So you added in a number two?

A. Yes.

Q. Okay. How did you go about doing that?

A. There was a paragraph two inserted between one and three.

Q. Well, the paragraph that's inserted between one and three wouldn't fit there.

So what did you do?

A. The document was opened up and a paragraph was inserted.

Q. Okay. So you increased the spacing on the document, correct, by adding a number three, correct?

A. Adding number two, yes.

Q. By adding number two, correct.

Okay. So you actually had to alter the chronology as it was placed on the document? You didn't just put a number two there in between one and three? You actually went and expanded the document with words that were inserted by you fraudulently, right?

MR. ROSE: Objection. Argumentative. Cumulative.

THE COURT: Sustained.

MR. BERNSTEIN: Okay.

MR. ROSE: Your Honor, the witness does have the exhibits in front of him. If Mr. Bernstein could be at the podium.

MR. BERNSTEIN: I don't know if he has all the exhibits.

THE COURT: Well, do you have the exhibit that I gave you from the Court's?

MR. BERNSTEIN: Oh, jeez.

THE COURT: Because I'd like to have it back so that that doesn't get lost.

MR. BERNSTEIN: Okay. You gave me the one with one, two, three.

Can I get a copy of this from the clerk?

THE BAILIFF: There is no clerk.

THE COURT: Can I have the document back, please? He's not a clerk.

MR. BERNSTEIN: Marshall, sheriff, officer, sir. Sorry about that.

THE COURT: He does not make copies.

MR. BERNSTEIN: Okay.

THE COURT: Thanks. Any other questions of the witness? Your time is rapidly disappearing.

MR. BERNSTEIN: Just going through that.

THE COURT: And I think you said earlier you have no objection to Plaintiff's 6 being received as an exhibit?

MR. ROSE: Correct.

THE COURT: Okay.

MR. ROSE: Thank you.

THE COURT: Then it's in evidence as Plaintiff's 6. I'm making it Plaintiff's 6, rather than Defendant's 3, because it's already marked and it's been referred to by that number.

(Plaintiff's Exhibit No. 6 was received into evidence.)

BY MR. BERNSTEIN:

Q. Are these your notes?

A. No, they're not. Those are Don's.

Q. Do you know the date on that note?

A. 3/12/08.

Q. Did you take any notes in the meeting?

A. Those are my notes there.

Q. These are? Oh, so this is a compilation of Don's and your notes?

A. Those are my notes, yes.

Q. And those were taken on that day?

A. Correct.

Q. Whose notes are those?

A. I just saw those for the first time today. I believe they're your father's notes.

Q. How would you know those are my father's notes?

A. Mr. Rose introduced that document earlier.

Q. Document 12, did it come from your offices?
A. I don't know where it came from.
Q. Did you Bates stamp this document as part of your documents?
A. I don't recall ever seeing that document.
Q. And it doesn't have your Bates stamp from your production, right?
A. Correct.
Q. You were supposed to turn over all your records, correct?
MR. ROSE: Objection. He's testified it wasn't in his --
THE COURT: What's the objection to the question?
MR. ROSE: Cumulative.
THE COURT: Sustained.
MR. BERNSTEIN: All right. Your Honor, I'm done.
THE COURT: All right. Thank you.
Is there any redirect?
MR. ROSE: Brief, Your Honor.

REDIRECT (ROBERT SPALLINA)

BY MR. ROSE:
Q. Assuming the documents are valid, they'll have to be a later trial to determine the effect of Simon's

exercise of his power of appointment?

A. Yes.

Q. It doesn't have any direct bearing on whether these five documents are valid?

A. No.

Q. And I take it you don't necessarily agree with Mr. Tescher's view as expressed in his letter of January 14th, 2014?

A. Again, I'm seeing that here. Surprised to see that.

Q. The original documents, the wills, you retained at all times of Shirley and Simon in your firm?

A. Prior to their death, yes.

Q. And that's consistent practice for a trust and estate lawyer, to keep it in your will vault or in your safe deposit box?

A. Yes. I would say most attorneys do that just because there's only one original of the will, and very often documents can get lost if clients take documents home. So, typically, they're kept in a safe deposit box or a safe or something like that, and left with the attorney.

Q. I want to make sure I understand and the Court understands what happened with the waiver forms.

While Simon was alive, he signed a petition

for discharge; is that correct?

A. Correct. April of '08.

Q. And --

MR. BERNSTEIN: What exhibit? Excuse me. What number are we looking at?

MR. ROSE: None -- well, actually, it's in my book. If you want to follow along, it's Tab 28. But it's not in evidence.

BY MR. ROSE:

Q. And Simon also then filed a waiver of accounting himself?

A. Correct.

Q. And is it necessary for Simon, even though he's the personal representative, to sign a waiver of accounting because he's a beneficiary?

A. I mean, we do it as a matter of course.

Q. And the signature of Simon Bernstein on April 9th, that's genuinely his signature?

A. Can I see?

Q. Exhibit 28 is a petition that was filed with the court. I'm going to just show you the exhibits. Exhibit A says "Petition for discharge full waiver."

Is this a document you would have prepared for Simon Bernstein to sign?

A. Yeah, our firm would prepare that.

Q. Okay. And it's a three-page document.
Is that Simon Bernstein's signature --
A. Yes, it is.
Q. -- April 9th, 2012?
A. Yes, he signed the document.
Q. And he was alive when he signed the document?
A. Yes, he was.
Q. Okay. Then he had to sign a waiver of accounting, which he signed on the same day?
A. Correct.
Q. And you have a document waiver of accounting on the next page signed by Eliot Bernstein on May 15th?
A. Correct.
Q. And there's no doubt that's Eliot's signature because he's the one who emailed you the document, correct?
A. And sent us the original by mail.
Q. Right. And we already have an exhibit which is his email that sent you his waiver form?
A. Correct.
Q. And the waiver forms of Ted, Pam, Lisa and Jill are all valid, signed by them on the date that they indicated they signed it?
A. To the best of my knowledge, yes.
Q. So then these got submitted to the court.

Is there anything wrong with submitting waiver forms to the court signed by Simon while he's alive after he had passed away?

A. Maybe we should have made a motion to, you know, have a successor PR appointed and file the documents through the successor PR.

Q. Were you trying to just save expenses because there was nothing in the estate?

A. Correct.

Q. And if Judge Colin had not rejected -- or his assistant had not rejected the documents, and the estate was closed, it would have been closed based on legitimate, properly signed documents of Simon and his five children?

A. Correct.

Q. So then they get kicked back to your law firm, and you could file a motion and undertake some expense, instead --

MR. BERNSTEIN: Object. This has been asked and answered.

THE COURT: Sustained.

BY MR. ROSE:

Q. Now, does the fact that -- well, strike that.

At the time that Simon signed his 2012 will and 2012 trust, had there been ever anyone question a

signature or a notarization of any document that had been prepared by your law firm?

A. No, there was not.

Q. You didn't see anything or observe anything or any behavior of Simon Bernstein during the course of any meeting you had with him that would call into question his competence or his ability to properly execute a testamentary document?

A. We did not.

MR. ROSE: Nothing further, Your Honor.

THE COURT: All right. Thanks.

Thank you, sir. You can step down.

MR. ROSE: At this time, we would rest our case.

THE COURT: Okay. Thank you.

Any evidence from the defendant's side?

MR. BERNSTEIN: Well, I'd like -- can I call back Spallina?

THE COURT: If you want to call him as a witness on your behalf, sure.

MR. BERNSTEIN: Yeah, sure.

THE COURT: All right. Mr. Spallina, you're still under oath, and you're being called as a defense witness now.

DIRECT EXAMINATION

BY MR. BERNSTEIN:

Q. Mr. Spallina, when Simon died on September 12th -- or September 13th -- sorry -- 2012, and you were responsible as his attorney to appoint Ted as the successor, correct, you were in charge of his wills and trusts?

THE COURT: You just asked three questions in a row.

MR. BERNSTEIN: Oh, sorry.

THE COURT: Which question would you like the witness to answer?

BY MR. BERNSTEIN:

Q. Okay. When Simon died, was Shirley's estate closed?

A. No, it was not.

Q. Okay. Did you appoint a successor to Simon who was the personal representative of Shirley on the day he died?

A. I don't understand the question.

Q. Well, on the day Simon died, there was a successor to him in the will, correct?

A. That's correct. Ted.

Q. Okay. Did you appoint Ted?

A. I did not appoint Ted. Si did.

Q. Si appointed Ted?

A. Si appointed Ted as a successor trustee under the document -- I mean, Shirley appointed Ted as the successor trustee to Si under the document.

Q. So Simon didn't appoint Ted?

A. Simon did not appoint Ted.

Q. Okay.

A. He was the named successor under your mother's document.

Q. Okay. So when Simon died -- just so I get all this clear, when Simon died, your law firm knew Ted was the successor, correct?

A. That's correct.

Q. According to your story. Okay.

A. Under Shirley's documents, you're talking about.

Q. Under the alleged Shirley document.

Okay. But yet did Simon then -- after he died, did he not close the estate of Shirley while he was dead?

MR. ROSE: Objection. Argumentative. It's cumulative.

THE COURT: Sustained.

MR. ROSE: And I believe this whole line of questioning's been covered ad nauseam in the first cross-examination.

THE COURT: Well, it's important not to ask the same thing over and over again. You have finite time to work with.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. The estate of Shirley was closed in January, correct, of 2013?

A. I don't recall, but it sounds -- it has to be sometime after November.

Q. Okay. So it was closed by Simon, who was dead at that time, correct?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Did Ted Bernstein close the Estate of Shirley Bernstein as the successor personal representative?

A. No.

Q. Who closed the Estate of Shirley Bernstein?

A. The documents were filed with the court based on the original petition that your father signed.

Q. Did you close the estate?

MR. ROSE: Objection. Relevance.

THE COURT: What's the relevance?

MR. BERNSTEIN: Well, I'm trying to figure out who closed my mom's estate.

THE COURT: What's the relevance I've got to figure out?

MR. BERNSTEIN: Okay. The documents, they were bringing up these waivers. There's relevance to this.

THE COURT: Well, I'll sustain the objection.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. On this petition for discharge that Mr. Rose brought up on his cross -- and I can't remember where I just pulled that -- I'm going to take a look. That would be 28.

MR. BERNSTEIN: Can I admit this into evidence, Your Honor, since I believe Mr. Rose stated it wasn't?

THE COURT: You're just picking up a piece of paper and walking up to me and saying, can I admit this into evidence?

MR. BERNSTEIN: Well, they didn't admit it.

THE COURT: Is there a foundation laid for its admissibility?

MR. BERNSTEIN: Yes.

THE COURT: Do I know what it is so that I can make a ruling?

MR. BERNSTEIN: Oh. It's a petition for

discharge.

THE COURT: Did anybody testify to that, or are you just --

MR. BERNSTEIN: Yeah, he just did.

THE COURT: If you have a piece of paper you want to have me consider as an exhibit, the other side has to have seen it and the witness has to have seen it so I'll know what it is.

MR. BERNSTEIN: Okay. They were just talking about it.

MR. ROSE: Your Honor, just to speed things along, we have no objection to this document coming into evidence. It is part of our Exhibit 28. The whole 28 could come in evidence. That's fine with me. Then it would all be in evidence. Or however you wish to do it.

THE COURT: I'm letting this party take charge of his own case.

Are you asking that to be received as an exhibit? There's no objection. So that'll be Defendant's 3. Hand that up, and I'll mark it.

MR. BERNSTEIN: Thank you.

(Defendant's Exhibit No. 3 was received into evidence.)

THE COURT: So are you done with it?

MR. BERNSTEIN: No. Can I use it still?

THE COURT: Anything that's supposed to be an exhibit in evidence has to come back to me.

MR. BERNSTEIN: Gotcha.

BY MR. BERNSTEIN:

Q. Okay. On this document, it's a petition for a discharge, a "full waiver," it says.

Was this document sent back to your firm as not notarized by Judge Colin's office?

A. I'm not sure. I didn't get the documents back.

Q. Is it notarized?

A. No, it's not.

Q. Did you sign as the notary?

MR. ROSE: Objection. Cumulative.

THE COURT: Overruled.

The question was, is it notarized? The answer was no. Then you asked if -- somebody else, if they'd sign, and then the witness if he signed as a notary.

THE WITNESS: I signed it as the attorney for the estate.

BY MR. BERNSTEIN:

Q. Okay. On April 9th with Simon Bernstein?

A. Yeah, it appears that way.
Q. Could it be another way?
A. It didn't -- this document did not require that I witness Si's signature. So I believe that that document was sent to Si, and he signed it, sent it back, we signed it and filed it.
Q. So you sent it to Si, he signed it, then sent it back, and you signed it all on April 9th?
A. It doesn't -- it's what day he signed it that's relevant. He signed it on April 9th.
Q. And what day did you sign it?
A. I could have signed it April 11th.
Q. Well, where does it say April 11th?
A. My signature doesn't require a date. His does.
Q. Why?
A. Just doesn't.
Q. Well, the date that the document says this document's being signed on April 9th.
A. I did not sign that exhibit.
Q. Next question. On September 13, 2013, the year after my father died, in Judge Martin Colin's court, when he discovered this document, did he threaten to read you your Miranda Rights, stating he had enough evidence to read you Mirandas?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Did you deposit this document, this April 9th full discharge, with the court?

A. Did I personally do it?

Q. Did your law firm?

A. No, the law firm did, yes.

Q. Okay. And on whose behalf?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

MR. ROSE: And relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Simon was dead when this document was deposited with the court, correct?

MR. ROSE: Objection. Cumulative. Relevance.

THE COURT: I've got that he is dead written down here several times. It's clear in my mind. You're not moving in a positive direction.

MR. BERNSTEIN: I understand that part.

THE COURT: All right. New question, please.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Is this document sworn to and attested by my

father? Is it a sworn statement? Does it say "under penalties of perjury"?

A. It does.

Q. Okay. So under penalties of perjury, on April 9th, my father and you signed a document, it appears, that states that Simon has fully administered the estate.

Was that done?

A. Yes, it was.

Q. He had settled the estate, made dispositions of all claims of Shirley's estate?

A. He was the only beneficiary of the estate. The creditor period had passed.

Q. He was the only beneficiary of the will?

A. He was the only beneficiary of the will if he -- that's if he survived your mother.

Q. Did you say earlier that the five children were tangible personal property devisees or beneficiaries under the will?

A. I did not. I said your father was the sole beneficiary of your mother's estate by virtue of surviving her.

Q. I thought you mentioned -- can I take a look at the will?

Okay. On Simon's will, which is Exhibit 4

here --

A. This is your mother's will we're talking about.

Q. Well, hold on. Well, you did state there were mirror documents, correct, at one point? That's okay. I'll proceed. That part seems to be in error.

Does the document say, "I, Shirley Bernstein, of Palm Beach County, Florida hereby revoke all of my prior wills and codicils and make this will my spouse's assignment. My children are Ted, Pam -- Pamela Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein"?

MR. ROSE: Objection. Best evidence and cumulative.

THE COURT: Sustained.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Was there a separate written memorandum prepared for this will?

A. No, there was not.

Q. And if Simon didn't survive, the property would be going to the children, correct?

MR. ROSE: Objection.

THE WITNESS: Correct.

MR. ROSE: Best evidence and cumulative.

THE COURT: Sustained.

MR. BERNSTEIN: What was -- I missed that. Can I not ask him that question I just asked?

THE COURT: I sustained the objection. You can ask a new question of him.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Is there any chance that the children could be beneficiaries of anything under this will?

A. Not at the time of your mother's death. Your father survived.

Q. So at the time of her death, you're saying that -- if they both died together, would the children --

MR. ROSE: Objection. Relevancy.

BY MR. BERNSTEIN:

Q. -- be beneficiaries?

THE COURT: Sustained.

MR. BERNSTEIN: Okay. I'm done with him.

MR. ROSE: No questions.

THE COURT: Okay. Thank you. You can step down now.

Next witness, please.

MR. BERNSTEIN: My next witness, are you saying?

THE COURT: If you have another witness, now's

the time to call him or her.

MR. BERNSTEIN: Okay. Ted Bernstein -- well, one second.

Is Kimberly Moran, your witness, here? Is Kimberly Moran, an exhibited witness, here, Mr. Rose?

THE COURT: Listen, it's your case. I've asked if you have any other witnesses. Do you have any other witnesses?

MR. BERNSTEIN: No, I don't. I was going to call some of their witnesses, but they're not here.

THE COURT: Okay. So you aren't going to call anybody?

MR. BERNSTEIN: Yes, I'm going to call Ted Bernstein.

THE COURT: Well, that's a witness, right?

MR. BERNSTEIN: Yeah, yeah. I just was looking for the other ones on the witness list. I didn't know if they were sitting outside.

Thereupon,

(TED BERNSTEIN)

having been first duly sworn or affirmed, was examined and testified as follows:

THE WITNESS: I do.

DIRECT EXAMINATION

BY MR. BERNSTEIN:

Q. Ted --

THE COURT: You've got to ask the witness his name. The record needs to reflect who's testifying.

MR. ROSE: And could I just ask that he stay at the podium?

THE COURT: Okay. You need to stay near the microphone so that I can hear and the court reporter can accurately hear you. And then if you need to go up to the witness stand for some reason, you're allowed to do that.

BY MR. BERNSTEIN:

Q. State your name for the record.

A. Ted Bernstein.

Q. Is that your full formal name?

A. That is.

Q. Do you go by Theodore Stuart Bernstein ever?

A. I do not.

Q. Okay. Is that your name on your birth certificate?

A. Which one?

Q. Theodore Stuart Bernstein?

A. It is not.

Q. Okay. Ted, you were made aware of Robert

Spallina's fraudulent alteration of a trust document of your mother's when?

A. I believe that was in the early 2013 or '14.

Q. Okay. And when you found out, you were the fiduciary of Shirley's trust, allegedly?

A. I'm not sure I understand the question.

Q. When you found out that there was a fraudulent altercation [sic] of a trust document, were you the fiduciary in charge of Shirley's trust?

A. I was trustee, yes. I am trustee, yes.

Q. And your attorneys, Tescher and Spallina, and their law firm are the one who committed that fraud, correct, who altered that document?

A. That's what's been admitted to by them, correct.

Q. Okay. So you became aware that your counsel that you retained as trustee had committed a fraud, correct?

A. Correct.

Q. What did you do immediately after that?

A. The same day that I found out, I contacted counsel. I met with counsel on that very day. I met with counsel the next day. I met with counsel the day after that.

Q. Which counsel?

A. Alan Rose.

Q. Oh. Okay. So he was -- so Tescher and Spallina were your counsel as trustee, but Alan Rose became that day?

A. I'm not sure when, but I consulted him immediately. You asked me when.

MR. ROSE: Can I caution the witness that it's fine to say who he consulted with. I think the advice was the attorney-client privilege I would instruct him on.

THE COURT: All right. The attorney-client privilege is available, and your client is on the stand. Counsel's reminding him that it exists.

Are there any other questions? What is the time period that you're asking about here?

MR. BERNSTEIN: Right after he discovered that there had been a fraudulent, invalid will created.

THE COURT: Right. And you're asking him what he did afterwards?

MR. BERNSTEIN: Right afterwards.

THE COURT: Okay. Have your mother and father both passed away at the time you're asking him that?

MR. BERNSTEIN: Correct.

THE COURT: So the validity of the documents

that I've got to figure out won't have anything to do with the questions you're asking him now about his actions at trustee, will they?

MR. BERNSTEIN: Yes.

THE COURT: Tell me how.

MR. BERNSTEIN: Okay. Because, Your Honor, when he found out that there was fraud by his attorneys that he retained, the question is, what did they do with those documents? Did he come to the court to correct --

THE COURT: The question you're asking him is what did he do.

MR. BERNSTEIN: Yeah.

THE COURT: Well, that doesn't tell me anything about what the attorneys did. So I'll sustain my own objection. I want to keep you on track here. You're running out of time, and I want you to stay focused on what I've got to figure out. You've got a lot more on your mind than I do. I explained that to you earlier. Do you have any other questions on the issues that I've got to resolve at this point?

MR. BERNSTEIN: Yeah.

BY MR. BERNSTEIN:

Q. Have you seen the original will and trust of

your mother's?

A. Can you define original for me?

Q. The original.

A. The one that's filed in the court?

Q. Original will or the trust.

A. I've seen copies of the trusts.

Q. Have you done anything to have any of the documents authenticated since learning that your attorneys had committed fraud in altering dispositive documents that you were in custody of?

MR. ROSE: Objection. Relevance.

THE COURT: Overruled.

THE WITNESS: I have not.

BY MR. BERNSTEIN:

Q. So you as the trustee have taken no steps to validate these documents; is that correct?

A. Correct.

Q. Why is that?

A. I'm not an expert on the validity of documents.

Q. Did you contract a forensic analyst?

A. I'm retained by counsel, and I've got counsel retained for all of this. So I'm not an expert on the validity of the documents.

Q. You're the fiduciary. You're the trustee.

You're the guy in charge. You're the guy who hires your counsel. You tell them what to do.

So you found out that your former attorneys committed fraud. And my question is simple. Did you do anything, Ted Bernstein, to validate these documents, the originals?

THE COURT: That's already been answered in the negative. I wrote it down. Let's keep going.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. As you sit here today, if the documents in your mother's -- in the estates aren't validated and certain documents are thrown out if the judge rules them not valid, will you or your family gain or lose any benefit in any scenario?

A. Can you repeat that for me, please? I'm not sure I'm understanding.

Q. If the judge invalidates some of the documents here today, will you personally lose money, interest in the estates and trusts as the trustee, your family, you?

A. I will not.

Q. Your family?

A. My -- my children will.

Q. So that's your family?

A. Yes.

Q. Okay. So do you find that as a fiduciary to be a conflict?

MR. ROSE: Objection.

THE WITNESS: No.

MR. ROSE: I think it calls for a legal conclusion.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Well, would it matter to you one way or the other how these documents are validated?

A. What would matter to me would be to follow the documents that are deemed to be valid and follow the court orders that suggest and deem that they are valid. That would be what I would be charged to do.

Q. So you can sit here today and tell me that the validity of these documents, even though your family will lose 40 percent, has no effect on you?

A. It has no effect on me.

Q. Okay. And you don't find that to be adverse to certain beneficiaries as the trustee?

MR. ROSE: Objection. Calls for a legal conclusion.

THE COURT: Well, what difference does it make to me? I mean, what he thinks about his role is just not relevant to me.

MR. BERNSTEIN: Well, Your Honor --

THE COURT: So the next question, please. That's not relevant.

BY MR. BERNSTEIN:

Q. So in no way have you tried to authenticate these documents as the trustee?

THE COURT: He has already said that. That's the third time you've asked it, at least. And I've written it down. It's on my papers.

MR. BERNSTEIN: Okay. I'll let it go. I'll let him go today.

THE COURT: Okay. You have no further questions of the witness.

Is there any cross?

MR. ROSE: Briefly.

CROSS (TED BERNSTEIN)

BY MR. ROSE:

Q. You did a few things to authenticate the documents, didn't you? You filed a lawsuit?

A. Yes.

Q. In fact, we're here today because you filed a lawsuit to ask this judge to determine if these five documents are valid, correct?

A. That's correct.

Q. And you fired Mr. Tescher and Spallina on the

spot?

A. Correct.

Q. Called the bar association?

A. The next business day.

Q. You consulted with counsel, and we retained additional probate counsel over the weekend?

A. We did.

Q. So as far as authenticating the documents, you personally believe these are genuine and valid documents, right?

A. I do.

Q. And you, in fact, were in your office the day your father signed them?

A. That's correct.

Q. And witnessed Mr. Spallina and the notary coming to the office to sign the documents?

A. Yes, that's right.

Q. And you had been on a conference call with your father, your brother and your three sisters where your father told you exactly what he was going to do?

A. That is also correct.

Q. And the documents that we're looking at today do exactly what your father told everybody, including your brother, Eliot, he was going to do on the conference call in May of 2012?

A. Yes, that is correct also.

Q. Now, I think you were asked a good question.

Do you care one way or the other how these documents are decided by the Court?

A. Absolutely not.

Q. Did you care when your father or mother made a document that did not specifically leave any money to you?

A. I did not.

Q. Now, did you care for anybody other than yourself?

A. I cared for the -- for the sake of my children.

Q. And why did you care for the sake of your children?

A. My parents had a very good relationship with my children, and I did not want my children to misinterpret what the intentions of their grandparents were and would have been. And for that reason, I felt that it would have been difficult for my children.

Q. Did you ever have access to the original will of your father or mother that were in the Tescher & Spallina vaults?

A. I have no access, no.

Q. Did you ever have access to the original

copies of the trusts that Mr. Spallina testified were sitting in their firm's file cabinets or vaults?

A. I did not.

Q. Now, did you find in your father's possessions the duplicate originals of the trusts of him and your mother that we've talked about?

A. I did.

Q. And do you have any reason to believe that they aren't valid, genuine and signed by your father on the day that he -- your father and your mother on the days that it says they signed them?

A. None whatsoever.

Q. You need to get a ruling on whether these five documents are valid in order for you to do your job as the trustee, correct?

A. Yes, that is correct.

Q. Whichever way the Court rules, will you follow the final judgment of the Court and exactly consistent with what the documents say, and follow the advice of your counsel in living up to the documents as the Court construes them?

A. Always. A hundred percent.

MR. ROSE: Nothing further, sir.

THE COURT: All right. Thank you.

Is there any redirect?

REDIRECT (TED BERNSTEIN)

BY MR. BERNSTEIN:

Q. You just stated that you came to the court and validated the documents in this hearing today; is that correct?

MR. ROSE: Objection. It mis --

BY MR. BERNSTEIN:

Q. You filed a motion to validate the documents today?

THE COURT: Wait. You've got to let me rule on the objection.

MR. BERNSTEIN: Oh, sorry. I don't hear any objection.

THE COURT: I'll sustain the objection.

BY MR. BERNSTEIN:

Q. Okay. Since -- did you file a motion that we're here for today for validity?

A. Explain motion.

Q. A motion with the court for a validity hearing that we're here at right now.

A. Do you mean the lawsuit?

Q. Well, yeah.

A. Yes, we did file a lawsuit, yes.

Q. Okay. Do you know when you filed that?

A. No. I don't know, Eliot. I don't know when I

filed it. I don't have it committed to memory.

Q. Do you have an idea?

MR. ROSE: Objection. I think the court file will reflect when the case was filed.

THE COURT: Overruled.

The question was answered, I don't know. Next question.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Prior to filing this lawsuit, Mr. Rose said you couldn't do anything because you didn't know if the documents were valid.

My question is, did you do anything from the time you found out the documents might not be valid and needed a validity hearing to today at this validity hearing?

MR. ROSE: Objection. Relevance.

THE COURT: What's the relevance?

MR. BERNSTEIN: Well, he knew about these documents being fraudulent for X months.

THE COURT: What will that help me decide on the validity of the five documents?

MR. BERNSTEIN: Why, Your Honor, they didn't come to the court knowing that they needed a validity hearing, and instead disposed and

disbursed of assets while they've known all this time --

THE COURT: I'll sustain the objection.

I'm not called to rule upon that stuff. I'm called to rule upon the validity of these five paper documents. That's what I'm going to figure out at the end of the day.

BY MR. BERNSTEIN:

Q. Mr. Rose asked you if you found documents and they all looked valid to you, and you responded yes.

Are you an expert?

A. I am not.

Q. Can you describe what you did to make that analysis?

A. They looked like they were their signatures on the documents. I had no reason whatsoever to think those weren't the documents that were their planning documents. I had no reason at all to think that.

Q. Even after your hired attorneys that were representing you admitted fraud, you didn't think there was any reason to validate the documents?

MR. ROSE: Objection. Argumentative.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Did you find any reason to validate these

documents forensically?

A. I think I answered that by saying that we filed a lawsuit.

Q. No, I'm asking you to have a forensic -- you're the trustee. And as a beneficiary -- to protect the beneficiaries, do you think you should validate these documents with a handwriting expert due to the fact that we have multiple instances of fraud by your counsel who were acting on your behalf?

MR. ROSE: Objection. Cumulative and argument.

THE COURT: The question is, does he think something. I've already told you when you ask a question do you think, I stop listening. It's not relevant what the witness thinks.

So I'll sustain the objection.

BY MR. BERNSTEIN:

Q. As a trustee, would you find it to be your fiduciary duty upon learning of document forgeries and frauds by your counsel to have the dispositive documents you're operating under validated by a professional handwriting expert, forensic expert, et cetera?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Do you think these documents should be validated -- you're the trustee.

Do you think these documents should be validated by a professional firm forensically?

MR. ROSE: Objection. Cumulative.

THE COURT: It's not relevant. You just asked him if he thinks he should have had them validated. I don't care what he thinks. In making my decisions today, what he thinks he should have done or not done isn't relevant. I'm looking for facts. So I really wish you would address your questions to facts.

BY MR. BERNSTEIN:

Q. So, to the best of your knowledge, have these documents been forensically analyzed by any expert?

MR. ROSE: Objection. Cumulative.

THE COURT: No, they are not. I already know that. I wrote it down. He's already said they've not been.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Ted, when your father signed, allegedly, his 2012 documents in July, were you aware of any medical problems with your father?

A. I don't think so.
Q. Were you aware that I took him for a biopsy of his brain?
A. I'm not aware of that, no.
Q. Were you aware of the headaches he was suffering that caused him to go for a biopsy of his brain?
A. I don't believe he had a biopsy of his brain. But if he did, then I'm not aware of it.
Q. Oh, okay. Were you aware of headaches your father was suffering?
A. I recall he was having some headaches.
Q. Were you aware that he was seeing a psychiatrist?
A. Yes.
Q. Were you aware of the reasons he was seeing a psychiatrist?
A. Absolutely not.
Q. Were you ever in the psychiatrist's office with him?
A. Yes.
Q. For what reason?
A. I wanted to have a conversation with him.
Q. About?
A. About some personal issues that I wanted to

discuss with him.

Q. Personal issues such as?

MR. ROSE: Can I get clarification? Are you talking about you wanted to -- he may have a privilege.

You were discussing Simon's issues or your own personal issues?

THE WITNESS: They were both intertwined together.

MR. ROSE: I think it's subject to a privilege.

THE COURT: All right. Well, you've been warned by your attorney you've got a psychologist-client privilege, so use it as you will.

MR. BERNSTEIN: He's not a client of the psychiatrist, I don't think.

THE COURT: I beg to differ with you.

MR. BERNSTEIN: Oh, he is?

THE COURT: Because the answer just clarified that he was in part seeking to be a client. Did you listen to his clarification of his answer?

MR. BERNSTEIN: No.

THE COURT: Well, I did very closely.

MR. BERNSTEIN: What was it?

THE COURT: Next question, please.

MR. BERNSTEIN: Okay. I'll just see it on the transcript.

BY MR. BERNSTEIN:

Q. Were you aware of any medical conditions, depression, anything like that your father was experiencing prior to his death?

A. I never found our father to suffer from any kind of depression or anything like that during his lifetime.

Q. So after your mother died, he wasn't depressed?

A. No.

MR. ROSE: Could I again ask Mr. Bernstein to step to the podium and not be so close to my client?

THE COURT: If you speak into the microphone, it'll be even more easy to hear your questions. Thank you.

BY MR. BERNSTEIN:

Q. So, according to you, your father's state of mind was perfectly fine after his wife died of -- a number of years --

A. I didn't say that.

Q. Okay. He wasn't depressed?

A. That's what I said.
Q. Were you aware of any medications he was on?
A. I was, yes.
Q. Such as?
A. From time to time, he would take something for your heart when you would have angina pains. But that he was doing for 30 years, for a good 30 years, that I knew dad was taking, whatever that medicine is when you have some chest pain.
Q. Did you have any problems with your father prior to his death?
MR. ROSE: Objection. Relevance.
THE COURT: The question is, did you have any problems with your dad before he died?
I'll sustain the objection.
BY MR. BERNSTEIN:
Q. Are you aware of any problems between you and your father that were causing him stress?
MR. ROSE: Objection. Relevance.
THE COURT: Sustained.
BY MR. BERNSTEIN:
Q. Were you aware that your father was changing his documents allegedly due to stress caused by certain of his children?
A. No.

Q. Were you on a May 10th phone call?
A. Yes.
Q. In that phone call, did your father --
MR. ROSE: Objection. It's beyond the scope -- well --
MR. BERNSTEIN: It has to do with the changes of the documents and the state of mind.
THE COURT: Do you have a question you want to ask? He's withdrawn whatever he was saying, so you can finish your question.
BY MR. BERNSTEIN:
Q. Okay. So on May 10th, at that meeting, your father stated that he was having trouble with certain of his children, and this would solve those problems.
Are you aware of that?
A. No, I don't -- not from the way you're characterizing that phone call.
Q. Well, how do you characterize that?
A. He wanted to have a conversation with his five children about some changes he was making to his documents.
Q. And you had never talked to him about the changes, that your family was disinherited?
A. No.
Q. Prior to that call?

A. No.
Q. When did you learn that you were disinherited?
A. I think when I first saw documents with -- maybe after dad -- once dad passed away.
Q. Were you aware of the contact with your sister Pam regarding her anger at your father for cutting both of you out of the will?
A. I'm aware of that.
Q. So that was before your father passed?
A. Excuse me. Can you ask -- say the end of that sentence again.
MR. BERNSTEIN: Can you read that back?
(A portion of the record was read by the reporter.)
THE WITNESS: I'm sorry. You asked me a question, and I had answered too quickly. What was the end of the question prior to that?
(A portion of the record was read by the reporter.)
THE WITNESS: I'm aware that she was angry with him about how -- that he -- she was not in his documents.
BY MR. BERNSTEIN:
Q. You didn't learn right there that you weren't in the documents?

A. I can't remember if it was then or if it was when dad died.

Q. Well, this is very important so can you think back to that time.

While your father was alive, did I invite you to a Passover holiday at my home?

MR. ROSE: Objection. Relevance.

THE WITNESS: I don't recall.

MR. BERNSTEIN: Okay.

THE COURT: What's the relevance?

MR. BERNSTEIN: Well, it's relevance to the state of mind my dad was in while --

THE COURT: Well, you're asking did this guy get invited to your home. You didn't ask about your dad, so I'll sustain the objection.

BY MR. BERNSTEIN:

Q. Okay. Did you get invited to a Passover dinner at my home that your father was attending?

A. I don't recall the circumstances of what -- whatever it is you're referring to.

Q. Do you recall saying you wouldn't come to the Passover dinner?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Do you recall writing me a email that stated that your family was dead for all intensive [sic] purposes?

MR. ROSE: Objection. Relevance.

THE COURT: What's the relevance to the validity of these documents?

MR. BERNSTEIN: If Si was in the right state of mind or if he was being, you know, forced at a gun to make these changes by children who had --

THE COURT: Your question asked this witness if he wrote you a letter that said his family was dead for all intents and purposes. What's that got to do with the validity of these documents?

MR. BERNSTEIN: Well, it establishes Simon's state of mind.

THE COURT: Okay. I'll sustain the objection.

MR. BERNSTEIN: Okay. All right. Well, then, I'm all done then.

THE COURT: All right.

Is there any cross?

MR. ROSE: I already crossed.

THE COURT: Oh, that's true. So you're all set. You're done. Thank you.

Next witness, please.

MR. BERNSTEIN: Alan Rose.

MR. ROSE: I object. Improper.

THE COURT: You've got 11 minutes yet.

MR. BERNSTEIN: Well, he's a witness to the chain of custody in these documents.

THE COURT: Well, you can call anybody you want. I just wanted you to know how much time you had left.

MR. BERNSTEIN: Oh, okay.

MR. ROSE: He wants to call me, and I object to being called as a witness.

THE COURT: Okay.

MR. ROSE: I don't think that's proper.

THE COURT: I don't think that's proper to call an attorney from the other side as your witness. So I accept the objection. Anybody else?

MR. BERNSTEIN: Your Honor, I would agree with that normally --

THE COURT: Well, thanks.

MR. BERNSTEIN: -- but there's a small problem. The chain of custody we're trying to follow in these documents for other reasons, other criminal reasons, is Mr. Rose has pertinent information to; meaning, he claims to have discovered some of these documents and taken them

off the property.

THE COURT: I thought you said you wanted a chain of custody?

MR. BERNSTEIN: Right. Meaning --

THE COURT: Well, the chain of custody to me means the chain of custody after the time they were executed.

MR. BERNSTEIN: Right.

THE COURT: All right. He wasn't around when they were executed.

MR. BERNSTEIN: No, but he found documents that are being inserted into this court case as originals, second originals that he found personally, and wrote a letter stating, I just happened to find these documents in Simon's home --

THE COURT: Well, I'm going to sustain the objection to you calling him as a surprise witness. He's a representative of your own. Do you have any other witnesses?

MR. BERNSTEIN: No. I'm good.

THE COURT: Okay. So you rest?

MR. BERNSTEIN: I rest.

THE COURT: Okay. Is there any rebuttal evidence from the plaintiff's side?

MR. ROSE: No, sir.

THE COURT: Okay. So the evidence is closed. We'll have time for brief closing arguments. And I'll take those now. Let me hear first from the plaintiff's side.

MR. ROSE: I'm sorry. Did you say it was time for me to speak?

THE COURT: Yes. I'm taking closing arguments now.

MR. ROSE: Okay. Thank you. May it please the Court.

We're here on a very narrow issue. And we -- you know, I apologize to the extent I put on a little bit of background. We've had an extensive litigation before Judge Colin. This is our first time here. And if any of my background bored you, I apologize.

There are five documents that are at issue, which we talked about before we started; the 2008 will and trust of Shirley Bernstein, as well as the amendment that she signed, and then the 2012 will and trust of Simon Bernstein.

So the uncontroverted evidence that you've heard was from Robert Spallina, who is an attesting witness to the documents and he was a draftsman of the documents.

I don't believe it's directly relevant to your inquiry, but you certainly heard evidence that what Simon Bernstein intended and what he communicated were his wishes; the exercise of a power of appointment through a will, the changing of the beneficiaries of his trust document by way of an amended and restated 2012 document, to give his money -- leave his wealth to his ten grandchildren. The final documents as drafted and signed are consistent with what.

But what we're here to decide is, are these documents valid and enforceable? And there are self-proving affidavits attached to the documents. And by themselves, if you find the self-proving affidavits to be valid, then the wills themselves are valid and enforceable.

Now, the only question that's been raised as to the self-proving affidavit is an issue with notarization. And we have two cases to cite to the Court on the notarization issue. One is from the Florida Supreme Court called The House of Lyons, and one is from a sister court in the State of North Carolina.

THE COURT: Just a second.

Sir, would you just have a seat. You're

making me nervous.

MR. BERNSTEIN: Sure.

THE COURT: Thanks.

MR. BERNSTEIN: Just aching.

THE COURT: Well, I understand. But just have a seat. That'll be better. Thanks.

And I'm sorry for the interruption.

MR. ROSE: No, that's all right.

If I may I approach with the two cases we would rely on.

THE COURT: All right.

MR. ROSE: The House of Lyons. The second is a case from Georgia. The House of Lyons case is from the Florida Supreme Court. It deals in a slightly different context, but it deals with notarization. And so what you have here is, we've put on evidence. The documents that are in evidence, that these documents were signed properly. The witnesses were in the presence of each other, and the testator and the notary notarized them.

Shirley's documents from 2008, there's no question that all the boxes were checked. There is a question that's been raised with regard to Simon's 2012 will and his 2012 trust; that the

notary -- rather than the law firm employee notarizing them, these were notarized by Simon's -- the testimony is by an employee of Simon's company, not a legal expert. And if on the face of the two documents -- and for the record, these would be Exhibits 4, which is Simon's will, and Exhibit 5, which is Simon's trust.

On Exhibit 4, there's no box to check. The whole information is written out. And I don't believe there's any requirement that someone circled the word -- if you just read it as an English sentence, the notary confirmed that it was sworn to and ascribed before me the witness is Robert L. Spallina, who is personally known to me or who has produced no identification.

So I think the natural inference from that sentence is that person was known to him, Kimberly Moran, who was personally known to me, and Simon Bernstein, who was personally known to me. So on its face, I think it -- the only inference you could draw from this is that the person knew them.

Now, we've established from testimony that she in fact knew the three of them, and we've established by way of Exhibit 16, which was signed on the same day and notarized by the same person.

And Exhibit 16, unlike Exhibit 4, which doesn't have a little check mark, Exhibit 16 has a check mark, and the notary properly checks personally known to the people that she was notarizing.

So I believe -- and the In Re Lyon case stands for substantial compliance with a notary is sufficient. And the North Carolina case is actually more directly on point. The Florida Supreme Court case, Lyons -- and we've highlighted it for the Court, but it says, clerical errors will not be permitted to defeat acknowledges -- acknowledgments when they, considered either alone or in connection with the instrument acknowledged and viewed in light of the statute controlling them, fairly show a substantial compliance with the statute.

The North Carolina case is a will case, In Re Will of Durham. And there it's exactly our case. The notary affidavit was silent as to whether the person was personally known or not. And the Court held the caveat was self-proving. The fact that the notary's affidavit is silent as to whether decedent was personally known to the notary or produced satisfactory evidence of his identity does not show a lack of compliance with the notary

statute, given the issues of personal knowledge or satisfactory evidence are simply not addressed in that affidavit.

So we have a Florida case and we have the North Carolina case, which I think is -- it's obviously not binding, but it is sort of persuasive. If they're self-proved, we would win without any further inquiry. The reason we had a trial and the reason we had to file a complaint was everything in this case -- you've slogged through the mud with us for a day, but we've been slogging through the mud for -- basically, I got directly involved in January of 2014, after the Tescher Spallina firm -- after the issues with the firm came to light. So we've been slogging through this.

But we did file a complaint. We went the next step. So the next step says to you, assume the notaries are invalid, which they aren't invalid; but if they were, all we need to establish these documents is the testimony of any attesting witness. So we put on the testimony of an attesting witness, Mr. Spallina. He testified to the preparation of the documents. And I do think it's relevant and it will give the Court comfort in

making findings of fact that there was an extensive set of meetings between Mr. Spallina and his clients when they did the documents.

I mean, we documented for the first set of documents, you know, four meetings, a letter with some drafts, then a meeting to sign the documents, some phone calls and some amending the documents. And in 2012, we've documented at least one meeting with notes involving Simon; telephone conferences between Simon and his client; eventually, when a decision was made, a conference call of all the children; drafts of the documents sent; the document being executed.

And so I think if you look at the evidence, the totality of the evidence, there's nothing to suggest that these five documents do not reflect the true intent of Simon and Shirley Bernstein. There's nothing to suggest that they weren't prepared by the law firm; that they weren't signed by the people that purport to sign them; that undisputed testimony from an attesting witness was that all three people were present, and it was signed by the testator and the two witnesses in the presence of each other.

So under either scenario, you get the document

admitted. In fact, the documents are in evidence. They've been admitted to probate. But the testimony under 732.502, 503, the testimony of the drafting attorney, who attested -- who was an attesting witness, is sufficient for these documents.

There's absolutely no evidence put on the Court that Simon Bernstein lacked mental capacity. In fact, the evidence is directly to the contrary. Every witness testified that he was mentally sharp; making intelligent decisions; having a conference call with his children to explain his wishes. And there's simply no evidence in the record to determine that he lacked testamentary capacity.

So if I have Mr. Bernstein, Simon Bernstein, with testamentary capacity signing documents in the presence of two subscribing witnesses, the 2012 documents should be upheld. I don't know if there's a question at all even about Shirley Bernstein's 2008 document, but the testimony is undisputed that the documents were consistent with her wishes. You saw a draft letter that explained to her exactly what was happening. She signed the documents. The self-proving affidavits for the Shirley documents are all checked perfectly. And

even if they weren't, we have an attesting witness here.

And, frankly, I think Eliot Bernstein likes these documents. And all he wants to do is argue what they mean and how much money you get from them. And we didn't really need to spend a day arguing this, but we have and we're here. And we believe that the evidence conclusively demonstrates that these documents are valid.

Now, you've heard some nonsense and some shenanigans. There were a couple of problems in the case; one with the notarization of documents. And it's sort of a sad and tortured story, but it's -- it was clearly wrong for someone to send documents into Judge Colin's courtroom that had been altered. The correct documents were submitted and the estate should have been closed.

And when the documents were returned, someone should have gone and filed a motion with Judge Colin to accept the un-notarized documents, since there was no dispute they were signed. And we wouldn't be here. But for whatever reason, that happened. And it's unfortunate that happened, but there's no evidence that Ted Bernstein, either of his sisters, or Eliot Bernstein, or any of the

grandchildren played any role in the fabrication of that document -- the false notarization.

The fabricated amendment to Shirley's trust document is a very disturbing fact, and we took immediate action to correct it. No one's purported to validate that document. We filed an action to have the Court construe the documents, tell us which are valid, tell us what they mean. And that's where we should be focusing our time on. And this is, in my view, step one toward that.

But if you look at the evidence we've presented, if you -- I understand you've got to deal with the witnesses that you're handed. And I think Mr. Spallina's testimony, notwithstanding the two issues that we addressed, was persuasive, it was unrebutted.

And we would ask that you uphold the five documents and determine, as we have pled, that the five testamentary documents that are in evidence, I believe, as 1, 2, 3, 4, and 5 be upheld and determined to be the valid and final testamentary documents of Simon and Shirley Bernstein. To the extent there's any question the document that has been admitted to be not genuine be determined to be an inoperative and ungenuine document, we would ask

that you enter judgment for us on Count II and reserve jurisdiction to deal with the rest of the issues as swiftly as we can.

THE COURT: All right. Thank you.

Any closing argument from the other side? Okay.

I keep forgetting that you've got a right to be heard, so please forgive me.

MR. MORRISSEY: Judge, if I may approach, I have some case law and statutes that I may refer to. And I'll try to be brief and not cumulative.

MR. BERNSTEIN: Could I get the other case law that was submitted? Do you have a copy of that?

MR. ROSE: Sure.

MR. MORRISSEY: Judge, the relevant statute with respect to the execution of wills is 732.502. It says that every will must be in writing and executed as follows. And I'll just recite from the relevant parts, that is to say relevant with respect to our case.

The testator must sign at the end of the will and it must be in the presence of at least two attesting witnesses. And if we drop down to Subsection C, the attesting witnesses must sign the will in the presence of the testator and in the

presence of each other.

Judge, that was established and uncontroverted in connection with Mr. Spallina's testimony. So 732.502 was complied with.

Now, I think that we -- there was kind of a distraction with respect to the self-proving affidavits at the end. As Your Honor's aware, a self-proving affidavit is of no consequence in connection with the execution of a will. Execution of a will as dealt with in 732.502 merely requires execution at the end by the testator or the testatrix, and then two witnesses who go ahead and attest as to the testator's signature.

Now, the self-proving affidavit at the end is in addition to. So the fact that there may or may not have been a proper notarization is of no consequence in connection with a determination of the validity of any of these documents. So that's number one.

Number two, I've also provided Your Honor with another -- a statutory section, 733.107, and it's titled "The Burden of Proof in Contest." And it says there, in Subsection 1, "In all proceedings contesting the validity of a will, the burden shall be upon the proponent of the will to establish,

prima facie, its formal execution and attestation."

I would submit to the Court that that was done today. We had Mr. Spallina's testimony, which was uncontroverted, that indicated that 732.502 was complied with. The statute goes on to state, "A self-proving affidavit executed in accordance with 733.502 or an oath of an attesting witness executed as required under the statutes is admissible and establishes, prima facie, the formal execution and attestation of the will."

So, once again, I would submit to the Court that there were self-proving affidavits with respect to all of these testamentary documents. They were proper in form, and therefore comply or comport with the second sentence of the statute. But even if not, we had Mr. Spallina testify today so as to comply with this second sentence of Subsection 1.

So if we drop down to the third sentence of this Subsection 1, it says that, "Thereafter, the contestant shall have the burden of establishing the grounds on which probate of the will is opposed or revocation is sought."

That was not done today by Mr. Eliot Bernstein. He did not present any evidence or meet

any burden to overturn these valid wills.

Judge, there is the competency argument. The testamentary competency, I'm now going to quote from In Re Wilmott's Estate, 66 So.2d 465. "A testamentary competency means the ability to understand generally the nature and extent of one's property, the relationship of those who would be the natural objects of the testator's bounty, and the practical effect of the will."

The only testimony, I elicited that from Mr. Spallina. His is the only testimony that we have in this regard. And it's uncontroverted that both of these decedents met those very specific criteria which -- with respect to each and every one of the five documents that are submitted for your Court's validation today.

There's also case law, In Re Estate of Weihe, W-E-I-H-E. That's 268 So.2d 446. That's a Fourth DCA case that says, "Competency is generally presumed and the burden of proving incompetency is on the contestant." So even if we didn't have Mr. Spallina's testimony today, which I elicited, competency on the part of both Shirley and Si Bernstein would be presumed. And it would be the contestant, Mr. Eliot Bernstein, who would have to

come up with the -- or would have the burden of showing that they were incompetent. He presented no evidence today in that regard or in that respect.

Lastly, there's the In Re Carnegie's estate, 153 Florida 7. It's a 1943 case. That says that testamentary capacity refers to competency at the time that the will was executed, so on that date.

The only testimony we have with respect to any issues of competency on the date -- on the specific dates that these testamentary documents were signed was from Mr. Spallina. And on all such dates and times, Mr. Spallina testified that these requisites with respect to competency -- or testamentary competency were met.

Finally, Judge, undue influence, that would be a reason for invalidating a will. Mr. Bernstein, once again, did not present any evidence to go ahead and suggest that these wills or trusts documents should be overturned on the grounds of undue influence. And in that regard, I provided Your Honor with the Estate of Carpenter, 253 So.2d 697. To prove undue influence, one must demonstrate that a beneficiary had a confidential relationship with the decedent and actively

procured the will or trust.

Mr. Eliot Bernstein did not even suggest today that any of the beneficiaries actively procured the document. Why? Beneficiaries are essentially -- are ultimately the ten grandchildren. Mr. Bernstein, Eliot Bernstein, did not suggest today that any one of the ten grandchildren, who are ultimately beneficiaries, were active in procuring any of the five documents, nor did Mr. Bernstein submit to the Court any evidence of confidential relationship by anyone in connection with the various criteria to raise the presumption of undue influence, nor did Eliot Bernstein raise the presumption by satisfying any or enough of the criteria under the Carpenter case to go ahead and raise the presumption that anyone, any substantial beneficiary, had committed undue influence with respect to any of these documents.

For those various, multifarious reasons, Judge, I would submit to the Court that these documents are valid and should be held as such.

THE COURT: All right. Thank you.

Any closing from the defendant's side?

MR. BERNSTEIN: Oh, yeah.

THE COURT: You've got eight minutes

remaining.

MR. BERNSTEIN: Okay. Your Honor, we're really here today because of a complex fraud on the court and on beneficiaries like myself and my children. The only witness they procured to validate these documents has consented to the SEC and felony charges recently with his partner for insider trading. He came up on the stand and admitted that he committed fraud, and that his law firm forged documents and frauded documents, and then submitted them not only to the court, but beneficiaries' attorneys as part of a very complex fraud to not only change beneficiaries, but to seize dominion and control of the estates through these very contestable documents.

They've been shown by the governor's office to not be properly notarized. The two people who are going -- well, one is --

MR. ROSE: I don't want to object to --

MR. BERNSTEIN: -- has no --

MR. ROSE: Can I object? He's so far talking about things that aren't in evidence.

THE COURT: Sustained.

You can only argue those things that were received in evidence.

MR. ROSE: And I realize Your Honor has a good memory of the evidence --

MR. BERNSTEIN: I put in evidence that Mr. Spallina was SEC --

THE COURT: No, I sustained objections to those questions.

MR. BERNSTEIN: Oh, okay.

THE COURT: You can only argue those things that came into evidence.

MR. BERNSTEIN: Okay. They didn't bring in any of the necessary parties to validate these documents, other than Mr. Spallina, who admitted to the Court today that he fraudulently altered the trust document. Can I now say that?

THE COURT: It's not good for you to ask me questions. I've got to rule on objections, and I'm trying to give you some guidance so that you don't screw up. But I can't answer your legal questions.

MR. BERNSTEIN: Okay. So the only witness has admitted in this very case that his law firm submitted forged and fraudulent documents to the Court already in this case; that he himself did those frauds. And we're relying on his sole testimony.

None of the other people who signed these

documents are here today to validate or even confirm his statements. So it's a highly uncredible [sic] witness to the documents, especially when Mr. Spallina drafted, signed as a witness, gained interest in the documents himself personally as a trustee, and seems to clearly have then taken it upon himself to mislead beneficiaries as to the actual documents.

I have asked for production of these documents. Today there were no originals produced to this Court for you to examine.

And more importantly, there's a few last things I wanted to state to the Court. My children are not represented here today as beneficiaries. They were supposed to be represented by a trustee of a trust that does not exist in our possession. So they were -- I was sued as a trustee of a trust I've never been given to represent my children, who are alleged beneficiaries by these guys. And the estate's done nothing to provide counsel to three minor children, and left them here today without counsel, and me as a trustee of a trust that doesn't exist, as far as we know. I've never signed it. They haven't submitted it to the Court, to anybody.

I want to bring up Rule 1.20, pretrial procedure, case management conference process provides, "The matter to be considered shall be specified in the order of notice setting the conference."

So I just want to say that we had a status conference in Simon Bernstein's estate, and only Simon Bernstein's estate, and that this trial was scheduled in Simon's status conference, which violates that very rule. So this trial, in my view, was conducted improperly.

Like I said, if you look at the hearing transcript of that day, you'll see that Mr. Rose misleads the Court to think that all these cases were noticed up that day. But Mr. O'Connell, the PR, had only noticed it up for Simon's estate. So what I'm doing here at a trial in Shirley's trust violates Rule 1.20.

There are some other things that are violated and not -- I believe we didn't get to discuss the -- at the case management, the fact that, you know -- and I did try to get this out -- that we would need a lot more time for a competency hearing, for a removal of Ted process, which should have come first before doing this and letting them

argue, where it's been alleged that there's some serious problems with Ted Bernstein's representation, including the fact that the PR of the estate of Simon has filed with this Court notice that he's not a valid trustee.

MR. ROSE: Objection. Outside -- not in evidence.

THE COURT: Okay. If you're not going to argue the facts that are in evidence in this trial, then I'm going to ask you to stop.

MR. BERNSTEIN: Okay. Well, I'll keep going on my -- see, that's what's confusing. What trial? We had a case management. I was prepared for a Simon, where I have Simon trust construction, all those things ready, and I didn't come with any notes about Shirley. And I've tried to notice the Court that under 1.200, this trial was scheduled improperly in the estate of Simon, and should have been reheard or rescheduled or something.

But that seems not to matter. It doesn't matter that we follow the rules. I follow the rules, but it seems that the other side doesn't follow any of the rules; doesn't submit documents properly to courts; commits frauds on courts; and then wants you to believe the validity of these

documents based on a felony statement to the Court, who's under a consent with the SEC.

THE COURT: You've got two minutes remaining.

MR. BERNSTEIN: There were outstanding discovery requests. I was denied all these documents. I was denied the trust that I'm sued under representing my children. So I can't get any of those documents. We would have brought all that up at a real status conference had it been a real status conference and not a corralling or, as you called it, a wrangling of octopuses.

THE COURT: That's vivid imagery. Isn't it? I pride myself on that one.

MR. BERNSTEIN: Oh, yeah. Well, I was wrangled, technically, into the wrong case here today, in a status conference that you should have corrected upon learning about this. And Mr. Rose has been aware of his mistake in misleading the Court that all these cases were noticed up, when they weren't. And he didn't come to the Court to correct it. Kind of like they didn't come to the Court to correct the validity of these documents before acting under them, knowing they needed to be not only challenged on validity, but on construction of terms, which will come next, which

is going to just go right back into the same circle of fraud.

So their star witness is a felon. Their star witness has committed fraud upon this Court in this case. That's who they're relying on, and hoping you bank on his words to validate documents.

I, Your Honor, am asking that you don't validate the documents; that we move forward to have the documents properly forensically analyzed. They were the subject of ongoing criminal investigations, which are just getting kicked off. In fact, I got 7200 documents from Mr. Spallina, where almost, I think, 7200 are fraud.

THE COURT: Your time is more than elapsed. I was letting you finish up as a courtesy, but you're getting off into things that aren't in evidence --

MR. BERNSTEIN: Okay. Well, I don't think the trial was conducted fairly. I think that my due process rights have been denied under the law.

THE COURT: Your time is more than up. Thank you.

MR. BERNSTEIN: Okay.

THE COURT: Is there any rebuttal?

MR. BERNSTEIN: And I still would like to move for your disqualification, on the record.

THE COURT: On the record doesn't count. You've got to put it in writing.

MR. BERNSTEIN: Are you sure? I thought I saw in the rules --

THE COURT: I'll tell you what. You proceed under your understanding of the law and the rules. That's fine.

MR. BERNSTEIN: Okay.

THE COURT: Before I take this --

MR. BERNSTEIN: I rest.

THE COURT: -- before I take this rebuttal argument, I'll let you put your request for recusal in writing. We'll be out of session five minutes.

Is that something you want me to read?

MR. ROSE: I just want to make my final --

THE COURT: I just want to make sure that there's been no possibility that this gentleman won't have his moment to shine.

So go ahead and go put that in writing, sir. Be back in five minutes.

(A break was taken.)

THE COURT: Did you get that written down?

MR. BERNSTEIN: Can I approach?

THE COURT: Sure. All approaches are okay.

MR. BERNSTEIN: Do you want to wait for

everybody?

THE COURT: Do you have something that you wanted to file, a written motion to recuse?

MR. BERNSTEIN: Yeah. In freestyle.

THE COURT: All right. I'll take a look at it. Thank you.

MR. BERNSTEIN: Can I ask a question?

THE COURT: I'll be in recess. I'll take a look at this written motion. Thank you. It'll take me just a minute. Don't anybody go away.

(A break was taken.)

THE COURT: The stack of documents handed up to me by the defendant are duplicates of documents that he filed, it looks like, twice with the clerk on December 4th, and they've already been ruled upon by me. But I am also ruling today by handwritten order on the face of one of the documents that the disqualification motion is denied as legally insufficient; already ruled upon in the order of 12/8/15, at Docket Entry No. 98; identical to motions filed by defendant on 12/4/2015 at Docket Entries Nos. 94 and 98; done in order of John Phillips, 12/15/15. And since I have skills, I made copies of my handwritten order for everybody.

Gary, if you could, just hand these out. That'll take care of all that.

Now we can go back to talking about the case. I was going to take the rebuttal argument from Plaintiff's side. I'd take that now.

MR. ROSE: I have just the exhibits that we put in evidence on the plaintiff's side, if that's easier for the Court.

THE COURT: That would be much easier. Thank you.

MR. ROSE: And I have a proposed final judgment. And I wanted to talk about one paragraph of the final judgment in particular.

MR. BERNSTEIN: I haven't had time to review any final judgment or anything.

THE COURT: You're interrupting the argument. Thank you.

MR. ROSE: So the complaint alleges -- and I realize we didn't cover every issue in the entire case, but we do it within the four corners of Count II of the complaint. Count II of the complaint was stated in paragraph 79 through 88 of the complaint.

And the answer that's filed in this case on Count II at paragraph 80 alleges that there's been a fraud on the court by Ted Bernstein, including,

but not limited to, proven forgery, fraudulent notarizations, fraud on the court, altercation [sic] of trust documents, et cetera, et cetera. And in paragraph 82, the answer says that Ted should be removed for his ongoing involvement in fraud which is dealing with these documents.

Ted Bernstein is serving as a fiduciary. You've heard -- that was the defense to this case. That's stated in the complaint. You heard no evidence that Ted Bernstein was involved in the preparation or creation of any fraudulent documents. In fact, the evidence from Mr. Spallina was to the contrary.

So our final judgment in paragraph 5 asks the Court to make a ruling on the issues that are pled in the answer, specifically that there was no evidence that Ted was involved and that the evidence was to the contrary.

So we have no rebuttal. We believe we've established our case, and we proposed a final judgment for Your Honor's consideration that discusses that this is an action to adjudicate five documents to be the testamentary documents. Based on the evidence presented, they're genuine, authentic, valid and enforceable; has the requisite

findings. Paragraph 5, which I've explained, the reason we believe it's appropriate in the final judgment, given the pleadings that were made and the lack of evidence on those pleadings. And we didn't get into it today, but --

THE COURT: Well, if we didn't get into it today, then it's not proper for argument.

MR. ROSE: Well, it's alleged in the complaint and not proven, so I think it's appropriate to make a finding on it. You didn't actually hear testimony that was relevant to those issues about Ted Bernstein. And I would ask you to consider that 5 is supported by the evidence and the pleadings.

And 6, we would like you to declare the unauthorized one invalid, because it does change potentially something, and we want to know what we're doing going forward. And I don't think anyone disputes that Exhibit 6 that's in evidence was not valid. And then it just states this is intended to be a final order under the rules of probate code.

So that's our order. We would ask you to enter our judgment or a judgment similar to it; find in favor of the plaintiff; reserve

jurisdiction for numerous other matters that we need to deal with as quickly as we can. But, hopefully, with the guidance we get today, we'll be able to do it more quickly and more efficiently. So thank you.

THE COURT: All right. Thanks.

We'll be in recess. It was fun spending time with you all.

Sir, do you have any proposed final judgment you want me to consider? I've received one from the plaintiff's side. Is there some from the defendant's side?

MR. BERNSTEIN: No. I haven't received one from them. And seeing theirs --

THE COURT: Okay. Thank you.

Then we'll be in recess. Thank you all very much. I'll get this order out as quickly as I can.

(At 4:48 p.m. the trial was concluded.)

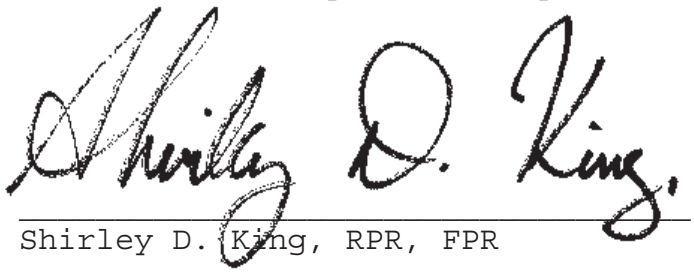
C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Shirley D. King, Registered Professional Reporter, State of Florida at large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 4th day of January, 2016.



Shirley D. King, RPR, FPR

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APPENDIX 24

Filing # 30382561 E-Filed 08/03/2015 11:04:33 AM

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION

IN RE: ESTATE OF

SIMON L. BERNSTEIN

Deceased.

File No. 502012CP4391XXXXNB IH

_____/

NOTICE OF HEARING

TO: ALL PARTIES ON CERTIFICATE OF SERVICE ATTACHED

YOU ARE HEREBY NOTIFIED that the undersigned will call up for hearing before the Honorable JOHN PHILLIPS, Judge of the above court, in the Judge's chambers in the Palm Beach North County Courthouse, 3188 PGA Blvd, Courtroom 3, Palm Beach Gardens, FL 33410 on **September 15, 2015 at 9:30 AM (one hour set aside):**

CASE MANAGEMENT CONFERENCE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by e-mail service or U.S. Postal Service on the 31st day of July, 2015 to the parties on the attached Service List.

BRIAN M. O'CONNELL
Florida Bar No: 308471
ASHLEY N. CRISPIN
Florida Bar No: 037495
JOIELLE A. FOGLIETTA
Florida Bar No: 094238
Ciklin Lubitz & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
Telephone: 561-832-5900 Facsimile: 561-833-4209
primary e-mail: service@ciklinlubitz.com
secondary e-mail: slobdell@ciklinlubitz.com

SERVICE LIST

Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, PA. 505 S. Flagler Dr., Suite 600 West Palm Beach, FL 33401 (561) 355-6991 arose@mrachek-law.com mchandler@mrachek-law.com Attorney for Ted S. Bernstein	John P. Morrissey, Esq. 330 Clematis St., Suite 213 West Palm Beach, FL 33401 john@jmorrisseylaw.com Attorney for Molly Simon et al	Donald R. Tescher, Esq. Robert L. Spallina, Esq. 925 S. Federal Highway, Suite 500 Boca Raton, FL 33432 Dtescher@tescherlaw.com ddustin@tescherlaw.com rspallina@tescherspallina.com kmoran@tescherspallina.com
Peter Feaman, Esq. Peter M. Feaman, P.A. 3695 Boynton Beach Blvd.,Suite 9 Boynton Beach, FL 33436 pfeaman@feamanlaw.com	Shendell & Pollock, P.L. 2700 N. Military Trail, suite 150 Boca Raton, FL 33431 241-2323 Fax: 241-2330 Gary R. Shendell, Esq. gary@shendellpollock.com estella@shendellpollock.com grs@shendellpollock.com Kenneth S. Pollock, Esq. ken@shendellpollock.com britt@shendellpollock.com grs@shendellpollock.com Attorney for Tescher and Spallina	Max Friedstein 2142 Churchill Lane Highland Park, IL 60035 Beneficiary
Eliot Bernstein and Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 N.W. 34th St. Boca Raton, FL 33434 iviewit@iviewit.tv	Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 psimon@stpcorp.com	Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com Lisa.friedstein@gmail.com Beneficiary
Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents & Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com		