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

CASE NO.:50-2012-CA-013933-XXXX-MB

FOURTH DISTRICT CASE NO.:4D16-3162

ELIOT IVAN BERNSTEIN
Appellant(s),

VS.

WILLIAM E STANSBURY
Appellee(s)

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

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163	10/1/2013		RECEIPT FOR PAYMENT
164	10/3/2013		NOTICE OF SERVICE
165	10/10/2013		SUBPOENA RETURNED / SERVED
166	10/16/2013		NOTICE OF SERVICE
167	10/30/2013		NOTICE OF UNAVAILABILITY
168	11/1/2013		REPLY/RESPONSE
169	11/1/2013		ORDER SETTING HEARING
170	11/4/2013		MOTION FOR EXTENSION OF TIME
171	11/5/2013		NOTICE OF HEARING
172	11/12/2013		NOTICE
173	11/13/2013		NOTICE OF CANCELLATION
174	11/15/2013		NOTICE OF TAKING DEPOSITION
175	11/15/2013		ORDER
176	11/25/2013		RE-NOTICE OF TAKING DEPOSITION

Case #: 502012CA013933XXXXMB			
Case Description: STANSBURY, WILLIAM E V BERNSTEIN, TED S			
#	Effective Date	Count	Description
177	11/26/2013		MOTION
178	11/27/2013		SUBPOENA RETURNED / SERVED
179	12/2/2013		AGREED ORDER
180	12/12/2013		REPLY/RESPONSE
181	12/20/2013		NOTICE OF FILING
182	1/10/2014		MOTION TO WITHDRAW
183	1/13/2014		MOTION TO WITHDRAW
184	1/13/2014		NOTICE OF HEARING
185	1/20/2014		REQUEST TO PRODUCE
186	1/20/2014		REQUEST TO PRODUCE
187	1/22/2014		CONSENT
188	1/31/2014		MOTION TO WITHDRAW
189	2/26/2014		MOTION
190	3/5/2014		MOTION
191	3/5/2014		NOTICE OF HEARING
192	3/10/2014		OBJECTION
193	3/11/2014		NOTICE OF APPEARANCE
194	3/11/2014		NOTICE OF UNAVAILABILITY
195	3/11/2014		NOTICE OF PRODUCTION NON PARTY
196	3/13/2014		ORDER
197	3/14/2014		NOTICE OF APPEARANCE
198	3/17/2014		OBJECTION
199	3/18/2014		RETURNED MAIL
200	3/21/2014		MOTION TO COMPEL
201	3/21/2014		NOTICE OF UNAVAILABILITY
202	3/28/2014		NOTICE OF UNAVAILABILITY
203	4/1/2014		SUBPOENA ISSUED
204	4/25/2014		ORDER SETTING HEARING
205	4/29/2014		RESPONSE TO:
206	4/30/2014		NOTICE OF CHANGE OF:
207	5/5/2014		ORDER
208	5/22/2014		MOTION TO COMPEL
209	5/22/2014		MOTION TO COMPEL
210	6/4/2014		NOTICE OF MEDIATION
211	6/5/2014		NOTICE OF MEDIATION
212	6/13/2014		NOTICE OF DROPPING PARTY
213	6/19/2014		STIPULATION
214	6/23/2014		ORDER OF DISMISSAL
215	6/25/2014		MOTION
216	7/15/2014		NOTICE OF UNAVAILABILITY
217	11/13/2014		NOTICE OF PRODUCTION NON PARTY
218	12/15/2014		SUBPOENA RETURNED / SERVED
219	12/15/2014		SUBPOENA RETURNED / SERVED
220	12/15/2014		SUBPOENA RETURNED / SERVED

Case #: 502012CA013933XXXXMB			
Case Description: STANSBURY, WILLIAM E V BERNSTEIN, TED S			
#	Effective Date	Count	Description
221	12/23/2014		NOTICE OF UNAVAILABILITY
222	1/22/2015		NOTICE OF UNAVAILABILITY
223	2/5/2015		NOTICE OF CHANGE OF:
224	3/24/2015		NOTICE OF UNAVAILABILITY
225	11/24/2015		NOTICE OF UNAVAILABILITY
226	1/15/2016		INACTIVE ATTORNEY
227	3/16/2016		REQUEST TO PRODUCE
228	4/6/2016		NOTICE
229	5/2/2016		MOTION TO COMPEL
230	5/10/2016		NOTICE OF UNAVAILABILITY
231	5/16/2016		MOTION TO COMPEL
232	5/26/2016		NOTICE OF HEARING
233	5/26/2016		NOTICE OF TAKING DEPOSITION
234	5/26/2016		NOTICE OF TAKING DEPOSITION
235	5/26/2016		NOTICE
236	5/26/2016		NOTICE
237	5/27/2016		NOTICE OF TAKING DEPOSITION
238	5/27/2016		NOTICE
239	6/6/2016		SUBPOENA RETURNED / SERVED
240	6/6/2016		SUBPOENA RETURNED / SERVED
241	6/14/2016		SUBPOENA RETURNED / SERVED
242	6/15/2016		NOTICE OF CANCELLATION
243	6/22/2016		NOTICE OF MEDIATION
244	6/24/2016		NOTICE OF CANCELLATION
245	6/24/2016		NOTICE OF CANCELLATION
246	6/24/2016		NOTICE OF CANCELLATION
247	7/1/2016		RE-NOTICE OF TAKING DEPOSITION
248	7/1/2016		RE-NOTICE OF TAKING DEPOSITION
249	7/1/2016		RE-NOTICE OF TAKING DEPOSITION
250	7/1/2016		RE-NOTICE OF TAKING DEPOSITION
251	7/6/2016		NOTICE OF UNAVAILABILITY
252	7/8/2016		MOTION
253	7/13/2016		ORDER
254	8/12/2016		NOTICE
255	8/12/2016		NOTICE OF CANCELLATION
256	8/12/2016		NOTICE OF CANCELLATION
257	8/12/2016		NOTICE OF CANCELLATION
258	8/18/2016		MOTION TO WITHDRAW
259	8/30/2016		NOTICE OF HEARING
260	9/8/2016		MOTION
261	9/8/2016		ORDER GRANTING WITHDRAW
262	9/15/2016		NOTICE OF APPEAL CIVIL
263	9/15/2016		APPL AND AFF OF INDIGENCY
264	9/16/2016		MEMORANDUM

Case #: 502012CA013933XXXXMB			
Case Description: STANSBURY, WILLIAM E V BERNSTEIN, TED S			
#	**Effective Date**	**Count**	**Description**
265	9/16/2016		ORDER OF RECUSAL
266	9/16/2016		DIVISION ASSIGNMENT
267	9/16/2016		NOTICE OF REASSIGNMENT CIVIL
268	9/16/2016		AUTOMATIC RECEIPT APPELLATE FILING
269	9/16/2016		ACKNOWLEDGMENT OF NEW CASE
270	9/16/2016		TRUE COPY
271	9/19/2016		MEMORANDUM
272	9/19/2016		ORDER SETTING STATUS HEARING
273	9/21/2016		MEDIATION REPORT
274	9/30/2016		RETURNED MAIL
275	9/30/2016		RETURNED MAIL
276	10/5/2016		ORDER SETTING STATUS HEARING
277	10/19/2016		ANSWER & AFFIRMATIVE DEFENSES

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

WILLIAM E. STANSBURY,
Plaintiff,

vs.

50 2012 CA 013 933 XXXXMB

Case No.

TED S. BERNSTEIN;
SIMON BERNSTEIN;
LIC HOLDINGS, INC.; and
ARBITRAGE INTERNATIONAL
MANAGEMENT, L.L.C., f/k/a
ARBITRAGE INTERNATIONAL
HOLDINGS, L.L.C.,
Defendants.
_____/

FILED
2012 JUL 30 PM 3:58
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL

COMPLAINT
And JURY DEMAND

WILLIAM STANSBURY (PLAINTIFF"), by and through his undersigned co-counsel, hereby demanding trial by jury of all issues so triable, hereby sues the Defendants, and says

1. This is an action for money damages in excess of $15,000, and for equitable relief.

2. Plaintiff is *sui juris*, and a resident of Palm Beach County, Florida.

3. Defendants TED S. BERNSTEIN ("TED BERNSTEIN"), and SIMON BERNSTEIN are both *sui juris*, and are both residents of Palm Beach County, Florida.

4. The corporate Defendants, LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C., are entities organized and existing under the laws of the State of Florida, all do business in the State of Florida and all have their principal offices in the State of Florida, and in Palm Beach County, Florida.

5. Defendants SIMON BERNSTEIN and TED BERNSTEIN (collectively "Defendants

BERNSTEIN") are, respectively, one another's father and son. They both own and control all of the corporate Defendants, and work closely together with respect thereto. In all matters involved herein, they worked closely together and were virtually one another's alter egos.

7 The acts and incidents giving rise to these causes of action occurred in Palm Beach County, Florida.

Background

8. Plaintiff has worked in the insurance field virtually all his adult life, and by 2003 had become well-known and highly regarded by major insurance companies, their principals, and by others throughout the insurance industry, at all levels thereof, as well as by professionals, including attorneys, CPAs, financial advisors, wealth managers and others who were involved in serving, or otherwise dealing with, insurers and insurance brokers.

9. SIMON BERNSTEIN dealt at high levels of the insurance industry, and specialized in developing and marketing insurance concepts suitable for persons of high net worth to incorporate in their wealth management and estate planning.

10. TED BERNSTEIN was actively involved in selling life insurance products in conjunction with attorneys, CPAs and other professionals, to be incorporated into clients' financial planning.

11. In 2003, TED BERNSTEIN approached Plaintiff, urging Plaintiff to spearhead the marketing of a unique insurance concept ("the said concept"), newly developed by a prominent law firm, which was designed for use in the financial and estate planning of wealthy individuals.

12. TED BERNSTEIN told Plaintiff that he knew of Plaintiff's knowledgeability, and reputation in the insurance and related industries and professions, and that Plaintiff was skilled

at, and accustomed to, speaking and marketing insurance products to, large groups of professionals, and that he realized that Plaintiff, because of his knowledgeability, reputation and abilities, would be ideal to market this concept nationwide, through prominent and experienced professionals..

13. SIMON BERNSTEIN proposed that Plaintiff work as an independent contractor for the Corporate Defendants, marketing the product to the above-described He offered Plaintiff an arrangement whereby Plaintiff would receive twenty percent (20%) of all net retained amounts of commissions received from insurance companies and general agents' overrides (hereinafter, "commissions") which chose to issue policies of the type to be marketed, for use in the said financial and estate planning, and all other sales by the companies. Plaintiff would receive no other salary remuneration, but would have his travel and marketing expenses advanced or reimbursed. In time, when Plaintiff agreed to become an employee rather than an independent contractor, he agreed to a salary of the equivalent of 15% of commissions received on all products.

14. After reviewing the concept and considering the terms of the arrangement offered by SIMON BERNSTEIN, Plaintiff agreed with BERNSTEIN to accept the proposal described in preceding paragraph 13, and all the parties proceeded to act in accordance therewith.

15. Thereafter, Plaintiff worked with diligence and skill, traveling throughout the United States, generating ever increasing sales, and generating very large commissions for Defendants and for Plaintiff, who received the agreed salary equal to 15% thereof. By 2006, the parties hereto began receiving checks, not only for commissions on new policies sold, but also renewal commissions. Initially, the Plaintiff and Defendants BERNSTEIN, and one secretary, comprised the entire workforce. At the height of the sales campaign, Defendants' staff for serving the

business generated by Plaintiff consisted of more than 40 individuals.

16. In 2005, the Plaintiff was paid his commissions in the form of two IRS forms 1099, from National Services Association, and from Defendant ARBITRAGE INTERNATIONAL MARKETING, INC. for his services as an independent contractor.

17. In 2006, Plaintiff received his agreed salary as an employee, reflected in two IRS forms W-2., One W-2 was from ARBITRAGE INTERNATIONAL MARKETING, INC., and the other was from ARBITRAGE INTERNATIONAL HOLDINGS, INC., which later became Defendant ARBITRAGE INTERNATIONAL MANAGEMENT, INC.

18. Also in 2006, SIMON BERNSTEIN told Plaintiff that Plaintiff, was being rewarded for the explosive growth of business, through receiving a 10% interest in LIC.

19. In 2007, Plaintiff received his agreed salary as an employee, which salary was reflected in an IRS Form W-2.

20. With the economic downturn in 2008, Defendants looked for ways to withhold from Plaintiff compensation to which he was entitled, and to deceive him into believing that the money which would have been paid to both Defendants as well as to Plaintiff as compensation, was instead being held in the company's coffers.

21. In order to hide from Plaintiff the real fact that Defendants were paying to Defendants BERNSTEIN the full earnings received as commissions, and thereby depriving Plaintiff of the 15% thereof to which he was entitled, they knew they had to terminate Plaintiff's function of calculating each person's entitlement to payment out of commissions received. Therefore, in early 2008, SIMON BERNSTEIN told Plaintiff that the Defendants BERNSTEIN felt that Plaintiff was spending too much time on making the said calculations, and that Plaintiff's time would be better spent in building the business. SIMON BERNSTEIN told

Plaintiff that he and TED BERNSTEIN had decided to pay themselves and Plaintiff identical salaries of not less than $1,000,000 each for 2008, and to distribute any profits beyond the total thus paid to the three owners, the Defendants BERNSTEIN and Plaintiff, according to their respective percentages of ownership, Plaintiff's share being 10%. Plaintiff, having thus far believed he was receiving whatever compensation he was entitled to, and having no reason to realize that this was a ruse to keep him in the dark as to the true state of affairs, readily acceded to his being relieved of the bookkeeping duties regarding calculating the disposition of moneys received.

22. Through misrepresentations made from 2008 through the date of filing of this Complaint, Defendants knowingly made false statements to Plaintiff to hide their scheme to withhold from Plaintiffs money to which he was entitled. For example, at times they claimed that money being received was not being paid as salary or distributions to either of Defendants BERNSTEIN but was being withheld and placed in company accounts, for eventual distribution. As Plaintiff and Defendants could afford to wait until year's end to be paid their distributions, and as Defendants BERNSTEIN assured Plaintiff that the payment arrangement would apply to all three equally, Plaintiff did not question the truthfulness of their representations..

23. In furtherance of their scheme to deprive Plaintiff of salary he had earned and to which he was entitled, Defendants intercepted mail addressed to Plaintiff, removed therefrom commission checks representing full commissions, deposited the same to their own accounts or otherwise converted the funds,, and willfully withhold from Plaintiff his salary. Defendants BERNSTEIN also opened Plaintiff's mail containing checks payable to him which were unrelated to Defendants' business.

24. In 2011, the Defendants BERNSTEIN decided to deceive Plaintiff into giving up

his 10% share in the business. Although he had never seen a stock certificate, Plaintiff had in fact been given K-1 statements reflecting his salary, which appeared to approximate 10% of the net profits or losses of LIC, after salary was paid. TED BERNSTEIN told Plaintiff that their accountants had discovered a taxable event which could cause all the owners of the company to have to pay taxes, and that they thought it would be unfair for Plaintiff to have to pay 10% of that tax, so TED BERNSTEIN promised that if Plaintiff would sign a paper ceding his 10% interest, TED BERNSTEIN would simply hold it and it would not become operative unless the tax liability came to exist. Plaintiff was assured that nothing would happen with the stock ownership until Plaintiff and the Defendants BERNSTEIN discussed the situation further after the Holiday Season.

25. Because of the misrepresentations, willful concealments of material facts, duplicity and deceit practiced by Defendants upon Plaintiff as described in preceding paragraphs 20 through 24, Plaintiff was reasonably of the belief that Defendants had complied , or intended to comply, with their material obligations to Plaintiff under the contract between them, and therefore was prevented from knowing, for a period of years, that these causes of action existed. The acts of Defendants in making false statements and withholding material information continues from its inception to the date of the filing hereof.

I. ACCOUNTING
(Against LIC and ARBITRAGE, for Accounting as to Withholding of Money Due Plaintiff)

26. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

27. The relationship between Plaintiff and the Defendants, particularly as affected by

Defendants' acts described in preceding paragraphs 20 through 25, inclusive, created a situation where Defendants had sole access to, receipts generated by Plaintiff's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to Plaintiff under his arrangement with Defendants.

28, The period of time during which Plaintiff has been deprived of moneys due him spans approximately four and a half years, the numerosity of the sources of receipts by Defendants of moneys from which the amounts due Plaintiff may be calculated, and the changes in the formula under which, and manner in which, Plaintiff was to be paid, all involve extensive and complicated accounts, and Plaintiff's remedy at law could not be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, and for such orders of Court as will require the Defendants to provide Plaintiff with all records and copies of documents, dated from the date in 2003 when Plaintiff first began his efforts to generate sales of the concept described in paragraph 11 above to the present, as will reveal his right to, and the amount of, all amounts: (a) received as commissions on said concepts or any other commissions as to which Plaintiff was entitled to a share; (b) due to Plaintiff, whether paid or not; (c) paid to Plaintiff, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the Defendants out of moneys received as commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid , to be paid, or not to be paid to Plaintiff, together with such other and further relief as the Court may deem just

and appropriate.

II. ACCOUNTING
(Against TED S. BERNSTEIN and SIMON BERNSTEIN, for Accounting as to Money Due to Plaintiff Which Said Defendants Converted)

29. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

30. The relationship between Plaintiff and the Defendants, particularly as affected by Defendants' acts described in preceding paragraphs 20 through 25, inclusive, created a situation where Defendants had sole access to, receipts generated by Plaintiff's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to Plaintiff under his arrangement with Defendants.

31, The period of time during which Plaintiff has been deprived of moneys due him spans approximately four and a half years, the numerosity of the sources of receipts by Defendants of moneys from which the amounts due Plaintiff may be calculated, and the changes in the formula under which, and manner in which, Plaintiff was to be paid, all involve extensive and complicated accounts, and Plaintiff's remedy at law could not be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, and for such orders of Court as will require the Defendants to provide Plaintiff with all records and copies of documents, dated from the date in 2003 when Plaintiff first began his efforts to generate sales of the concept described in paragraph 11 above to the present, as will reveal his right to, and the amount of, all amounts: (a) received as commissions on said concepts or any other commissions as to which Plaintiff was entitled to a

share; (b) due to Plaintiff, whether paid or not; (c) paid to Plaintiff, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the Defendants out of moneys received as said commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid , to be paid, or not to be paid to Plaintiff, together with such other and further relief as the Court may deem just and appropriate.

III. BREACH OF ORAL CONTRACT

(Against All the Defendants)

32. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

33. The arrangement between Plaintiff and Defendants as described in paragraphs 11 and 13 above, and as modified by the parties as further described above, constituted a contract between them.

34. An express term of that contract involved the commitment of Defendants to calculate, and to pay to Plaintiff, fully and timely, all sums due to him under the parties' contract, whether as commissions, salary, distributions, expenses or any other reason

35. The parties initially performed the duties required of them under said contract.

36. However, as described above in paragraphs 20 through 25, inclusive, Defendants willfully and maliciously agreed to breach their contract with Plaintiff by withholding from Plaintiff moneys due him under the contract.

37. Defendants did withhold such moneys due Plaintiff.

38. The withholding of such moneys constituted a material breach of the contact between Plaintiff and Defendants.

39. There is therefore due to Plaintiff from Defendants all amounts due under said contract, together with prejudgment and post-judgment interest on said amounts.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

IV. BREACH OF IMPLIED COVENANT Of GOOD FAITH and FAIR DEALING

40. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive, and paragraphs 33 through 38, inclusive.

41. The said contract, as a matter of law, contained an implied covenant of good faith and fair dealing, obligating the parties to honor every express term of the agreement..

42. Among the express terms of the oral contract between the parties were (a) that Plaintiff would be constantly apprised, either through being permitted to calculate all amounts due the Defendants out of commissions, or through being advised of all receipts of commissions and the disposition thereof, or the amounts due to Plaintiff for any reason under the terms of the contract; and (b) that Plaintiff would be fully and promptly paid all such amounts due him.

43. Through their actions as described in preceding paragraphs 20 through 25, inclusive, the Defendants willfully breached the said express of the contract.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for

the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

V. BREACH OF FIDUCIARY DUTY

41. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

42. Plaintiff reposed full confidence in the defendants BERNSTEIN, and trusted them and relied on them to be as good as their word and to deal honestly with him, for a variety of reasons. Plaintiff knew of SIMON BERNSTEIN as a major figure in the insurance industry, prior to their becoming parties to the agreement involved herein. Moreover, Plaintiff and the Defendants BERNSTEIN had formed a social relationship which had grown into what Plaintiff regarded as friendship. Moreover, as the initial situation under their contractual relationship had Plaintiff receiving all information as to commissions received and calculating the amount of money due to Plaintiff and the Defendants BERNSTEIN, as ,mentioned in preceding paragraphs 21 and 22, and also because Plaintiff was told he had been given a minority shareholder interest in LIC, Plaintiff reasonably felt that the Defendants would deal with Plaintiff honestly and fairly, and that the Defendants had no intention of hiding from Plaintiff any information as to the amounts due Plaintiff or as to the Defendants' intention of paying said amounts to Plaintiff

43. Moreover, when Defendants proposed to Plaintiff that Plaintiffs cease being the one to calculate moneys due the parties out of commissions received, the Plaintiff trusted Defendants to make proper, accurate and complete calculations, as Plaintiff had done, and to pay Plaintiff accordingly.

44. Furthermore, when Defendants BERNSTEIN made statements to Plaintiff as to why payments due him were not being paid, as described, for example, in preceding paragraphs 22 through 25, inclusive, and 42, he trusted Defendants to be telling Plaintiff the truth,

45. As a result of the foregoing, a fiduciary relationship existed between Defendants BERNSTEIN and Plaintiff, and there existed in Plaintiff complete confidence and trust in the said Defendants, of which confidence and trust said Defendants were well aware.

46. Defendants BERNSTEIN accepted the trust which Plaintiff reasonably placed in them.

47 Through Defendants' willful misrepresentations and withholding of material information as to their intentions and the purposes for which Plaintiff's payments were not being paid, and through their diversion from Plaintiff of amounts which should have been paid to him, Defendants abused and betrayed Plaintiff's trust and confidence in them, to Plaintiff's great detriment, in that he has been deprived of the said amounts due him, the precise amount of which cannot be calculated without access to Defendants' books and records, and a full accounting by them.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

VI. CIVIL THEFT
Against All Defendants

48. This is an action for Civil Theft under Chapter 772, Florida Statutes, more

specifically §772.11, Fla.Stats.

49. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

50. All funds which Defendants' records will reveal are due to Plaintiff but which have been deposited to any of the Defendants' accounts or which have been received by any Defendant or diverted by any Defendant to any recipient but Plaintiff are the specific funds to which this Count relates.

51. By refusing to pay to Plaintiff funds due him under their agreement, and by paying said sums to themselves or to others, Defendants have been guilty of criminal theft by conversion, which has been and continues to be performed by Defendants with the criminal intent of stealing his money and depriving him of the possession and use thereof.

52. Written demand for payment of all amounts due Plaintiff has been made to Defendants, more than 30 days preceding the filing of this Complaint, to no avail.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for three times the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, and such other remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate, together with such other and further relief as the Court may deem just and appropriate.

VII. FRAUD
(Against All Defendants)

53. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated

herein, preceding paragraphs 1 through 24, inclusive.

54. Defendants, with the intent to defraud Plaintiff by preventing his receipt of moneys due him from Defendants as commissions, salary, distributions, expenses, and otherwise, made false statements to him and withheld material information from him, all as specifically set forth in preceding paragraphs 20 through 24 above.

55. At the time said statements were made, Defendants knew that they were material and false, and that Plaintiff would rely thereon. At the time said material information was withheld from Plaintiffs, Defendants knew that the information being withheld was material, and that the withholding of the information would cause Plaintiff to rely on the absence of said information

56. Defendants intended for Plaintiff to rely on said false statements of material fact and to rely on the absence of the material facts which were withheld.

57. Plaintiff did rely on the false statements and the withholding of material information, and was damaged thereby. Through the loss the possession and use of moneys due him but withheld by Defendants under their scheme to defraud him of said money.

58. The behavior of Defendants in deceiving Plaintiff and in abusing the trust they had engendered in Plaintiff, as set forth in preceding paragraphs 42 through 47, which are incorporated herein by reference as if expressly restated herein, was in willful and conscious disregard of his rights, and was of such a concerted, premeditated, and outrageous nature as to go beyond the bounds of decency, and constituted rampant fraud.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

VIII. EQUITABLE LIEN

59. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive, and paragraphs 54 through 58, inclusive.

60. The bank accounts into which any of the commissions received by Defendants as to which Plaintiff was to receive a share of commissions received, and the operating accounts and other accounts of the corporate Defendants into which said commission checks were deposited were intended by Defendants and by Plaintiff to be the source out of which Plaintiff would be paid, and they therefore were intended to be, and therefore should be, charged by this Court with the obligation of being the source of all amounts Plaintiff was and is to be paid, including amounts not yet paid.

61. Any and all other accounts into which were deposited said commissions or any part thereof, out of which Plaintiff was to be paid, should, out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings, be charged with the obligation of paying Plaintiff.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts. Plaintiff further prays for the Court to declare and establish an equitable lien in favor of Plaintiff on all the accounts described in preceding paragraphs 60 and 61, and for all other accounts into which said commissions have been or will be wholly or partly diverted, and on all assets of Defendants or third parties which have been purchased wholly or partly with the

diversion of said funds due Plaintiff. Plaintiff further prays for such other and further relief as the Court may deem just and appropriate.

IX. CONTRACT IMPLIED IN LAW

62. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 25, inclusive.

63. By keeping the moneys due Plaintiff, Defendants have been unjustly enriched.

64. By agreeing to permit Defendants to receive, possess and control the paperwork revealing commissions received, and by agreeing that Defendants would assume the function of calculating amounts due the parties, Plaintiff conferred on Defendants the benefit of controlling the disposition of the funds received, including those due Plaintiff. The Defendants, having induced Plaintiff to confer said benefit, knew of the benefit and accepted and retained the benefit and abused it to defraud the Plaintiff.

65. The Circumstances are such that it would be inequitable for the Defendants to retain the benefit of the possession and use of funds due Plaintiff

WHEREFORE, Plaintiff prays for judgment that there exists a contract implied in law with the terms against Defendants described above, and for judgment against all Defendants, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

X. CONSTRUCTIVE TRUST

66. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

67. The bank accounts into which any of the commissions received by Defendants as to which Plaintiff was to receive a share of commissions received, and the operating accounts and other accounts of the corporate Defendants into which said commission checks were deposited were intended by Defendants and by Plaintiff to be the source out of which Plaintiff would be paid, and they therefore were intended to be, and therefore should be, charged by this Court with the obligation of being the source of all amounts Plaintiff was and is to be paid, including amounts not yet paid.

68. Any and all other accounts into which were deposited said commissions or any part thereof, out of which Plaintiff was to be paid, should, out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings, be charged with the obligation of paying Plaintiff.

.WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts. Plaintiff further prays for the Court to declare and establish a constructive trust in favor of Plaintiff on all the accounts described in preceding paragraphs 60 and 61, and for all other accounts into which said commissions have been or will be wholly or partly diverted, and on all assets of Defendants or third parties which have been purchased wholly or partly with the diversion of said funds due Plaintiff. Plaintiff further prays for such other and further relief as the Court may deem just and appropriate.

XI. INDEMNIFICATION

69. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

70. When Defendants entered the arrangement with Plaintiff described in preceding paragraph 13, SIMON BERNSTEIN, acting for himself and on behalf of the corporate Defendants and TED BERNSTEIN, and for their collective and shared benefit, told Plaintiff that it would be better for the simplicity of administration, if Plaintiff would arrange for all commissions, paid by insurance companies for sales of the said product by the Defendant companies, to be paid in the name of Plaintiff., even though Plaintiff would ultimately receive only 15% thereof.

71. Plaintiff, believing the representation that this was being requested solely to simplify bookkeeping and administration, agreed to receive all commissions in his own name, even though the bulk of each commission would become the property of the various Defendants.

72. At the time Defendants, through SIMON BERNSTEIN, represented to Plaintiff that the reason for their request that Plaintiff receive all commissions solely in his own name was for administrative simplicity, they knew that they had an ulterior motive in making this request. Their said motive was that, in the event any insurance company which had paid a commission for sale of the said product were to request a full refund of the commission on the ground that the insurance client or the broker had falsified the application for the policy, Defendants intended to disclaim liability therefor, and to avoid personal and corporate responsibility for any requests for refund of commissions paid, even though they collectively have received 85% of each such commission.

73. Plaintiff, acting in good faith, did not realize that Defendants were concealing this motive, or that such was their motive, and he reasonably relied on their representations as to the reason for the request, to his detriment.

74. As a direct and proximate result of the Defendants' representations, Plaintiff will have nominal full liability for refund of any commissions thus sought to be refunded as described in preceding paragraph 72. Such liability creates the certainty that requests for refunds will be made solely to Plaintiff, even though Defendants received 85% of the commissions.. Such disproportionate and unfair liability has been caused by the willful misrepresentation by Defendants.

75. Plaintiff was without fault in reasonably relying on the said representations.

76. Defendants were solely at fault in creating the said liability.

77. There was a special relationship between Plaintiff and the Defendants, because Plaintiff was acting as the nominal agent for Defendants in receiving in his name 100% of the commissions, making him vicariously liable for the refund of the 85% of commissions which were retained by Defendants for their own benefit.

78. Moreover, Defendants had ceased to pay Plaintiff any commissions. Instead, as an employee he was now receiving a salary. To reflect Plaintiff's successful generation of Defendants' business, Defendants made Plaintiff's salary approximate 15% of the amount of commissions received. Nonetheless, as Plaintiff was not receiving any share of commissions *per se*, he should not have his indemnification limited to 85%, but rather it should be to the full 100% of all commissions being refunded.

WHEREFORE, Plaintiff prays for a Judgment in his favor, and against all Defendants, Adjudicating them under an obligation to defend, hold harmless and indemnify Plaintiff from

and against refund claims for said commissions, to the extent of 100% thereof, and for such other and further relief as the Court shall deem just and appropriate.

July 30, 2012

Peter M. Feaman, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552 Fax: 561-734-5554
pfeaman@feamanlaw.com

By: _____
Peter M. Feaman
Fla. Bar No. 260347

Kenneth D. Stern, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-740-1413 Fax: 561-734-5554
kdstern@gmail.com

By: _____
Kenneth D. Stern
Fla. Bar No. 0244929

R E C E I P T

PALM BEACH CTY CIR CT JISPROD

Receipt Number: CAMB698452
Date: 30-JUL-2012
Cashier: KBUTLER

Payor: NANCY GUFFEY - LANDERS PA
Addr:

Violation/Docket	Description	Amount
Case: 2012CA013933 - WILLIAM STANSBURY V TED BERNSTEIN		
Party: WILLIAM E STANSBURY		
CAFF		401.00
	CHECK RECEIVED GENERAL ACCT	-401.00
	Total Fees:	401.00
	Total Payment:	401.00

000033

FORM 1.997. CIVIL COVER SHEET

I. CASE STYLE

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

WILLIAM E. STANSBURY,
Plaintiff,

v.

CASE NO:

50 2012 CA 013 933 XXXXMB

TED S. BERNSTEIN; SIMON BERNSTEIN; LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC.
Defendants.
_____/

II. TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x in both the main category and subcategory boxes.

- ☐ Condominium
- ☒ Contracts and indebtedness
- ☐ Eminent domain
- ☐ Auto negligence
- ☐ Negligence—other
  - ☐ Business governance
  - ☐ Business torts
  - ☐ Environmental/Toxic tort
  - ☐ Third party indemnification
  - ☐ Construction defect
  - ☐ Mass tort
  - ☐ Negligent security
  - ☐ Nursing home negligence
  - ☐ Premises liability—commercial
  - ☐ Premises liability—residential
- ☐ Products liability
- ☐ Real property/Mortgage foreclosure
  - ☐ Commercial foreclosure $0 - $50,000
  - ☐ Commercial foreclosure $50,001 - $249,999
  - ☐ Commercial foreclosure $250,000 or more
  - ☐ Homestead residential foreclosure $0 - $50,000
  - ☐ Homestead residential foreclosure $50,001 - $249,999
  - ☐ Homestead residential foreclosure $250,000 or more
  - ☐ Nonhomestead residential foreclosure $0 - $50,000
  - ☐ Nonhomestead residential foreclosure $50,001 - $249,999
  - ☐ Nonhomestead residential foreclosure $250,000 or more
  - ☐ Other real property actions $0 - $50,000
  - ☐ Other real property actions $50,001 - $249,999
  - ☐ Other real property actions $250,000 or more
- ☐ Professional malpractice
  - ☐ Malpractice—business
  - ☐ Malpractice—medical
  - ☐ Malpractice—other professional
- ☐ Other
  - ☐ Antitrust/Trade regulation
  - ☐ Business transactions
  - ☐ Constitutional challenge—statute or ordinance

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL
2012 JUL 30 PM 3:18
FILED

☐ Constitutional challenge—proposed amendment
☐ Corporate trusts
☐ Discrimination—employment or other
☐ Insurance claims
☐ Intellectual property
☐ Libel/Slander
☐ Shareholder derivative action
☐ Securities litigation
☐ Trade secrets
☐ Trust litigation

III. REMEDIES SOUGHT (check all that apply):
☒ monetary;
☒ nonmonetary declaratory or injunctive relief;
☐ punitive

IV. NUMBER OF CAUSES OF ACTION: [ ]
(specify) Eleven (11)

V. IS THIS CASE A CLASS ACTION LAWSUIT?
☐ yes
☒ no

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?
☒ no
☐ yes If "yes," list all related cases by name, case number, and court.

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?
☒ yes
☐ no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature _____
Attorney or party

Kenneth D. Stern
(type or print name)

Fla. Bar # 0244929
(Bar # if attorney

July 30, 2012
Date

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

WILLIAM E. STANSBURY,
Plaintiff,

v.

CASE NO: 502012CA013933 XXXX MB AA

TED S. BERNSTEIN; SIMON BERNSTEIN; LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC.
Defendants.
_____/

FILED
12 AUG -9 PM 1:59
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT PROBATE

NOTICE OF APPEARANCE AS CO-COUNSEL

COMES NOW Peter M. Feaman, P.A., and hereby files its Notice of Appearance as Co-counsel for Plaintiff, WILLIAM E. STANSBURY, and requests that all pleadings, correspondence and other notices include Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, as co-counsel for Plaintiff.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via facsimile and U.S. Mail to David A. Riggs, Esq., and David McKibbin, Esq., Rutherford Mulhall, P.A., 2600 No. Military Trail, Fl. 4, Boca Raton, FL 33431 on this 8th day of August, 2012.

PETER M. FEAMAN, P.A.
Co-counsel for Plaintiff
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: Peter M. Feaman
Peter M. Feaman
Florida Bar No.: 0260347

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

WILLIAM E. STANSBURY,
Plaintiff,

v.

CASE NO: 502012CA013933 XXXX MB AA

TED S. BERNSTEIN; SIMON BERNSTEIN; LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC.
Defendants.
_____/

FILED
12 SEP -6 PM 4:21
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 2

NOTICE OF COMPLIANCE WITH RULE 2.516
AND DESIGNATION OF E-MAIL ADDRESSES

Plaintiff, WILLIAM E. STANSBURY, by and through his undersigned counsel, and pursuant to Rule 2.516 of Florida Rules of Judicial Administration, hereby designates the following e-mail addresses for receiving service of all Court documents:

1. Primary: service@feamanlaw.com
2. Secondary: mkoskey@feamanlaw.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via facsimile and U.S. Mail to David A. Riggs, Esq., and David McKibbin, Esq., Rutherford Mulhall, P.A., 2600 No. Military Trail, Fl. 4, Boca Raton, FL 33431 on this 31 day of August, 2012.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554

By: _____
Peter M. Feaman
Florida Bar No.: 0260347

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

WILLIAM E. STANSBURY, an individual,

Plaintiff,

v.

CASE NO.: 50 2012CA013933 XXXX(NB)
(AA)

TED S. BERNSTEIN, an individual,
SIMON L. BERNSTEIN, an individual,
LIC HOLDINGS, INC., a Florida
Corporation, **ARBITRAGE**
INTERNATIONAL MARKETING, LLC, a
Florida Corporation f/k/a **ARBITRAGE**
INTERNATIONAL HOLDINGS, LLC.,

Defendants.

FILED
12 SEP 10 PM 2:33
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

MOTION FOR ENLARGEMENT OF TIME

Defendants, TED S. BERNSTEIN ("Ted"), SIMON L. BERNSTEIN ("Si"), LIC HOLDINGS, INC. ("LIC") and ARBITRAGE INTERNATIONAL MARKETING, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC ("Arbitrage") (Ted, Si, LIC and Arbitrage are, collectively, the "Defendants"), pursuant to Fla. R. Civ. P. 1.090(b), move for an enlargement of time to respond to Plaintiff, WILLIAM E. STANSBURY's, complaint, and in support state:

1. On July 31, 2012, Plaintiff served Defendants with his eleven count complaint.

2. On August 20, 2012, shortly after the undersigned's retention as counsel for the Defendants, the undersigned contacted Plaintiff's counsel to request an enlargement of time to respond to the complaint up through and including Wednesday, September 19, 2012.

Unfortunately, Plaintiff's counsel was only authorized by Plaintiff to agree to an enlargement of time up through and including September 7, 2012.

3. Due to other pressing matters and the intervening holiday, the undersigned has been unable to properly devote the time necessary to investigate Plaintiff's allegations, evaluate all potential defenses and claims and formulate a response to the complaint. Accordingly, Defendants seek an enlargement of time, through and including Monday, September 24, 2012, to serve Defendants' response to the complaint.

4. This motion is not made for the purpose of delay, or any other improper purpose, and no prejudice will be caused to Plaintiff by the granting of this motion.

5. The undersigned has consulted with Plaintiff's counsel. Unfortunately, Plaintiff refuses to consent to the relief requested herein.

WHEREFORE, Defendants respectfully request entry of an order enlarging the time for the Defendants to serve their response to the complaint through and including Monday, September 24, 2012 and granting such other and further relief this Court deems just and appropriate.

Dated this 7th day of September, 2012.

GREENBERG TRAURIG, P.A.
401 E. Las Olas Blvd., Suite 200
Telephone: (954) 765-0500
Facsimile: (954) 765-1477

Jon L. Swergold
Florida Bar No. 0108510
swergoldj@gtlaw.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the has been sent via e-mail and U.S. Mail to: Peter M. Feaman, Esq.(pfeaman@feamanlaw.com), Kenneth D. Stern, Esq. (kdstern@gmail.com), 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436 on this 7th day of September, 2012.

JONL. SWERGOLD

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

CASE NO: 502012CA013 933XXXXMB AA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN, SIMON BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C.,

Defendants.

NOTICE OF DESIGNATION OF PRIMARY AND SECONDARY E-MAIL ADDRESSES IN COMPLIANCE WITH NEW MANDATORY E-MAIL SERVICE RULE

FILED
2012 SEP 17 PM 4:10
SHARON R. BOCK, CLERK
PALM BEACH COUNTY FL
CIRCUIT COURT

Defendants, TED S. BERNSTEIN, SIMON BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C., by and through undersigned counsel, and in accordance with Florida Rule of Civil Procedure 1.080 (as amended effective September 1, 2012) and new Florida Rule of Judicial Administration 2.516 (as enacted effective September 1, 2012), hereby designates undersigned counsel's primary and secondary electronic mail addresses in the above styled cause and respectfully requests that the copies of all orders, process, pleadings and other documents filed or served in this matter be served at the primary and secondary e-mail addresses listed below, with such service complying by new Rule 2.516(b)(1)(E). Initiating documents shall be served by hard copy in addition to e-mail service required by new Rule 2.516(b)(1)(A).

Primary: swergoldj@gtlaw.com, arnsdorffk@gtlaw.com
Secondary: steffesj@gtlaw.com, FLService@gtlaw.com

Respectfully submitted,

JON L. SWERGOLD, ESQ.
Florida Bar No. 0108510
swergoldj@gtlaw.com
KRISTINA L. ARNSDORFF, ESQ.
Florida Bar No. 0040596
arnsdorffk@gtlaw.com
GREENBERG TRAURIG, P.A.
401 East Las Olas Boulevard, Suite 2000
Fort Lauderdale, Florida 33301
Telephone: (954) 765-0500
Facsimile: (954) 765-1477
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail to: pfeaman@feamanlaw.com and kdstern@gmail.com, **Peter M. Feaman, Esq.**, **Kenneth D. Stern, Esq.**, 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, on this 14th day of September 2012.

JON L. SWERGOLD

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: 502012CA013933 XXXX MB AA

v.

TED S. BERNSTEIN; SIMON BERNSTEIN; LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC.
Defendants.
_____/

FILED
12 SEP 18 PM 4:36
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

NOTICE OF COMPLIANCE WITH RULE 2.516
AND DESIGNATION OF E-MAIL ADDRESSES

Plaintiff, WILLIAM E. STANSBURY, by and through his undersigned counsel, and pursuant to Rule 2.516 of Florida Rules of Judicial Administration, hereby designates the following e-mail addresses for receiving service of all Court documents:

1. Primary: service@feamanlaw.com
2. Secondary: mkoskey@feamanlaw.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail at swergoldj@gtlaw.com; arnsdorffk@gtlaw.com; steffesj@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301 this 14TH day of SEPTEMBER, 2012.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: */s/ Peter M. Feaman*
Peter M. Feaman
Florida Bar No.: 0260347

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

CASE NO: 502012CA013 933XXXXMB AA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN, SIMON BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C.,

Defendants.

SUGGESTION OF DEATH

FILED
12 SEP 20 PM 2:43
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

Defendants, TED S. BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C., pursuant to Fla. R. Civ. P. 1.260(a), hereby give notice of the death of Defendant, Simon Bernstein. Mr. Bernstein died on September 13, 2012.

Dated this 19 day of September 2012.

GREENBERG TRAURIG, P.A.
401 East Las Olas Boulevard, Suite 2000
Fort Lauderdale, Florida 33301
Telephone: (954) 765-0500
Facsimile: (954) 765-1477

By: _____
JON L. SWERGOLD, ESQ.
Florida Bar No. 0108510
swergoldj@gtlaw.com
KRISTINA L. ARNSDORFF, ESQ.
Florida Bar No. 0040596
arnsdorffk@gtlaw.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail to: pfeaman@feamanlaw.com and kdstern@gmail.com, **Peter M. Feaman, Esq., Kenneth D. Stern, Esq.**, 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, on this 19th day of September 2012.

JON L. SWERGOLD

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

WILLIAM E. STANSBURY, an individual,

Plaintiff,

v.

CASE NO.: 50 2012CA013933 XXXX(NB)
(AA)

TED S. BERNSTEIN, an individual,
SIMON L. BERNSTEIN, an individual,
LIC HOLDINGS, INC., a Florida Corporation, **ARBITRAGE INTERNATIONAL MARKETING, LLC**, a Florida Corporation f/k/a **ARBITRAGE INTERNATIONAL HOLDINGS, LLC.**,

Defendants.

FILED
12 SEP 25 PM 2:56
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

SECOND MOTION FOR ENLARGEMENT OF TIME

Defendants, TED S. BERNSTEIN ("Ted"), LIC HOLDINGS, INC. ("LIC") and ARBITRAGE INTERNATIONAL MARKETING, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC ("AIM") (Ted, , LIC and Arbitrage are, collectively, the "Defendants"), pursuant to Fla. R. Civ. P. 1.090(b), move for an additional brief enlargement of time to respond to Plaintiff, WILLIAM E. STANSBURY's, complaint, and in support state:

1. On July 31, 2012, Plaintiff served Defendants with his eleven count complaint.

2. On September 7, 2012, the Defendants filed a motion for an enlargement of time to respond to the complaint through and including Monday, September 24, 2012.

3. On September 19, the Defendants filed a suggestion of death for Defendant Simon Bernstein ("Simon"), who passed away on September 13, 2012.[1] As reflected in the complaint, Simon and Ted were father and son, respectively. The unexpected and sudden passing of Simon has given rise to a myriad of family and business issues for Ted, LIC and AIM. These matters, as well as the Jewish holidays have precluded the undersigned from effectively communicating with the Defendants.

4. Accordingly, the undersigned has been unable to properly complete the necessary investigation of Plaintiff's allegations, evaluate all potential defenses and claims and finalize a response to the complaint. Accordingly, Defendants seek a brief one week enlargement of time, through and including Monday, October 1, 2012, to serve Defendants' response to the complaint.

5. This motion is not made for the purpose of delay, or any other improper purpose, and no prejudice will be caused to Plaintiff by the granting of this motion.

6. The undersigned contacted Plaintiff's counsel to request his consent to the relief sought herein. However, Plaintiff's counsel was unavailable at the time and has not returned the undersigned's call.

[1] The undersigned law firm was retained by Simon prior to his passing and would have filed the instant motion on behalf of Simon had he not passed away. However, the undersigned has not been retained by Simon's estate as of the filing of this motion. In any event, Simon's death has the effect of an abatement and precludes the entry of a default against Simon's estate Floyd v. Wallace, 339 So.2d 653, 654-55 (Fla. 1976).

WHEREFORE, Defendants respectfully request entry of an order enlarging the time for the Defendants to serve their response to the complaint through and including Monday, October 1, 2012 and granting such other and further relief this Court deems just and appropriate.

Dated this 24th day of September, 2012.

GREENBERG TRAURIG, P.A.
401 E. Las Olas Blvd., Suite 200
Telephone: (954) 765-0500
Facsimile: (954) 765-1477

Jon L. Swergold
Florida Bar No. 0108510
swergoldj@gtlaw.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the has been sent via e-mail and U.S. Mail to: Peter M. Feaman, Esq.(pfeaman@feamanlaw.com), Kenneth D. Stern, Esq. (kdstern@gmail.com), 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436 on this 24th day of September, 2012.

JON L. SWERGOLD

FILED
12 OCT -3 PM 2:00
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

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

CASE NO: 502012CA013 933XXXXMB AA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN, SIMON BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C.,

Defendants.

MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT

Defendants, TED S. BERNSTEIN ("Ted"), LIC HOLDINGS, INC. ("LIC"), and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C. ("AIM")[1], by and through their undersigned counsel, and pursuant to Florida Rule of Civil Procedure 1.140(b) and (e), hereby move to dismiss the Complaint filed by Plaintiff, William E. Stansbury ("Plaintiff" or "Stansbury"), for failure to state a cause of action, or, in the alternative, for a more definite statement, and for an award of attorneys' fees, and in support state:

I. INTRODUCTION

1. On July 30, 2012, Plaintiff filed his eleven (11) count Complaint against Defendants arising out of at least two (2) purported oral contracts allegedly entered into between

[1] On September 19, 2012, Defendants Ted, LIC and AIM, pursuant to Fla. R. Civ. P. 1.260(a), served a Suggestion of Death for Defendant, Simon Bernstein ("Simon"). The undersigned law firm was retained by Simon prior to his passing and would have filed the instant motion on behalf of Simon had he not passed away. However, the undersigned has not been retained by Simon's estate as of the filing of this motion. In any event, Simon's death has the effect of an abatement and precludes the entry of a default against Simon's estate. *Floyd v. Wallace*, 339 So. 2d 653, 654-55 (Fla. 1976).

Plaintiff and LIC and/or AIM. Plaintiff's Complaint should be dismissed in its entirety because each count fails to allege a cause of action and the Complaint improperly lumps together all four (4) Defendants, in essence alleging that "everyone did everything" -- notwithstanding Plaintiff's own admissions that the alleged oral contracts were entered into by the "Corporate Defendants" (defined in the Complaint as LIC and AIM, collectively)[2], not the individual Defendants.

2. Further, Plaintiff's Complaint is confusing and is riddled with a multitude of ambiguities, as well as vague and contradictory allegations that make responding to the Complaint virtually impossible. Accordingly, Plaintiff's Complaint should be dismissed in its entirety, or, in the alternative, Plaintiff should be required to file a more definite statement as to any count not dismissed.

II. PLAINTIFF'S ALLEGATIONS

3. Plaintiff alleges, *inter alia*, that in 2003, Ted approached Plaintiff regarding "spearhead[ing] the marketing of an unique insurance concept . . . developed by a prominent law firm . . . designed for use in the financial and estate planning of wealthy individuals." Complaint at ¶ 11.

4. Sometime thereafter, Plaintiff alleges he worked as an independent contractor for the Corporate Defendants, receiving a portion of net retained commissions received by the Corporate Defendants from insurance companies and that the commissions were paid to him in 2005 in the form of two (2) 1099's. *See* Complaint at ¶¶ 13 and 16.

5. Plaintiff alleges that, in 2006, he became an "employee" and verbally agreed to a "salary of the equivalent of 15% of commissions received on all products." Complaint at ¶¶ 13 and 17.

---

[2] *See* Complaint at ¶¶ 4, 13 and 16-17. Indeed, as currently pled, it is unclear from the complaint whether Stansbury is alleging he had oral contracts with **both** AIM and LIC and that each oral contract was amended in "early 2008".

6. Plaintiff admits that in 2006 he "received his agreed salary as an employee" and was paid by AIM. Complaint at ¶ 17.

7. Plaintiff further admits that he "received his agreed salary as an employee" in 2007. Complaint at ¶ 18.

8. Plaintiff alleges that in "early 2008" he agreed to forgo his 15% of net retained commissions salary in exchange for a $1,000,000 salary and a pro rata (10%) distribution of any profits going forward. *See* Complaint at ¶¶ 21 and 22.

9. Notwithstanding the allegations of paragraph 19, that Stansbury received his agreed salary as an employee in 2007, Plaintiff alleges that as of the filing of the complaint on July 30, 2012, he has been "deprived of moneys [sic] due him . . . [for] approximately four and a half years." Complaint at ¶ 22.

III. MOTION TO DISMISS

A. Counts I (Accounting), II (Accounting), III ((Breach of Oral Contract), IV (Breach of Implied Covenant of Good Faith and Fair Dealing), V (Breach of Fiduciary Duty), VII (Fraud), VIII (Equitable Lien), IX (Contract Implied in Law) and X Constructive Trust) of the Complaint are Barred by the Applicable Statute of Limitations and Should be Dismissed

10. Counts I (Accounting), II (Accounting), III (Breach of Oral Contract), IV (Breach of Implied Covenant of Good Faith and Fair Dealing), V (Breach of Fiduciary Duty), VII (Fraud), VIII (Equitable Lien), IX (Contract Implied in Law), and X (Constructive Trust) are barred in whole or in part by the applicable 4-year statute of limitations set forth in Fla. Stat. § 95.11(3).

11. Accepting Plaintiff's allegations as true for purposes of this Motion only, Plaintiff's various causes of actions accrued in "early 2008" when Plaintiff's alleged oral contract with LIC and/or AIM was modified from an agreement to receive a salary of 15% in net

retained commissions to a $1,000,000 salary and a pro rata (10%) distribution of any profits going forward. Plaintiff concedes that he was paid his alleged agreed-upon commissions in 2005, 2006 and 2007. *See* Complaint at ¶¶ 13 and 16-18. Therefore, Plaintiff's alleged causes of actions can only be based upon the purported breach of the alleged modified oral contract(s) in 2008.

12. While Plaintiff's Complaint fails to specifically identify the precise date the breach of the alleged oral contract(s) occurred, it appears, based on Plaintiff's allegations, that the purported breach would have occurred in "early 2008". *See* Complaint at ¶¶ 22 and 28 (Plaintiff alleges that he has been "deprived of moneys [sic] due him . . . [for] approximately ***four and a half years***.") (emphasis added).

13. Consequently, the statute of limitations expired on Plaintiff's various causes of action to the extent based upon claims accruing prior to July 31, 2008. Plaintiff, however, did not file his Complaint until July 30, 2012. Therefore, Counts I, II, III, IV, V, VI, VIII , IX and X should be dismissed as being barred by the statute of limitations.

B. Counts II (Accounting), III (Breach of Oral Contract) IV (Breach of Implied Covenant of Good Faith and Fair Dealing) and Count IX (Contract Implied in Law) Should Also be Dismissed Because Plaintiff Has Not Alleged Sufficient Facts to Assert Claims Against Ted in His Individual Capacity

14. Plaintiff's Complaint fails to specify how or why Ted is personally liable for the payment of an alleged obligation of either LIC and/or AIM to Plaintiff. Indeed, Plaintiff admits that he was an employee of the Corporate Defendants, he was paid by AIM and entered into the alleged oral contract(s), and subsequent modified oral contract(s), with LIC and/or AIM.

15. Plaintiff's theory upon which he attempts to sue Ted is unclear at best. Indeed, Plaintiff never alleges Ted was a party to the alleged oral contract(s) or that he agreed to be

personally responsible for payment to Plaintiff. The Defendants and the Court should not be required to guess as to this fundamental matter, which is conspicuously absent from the Complaint.

16. In order to impose personal liability against Ted for breach of an oral contract(s) with the Corporate Defendants, breach of the implied covenant of good faith and fair dealing relating to the alleged oral contract(s), for an individual accounting, and a contract implied in law, Plaintiff must affirmatively allege that Ted acted in some capacity other than as a mere officer of the Corporate Defendants. *See Superior Garlic International v. E&A Produce Corp.*, 913 So. 2d 645 (Fla. 3d DCA 2005) (claim against president of company was improper where there was no evidence that president acted in a personal capacity rather than as a officer).

17. Additionally, Plaintiff does not allege, nor can he, that any consideration flowed to Ted, individually. Without any consideration, there can be no enforceable contract. *St. Joe Corp. v. McIver*, 875 So. 2d 375 (Fla. 2004) (an oral contract is subject to the basic requirements of contract law, such as offer, acceptance, consideration and sufficient specification of essential terms).

18. Because there is no set of facts under which Plaintiff can state a cause of action against Ted, individually, Count II (Accounting), Count III (Breach of Oral Contract), Count IV (Breach of the Implied Covenant of Good Faith & Fair Dealing) and Count IX (Contract Implied in Law) should be dismissed as to Ted.

C. Counts I (Accounting Against LIC and AIM) and Count II (Accounting Against T. Bernstein and S. Bernstein) Should Also Be Dismissed Because Plaintiff's Allegations Are Inherently Contradictory and Plaintiff Fails to State a Cause of Action

19. In Counts I and II, Plaintiff seeks an accounting, ***dating back to 2003***, against the Corporate Defendants and the individual Defendants, respectively. Aside from the fact that Plaintiff's Complaint is devoid of any allegations that Ted was a party to the alleged oral contract(s) between Plaintiff and one or both of the Corporate Defendants, or any other allegations under which Ted could be held individually liable for breach of the alleged oral contract(s) and a corresponding accounting, Plaintiff admits in paragraphs 16-19 -- which are expressly incorporated by reference into Count I -- that Plaintiff was properly paid through 2007.

20. Further, Plaintiff asserts in paragraph 28 of Count I and paragraph 31 of Count II that he is purportedly owed payment for "four and a half years" under an alleged oral contract. These allegations are both inconsistent with Plaintiff's demand for an accounting in both Counts I and II ***dating back to 2003*** and are vague. *See* WHEREFORE clauses following ¶¶ 28 and 31. Accordingly, Counts I and II should be dismissed. *See Peacock v. General Motors Acceptance Corp.*, 432 So. 2d 142, 146 (Fla. 1st DCA 1983)("contradictory allegations within a single count neutralize each other and render the count insufficient on its face", even where they are "incorporated in that count" from a prior count of the complaint).

21. Additionally, Counts I and II should be dismissed because Plaintiff's Complaint fails to allege the requisite elements for an accounting. To state a cause of action for an accounting, Plaintiff must allege that (1) the Plaintiff and Defendants shared a fiduciary relationship or entered a complex transaction and (2) a remedy at law is inadequate. *See Bankers Trust Realty Inc. v. Kluge*, 672 So. 2d 897, 898 (Fla. 3d DCA 1996). Here, although Plaintiff has

inartfully and in confusing fashion alleged that the accounting required to assess what he is purportedly owed under the oral contract(s) is complex, that is irrelevant as the underlying transaction must be complex, which, even accepting Plaintiff's allegations, it is not. *See* Complaint ¶¶ 28 and 31. Moreover, Plaintiff's allegation that his "remedy at law could not be as full, adequate and expeditious as it is in equity" does not meet the second element required under *Kluge*. Plaintiff's failure to clearly plead and allege ultimate facts for either element warrants dismissal of Counts I and II.

D. Count IV (Breach of Implied Covenant of Good Faith and Fair Dealing) Should Be Dismissed Because It Fails to State a Claim and is Duplicative of Count III (Breach of Oral Contract)

22. "[A] claim for breach of the implied covenant of good faith and fair dealing cannot be maintained under Florida law absent an allegation that an express term of the contract has been breached. A duty of good faith must relate to the performance of an ***express*** term of the contract and is not an abstract and independent term of a contract which may be asserted as a source of breach . . ." *Insurance Concepts and Design, Inc. v. Healthplan Services, Inc.*, 785 So. 2d 1232, 1234 -1235 (Fla. 4th DCA 2001) (emphasis added).

23. "The duty of good faith does not attach until the Plaintiff can establish a [specific] term of the contract that [the defendant] was obligated to perform. *Id.*; *see Onuss Ortak Nokta Uluslararasi Haberlesme Sistem Servis Bilgisayar Yazilim Danismanlik Ve Dis Ticaret v. Terminal Exch., LLC,* No. 09-80720, 2010 U.S. Dist. LEXIS 22216, at *9 (S.D. Fla. Mar. 10, 2010) (applying Florida law) ("The breach of implied covenant of good faith and fair dealing is not an independent cause of action but attaches to the performance of a ***specific*** contractual obligation.") (emphasis added). Citing then New Hampshire Supreme Court Justice Souter, the

court in *Cox v. CSX Intermodal, Inc.*, 732 So. 2d 1092 (Fla. 1st DCA 1999) explained the proper circumstances for applying the implied obligation of good faith and fair dealing.

> [U]nder an agreement that appears by word or silence to invest one party with a degree of discretion in performance sufficient to deprive another party of a substantial portion of the agreement's value, the parties' intent to be bound by an enforceable contract raises an implied obligation of good faith to observe reasonable limits in exercising that discretion, consistent with the parties purpose or purposes in contracting.

Id. at 1097. The *Cox* Court concluded "where the terms of the contract afford a party substantial discretion to promote that party's self-interest, the duty to act in good faith nevertheless limits that party's ability to act capriciously to contravene the reasonable contractual expectations of the other party." *Id.* at 1097-98.

24. In Count IV of the Complaint, Plaintiff fails to allege an express term of the contract for which Defendants[3] purportedly breached their implied covenant of good faith and fair dealing. Instead, Plaintiff generally alleges the terms of the alleged oral contract(s) and then concludes the Count by summarily stating: "Defendants willfully breached the said express [terms] of the contract."

25. It is insufficient, however, for Plaintiff to conclusorily allege that Defendants breached the terms of the contract. Plaintiff must pinpoint the express term of the contract upon which the purported cause of action relates. Accordingly, Count IV of the Complaint should be dismissed on this ground alone.

26. Count IV should also be dismissed as duplicative of Count III (Breach of Oral Contract). Florida law provides that "a breach of the implied covenant of good faith and fair

[3] While Plaintiff's Complaint fails to identify which of the four (4) Defendants Plaintiff is suing in Count IV and prays for judgment against "Plaintiffs" in the WHEREFORE clause to Count IV, Plaintiff's breach of implied covenant of good faith and fair dealing claim is subject to dismissal against Ted individually for the reasons set forth in III.B. *supra*.

dealing cannot be advanced when the allegations underlying that claim are duplicative of the allegations supporting the breach of contract claim." *Onuss,* at *10 (S.D. Fla. Mar. 10, 2010); *see Enola Contr. Servs. v. URS Group, Inc.,* No. 5:08cv2-RS-EMT, 2008 U.S. Dist. LEXIS 33441, at *18 (N.D. Fla. Apr. 23, 2008) (applying Florida law) (dismissing with prejudice breach of good faith and fair dealing claim where such claim was "indistinguishable from" and "subsumed within" the breach of contract claim); *see also* Shibata v. Lim, 133 F. Supp. 2d 1311, 1321-1322 (M.D. Fla. 2000) (applying Florida law) (dismissing breach of implied covenant of good faith and fair dealing claim because there was "no difference between the factual underpinnings of [the] breach of contract claim and [the] claim for breach of the implied covenant").

27. Here, Plaintiff's Breach of Implied Covenant of Good Faith and Fair Dealing alleges that "Defendants willfully breached the [following] said express [terms] of the contract": "that Plaintiff would be constantly apprised, either through being permitted to calculate all amounts due the Defendants [sic] out of commissions, or through being advised of all receipts of commissions and the disposition thereof, or the amounts due to Plaintiff for any reason under the terms of the contract; and (b) that Plaintiff would be fully and promptly paid all such amounts due him." Complaint at ¶¶ 42-43.[4]

28. These allegations, however, are nearly identical to the allegations supporting Plaintiff's breach of oral contract claim in Count III. *See, e.g.,* Count III at ¶ 34 ("An express term of that contract involved the commitment of Defendants to calculate, and to pay to Plaintiff,

[4] Plaintiff alleges that as of early 2008, his salary was no longer equal to 15 per cent of commissions, but instead consisted of a base salary of $1 million plus his proportionate interest in any profits. Complaint at ¶ 21. Inasmuch as the statute of limitations for a breach of implied covenant of good faith and fair dealing is 4 years, the conduct supporting the claim must have occurred within the 4 year period. Here, Plaintiff's allegations in Count IV as to the alleged breach by the Defendants (calculating commissions and keeping Plaintiff informed of all receipts) cannot give rise to a breach of the implied covenant of good faith and fair dealing as by his own admission, Plaintiff was no longer being compensated based upon a calculation of commissions as of July 31, 2008 -- 4 years prior to the filing of the Complaint. Accordingly, Count IV should be dismissed.

fully and timely, all sums due to him under the parties' contract, whether as commissions, salary, distributions, expenses or any other reason.") and ¶ 36 ("[ ] Defendants willfully and maliciously agreed to breach their contract with Plaintiff by withholding from Plaintiff moneys due him under the contract."). Such allegations already form the basis of Plaintiff's breach of oral contract claim in Count II and, therefore, cannot support a separate cause of action for breach of good faith and fair dealing. Consequently, Count IV of Plaintiff's Complaint should be dismissed.

E. Count V (Breach of Fiduciary Duty), Count VI (Civil Theft) and Count VII (Fraud) Are Barred by the Economic Loss Rule

29. "The economic loss rule is a judicially created doctrine that sets forth the circumstances under which a tort action is prohibited if the only damages suffered are economic losses." *Indemnity Ins. Co. of N. Am. v. Am. Aviation, Inc.*, 891 So. 2d 532, 536 (Fla. 2004); *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So. 2d 871 (Fla. 2007) (noting that "the economic loss doctrine determines what cause of action is available to recover economic losses-tort or contract").

30. Specifically, the economic loss doctrine applies where "the parties are in contractual privity and one party seeks to recover damages in tort ***for matters arising from the contract***." *Indemnity Ins. Co. of N. Am.*, 891 So. 2d at 536 (emphasis added). The purpose of the doctrine is to "protect the integrity of contract," and to prevent contract law from "drown[ing] in a sea of tort." *Id.* at 537-38, 544.

31. The doctrine is designed to "prevent parties to a contract from circumventing the allocation of losses set forth in the contract by bringing an action for economic loss in tort." *Id.* at 536. In other words, "[n]o cause of action in tort can arise from a breach of a duty ***existing by***

virtue of a contract." *Weimar v. Yacht Club Point Estates, Inc.*, 223 So. 2d 100, 103 (Fla. 4th DCA 1969) (emphasis added). The economic loss rule provides that "without some conduct resulting in personal injury or property damage, there can be no independent tort flowing from a contractual breach which would justify a tort claim solely for economic losses." *HTP, Ltd. v. Lineas Aereas Costarricenses, S.A.*, 685 So. 2d 1238, 1239 (Fla. 1996).

32. Simply stated, "a cause of action for breach of fiduciary duty will not lie where the claim of breach is dependent upon the existence of a contractual relationship between the parties." *Detwiler v. Bank of Central Florida*, 736 So. 2d 757, 759 (Fla. 5th DCA 1999).

33. Count V (Breach of Fiduciary Duty) and Count VII (Fraud) of Plaintiff's Complaint are barred by the economic loss rule because Plaintiff cites ***the exact same allegations of fact in support of his breach of oral contract claim.***

34. Specifically, Plaintiff alleges in Count V that he "trusted Defendants to make proper, accurate and complete calculations, as Plaintiff had done, and to pay Plaintiff accordingly." Complaint at ¶ 43.[5] In Count VII at paragraph 58, Plaintiff incorporates the same allegations asserted in his breach of fiduciary duty claim into his fraud claim. Nearly identical allegations are cited in support of Plaintiff's breach of oral contract claim. *See* Complaint at ¶¶ 34-36. Thus, Plaintiff's breach of fiduciary duty and fraud claims arise out of the ***same conduct*** that constitutes the purported breach the alleged oral contract. As such, Counts V and VII are barred by the economic loss rule and should be dismissed.

35. Moreover, "[m]isrepresentations relating to the breaching party's performance of a contract do not give rise to an independent cause of action in tort, because such misrepresentations are interwoven and indistinct from the heart of the contractual agreement."

[5] The numbered paragraphs of Count V of the Complaint are improperly numbered and contain paragraph numbers that are duplicative of the numbered paragraphs of Count IV.

Hotels of Key Largo, Inc. v. RHI Hotels, Inc., 694 So. 2d 74 (Fla. 3d DCA 1997) (Hotel franchisee's claim of fraud against franchisor barred by economic loss doctrine where defendant alleged to have failed to perform contract). Here, Plaintiff's fraud claim clearly relates to the purported failure of the Defendants to perform the alleged contract. *See* Complaint at ¶¶54-58. Indeed, as noted above, Plaintiff's prayer for his fraud claim reveals that this claim is really a breach of contract claim in sheep's clothing, providing "WHEREFORE, Plaintiff prays for judgment . . . for the full amount of moneys due to Plaintiff ***under the terms of their contract,***...."

36. Finally, the economic loss rule applies to statutory causes of action, which are characterized as statutory torts. *Sarkis v. Pafford Oil Co., Inc.*, 697 So. 2d 524, 527 (Fla. 1st DCA 1997) (Civil theft claim barred by economic loss rule). *See also Gambolati v. Sarkisian*, 622 So. 2d 47 (Fla. 4th DCA 1993) and *Gilman Yacht Sales v. First National Bank of Chicago*, 600 So. 2d 1131 (Fla. 4th DCA 1992). Accordingly, Plaintiff's civil theft claim is barred by the economic loss rule and must be dismissed.

F. Counts V (Breach of Fiduciary Duty) and VII (Fraud) Should be Dismissed Because Plaintiff's Alleged Damages, if Any, Result from the Breach of a Purported Contract Rather than From Fraud

37. Additionally, the damages Plaintiff seeks in Counts V and VII are contractual damages -- "the full amount of moneys due to Plaintiff under the terms of their contract." *See* WHEREFORE clause following paragraph 47 of the Complaint and WHEREFORE clause following paragraph 58. "[N]o cause of action for fraud exists unless there is damage *due to fraud* that is separate from damages that may result from any subsequent contractual breach." *La Pesca Grande Charters, Inc. v. Moran*, 704 So. 2d 710 (Fla. 5th DCA 1998) (emphasis in

original). Here, at most, any damage to Plaintiff, which Defendants deny, stems from the purported breach of the alleged contract. Accordingly, Counts V and VII should be dismissed.

G. Count V (Breach of Fiduciary Duty) Should Be Dismissed Because Plaintiff Has Failed to State a Cause of Action

38. Although Count V fails to specify which of the four (4) Defendants Plaintiff is suing for breach of fiduciary duty and demands judgment against "Plaintiffs" -- all of which is further evidence of the highly confusing, vague and ambiguous nature of Plaintiff's Complaint -- Count V should also be dismissed because it fails to state a cause of action for breach of fiduciary duty.

39. To state a claim for breach of fiduciary duty, Plaintiff must plead, and allege ultimate supporting facts demonstrating, the following elements: (1) Plaintiff and Defendants share a relationship whereby: (a) Plaintiff reposes trust and confidence in Defendants, and (b) Defendants undertake such trust and assume a duty to advise, counsel and/or protect Plaintiff; (2) Defendants breach their duties to Plaintiff; and (3) Plaintiff suffers damages. *Taylor Woodrow Homes Florida, Inc. v. 4/46-A Corp.*, 850 So. 2d 536, 540-541 (Fla. 5th DCA 2003).

40. To the extent Plaintiff is asserting Count V against the Corporate Defendants, Plaintiff has wholly failed to allege any of the requisite elements for a breach of fiduciary duty claim and, therefore, Count V should be dismissed as against AIM and LIC. Moreover, an employer does not owe a general fiduciary duty to its employees. *See, e.g., Eden v. St. Luke's-Roosevelt Hosp. Ctr.*, 96 AD.3d 614 (N.Y. App. Div. 2012) ("Neither an agreement by an employer to share profits with an employee as compensation for the latter's services nor a contract 'of mere hiring and providing for compensation in a particular manner supposedly

tending to induce greater energy and faithfulness on the part of the employee' creates a fiduciary relationship between the employer and employee.") (internal citations omitted).

41. To the extent Plaintiff seeks to assert Count V against Ted, Plaintiff's Complaint fails to allege how Ted, a minority shareholder of the Corporate Defendants, owed any duty to Plaintiff. Plaintiff cannot plead a viable fiduciary relationship by merely alleging a bestowal of trust and confidence in Ted. "A party must allege some degree of dependency on one side and some degree of undertaking on the other side to advise, counsel, and ***protect the weaker party***." *Watkins v. NCNB Nat'l Bank of Fla., N.A.*, 622 So. 2d 1063, 1065 (Fla. 3d DCA 1993) (emphasis added).

42. Plaintiff does not -- and cannot allege -- that he was the "weaker party" in his relationship with Ted because Plaintiff admits that he was a sophisticated, knowledgeable and highly regarded business person in the insurance industry. *See* Complaint at ¶ 8. The only affiliation between Plaintiff and Ted, besides being in an alleged "social relationship",[6] was that of business associates, which is in and of itself insufficient to support a fiduciary duty claim. *See Orlinsky v. Patraka*, 971 So. 2d 796, 800 (Fla. 3d DCA 2007) ("the only relation between Orlinsky and Patraka, besides being brothers-in-law, was that of business associates. Patraka has not cited any case where a general fiduciary duty has been found in the context of two business associates.").

43. Here, because Ted did not owe a fiduciary duty to Plaintiff, Count V of Plaintiff's Complaint must be dismissed.

[6] Complaint at Count V, ¶ 42.

H. Count VI (Civil Theft) Should Be Dismissed Because Plaintiff Has Failed to State a Cause of Action

44. In Florida, civil theft is a statutory form of conversion. *Sarkis v. Pafford Oil Co.*, 697 So. 2d 524, 528 (1st DCA 1997). In order to state a claim for civil theft, a complaint must allege that the defendant knowingly obtained or used, or endeavored to obtain or to use the plaintiff's property with the intent to temporarily or permanently deprive the plaintiff of a right to property or a benefit from the property; or the defendant appropriated the plaintiff's property for use by the defendant or another person who does not have a right to use the property. *See Palmer v. Gotta Have It Golf Collectibles, Inc.*, 106 F. Supp. 2d 1289, 1303 (S.D. Fla. 2000) (interpreting Florida's civil theft statute). "Further, it is necessary to show not only that defendant obtained or endeavored to obtain the plaintiff's property, but that he did so with felonious intent to commit theft." *Id.* (internal quotations omitted).

45. The Fourth District Court of Appeal has held that where the property at issue is also the subject of a contract -- as is the case here -- there must be an intricate sophisticated scheme of deceit and theft to maintain a separate count for civil theft. *Gersh v. Coffman*, 769 So. 2d 407, 409 (Fla. 4th DCA 2000). Plaintiff's complaint is devoid of any allegations detailing or even suggesting a "sophisticated scheme of deceit and theft". Accordingly, Count VI should be dismissed.

46. Further, in order to maintain a claim for civil theft, the property that is alleged to have been converted must consist of specific money capable of identification. *Belford Trucking Co. v. Zagar*, 243 So. 2d 646, 648 (Fla. 4th DCA 1970). Additionally, "[a] debt which may be discharged by the payment of money in general cannot form the basis for conversion." *Gambolati v. Sarkisian* 622 So. 2d 47, 50 (Fla. 4th DCA 1993). Here, Plaintiff alleges generally

that he did not receive certain compensation rather than an entitlement to ***specific*** dollars capable of identification. Indeed, in the Complaint, Plaintiff admits he received his salary for 2007. *See* Complaint at ¶ 18. Thus, the only other period within the five year statute of limitations, per Florida Statute § 772.11, would be in 2008 -- the period in which he claims he had a contract to be paid a salary of $1 million plus his proportionate interest in any profits. *See* Complaint at ¶ 21. By its very terms, the alleged contract does not relate to ***specific*** funds capable of identification as required under Florida law to state a viable claim for civil theft. *Mazza v. Rose Media Group, Inc.*, 937 So. 2d 307, 310 (Fla. 4th DCA 2006). Accordingly, Count VI should be dismissed.[7]

I. Count VII (Fraud) Must be Dismissed Because Plaintiff Fails to Properly Plead the Required Elements to State a Claim for Fraud

47. To state a claim for fraud, a pleader must allege "[a] false representation of a material fact, made with knowledge of its falsity, to a person ignorant thereof, with intention that it shall be acted upon, followed by reliance upon and by action thereon amounting to ***substantial change of position***, is a fraud of which the law will take cognizance." *Biscayne Boulevard Properties, Inc. v. Graham*, 65 So. 2d 858 (Fla. 1953) (emphasis added). "For fraud and deceit to be actionable, there must have been a false representation of a material fact made for the purpose of inducing *another to change position, which change in position was occasioned by reliance on the false representation* to the damage of the one to whom the representation was made." *Goodman v. Strassburg*, 139 So. 2d 163 (Fla. 3d DCA 1962)(emphasis added). Here, although Plaintiff alleges he relied upon "false statements and the withholdding of material

[7] Inasmuch as Plaintiff's civil theft claim is nothing more than a breach of contract claim, Plaintiff's civil theft claim is not viable. As such, Defendants are entitled, as a matter of law, to their attorneys' fees under Florida Statutes § 772.11 and § 812.035(7).

information", he fails to allege that he has changed his position in any way. *See* Complaint at ¶ 57. As a result, Count VII should be dismissed.

48. Further, Count VII should be dismissed for the additional reason that Plaintiff has failed to plead fraud with particularity, as required by Fla. R. Civ. P. 1.120(b). "The factual basis for a claim of fraud must be pled with particularity and must specifically identify misrepresentations or omissions of fact, as well as time, place or manner in which they were made." *Cedars Healthcare Group, Ltd. v. Mehta*, 16 So. 3d 914, 917 (Fla. 3d DCA 2009).

49. Here, Plaintiff fails to allege with particularity the who, what, when and how underlying his purported fraud claim. Instead, Plaintiff lumps all four (4) Defendants together and summarily alleges that Defendants "made false statements to him and withheld information from him." *See* Complaint at ¶ 54. There is no allegation with any particularity as to the substance of any false statement(s) or the time frame or the context in which any alleged statement(s) were made or omitted when there was a duty to speak.

50. Plaintiff's vague allegations regarding purported false statements and withheld information falls short of the heightened fraud pleading requirements under Rule 1.120(b) and is insufficient to support a claim for fraud.

J. Count VIII (Equitable Lien) and Count X (Constructive Trust) Should Be Dismissed For Failure to State a Cause of Action

51. In paragraphs 60 and 61 of Count VIII and paragraph 67 of Count X, Plaintiff alleges he was entitled to a share of "commissions received by Defendants." However, in paragraph 21, as reincorporated in Count VIII by paragraph 59 and paragraph 66 in Count X, Plaintiff alleges his compensation changed in "early 2008" and he was no longer entitled to a

share of any commissions.[8] Thus, Counts VIII and X are internally inconsistent, rendering Counts VIII and X subject to dismissal. *See Peacock v. General Motors Acceptance Corp.*, 432 So. 2d 142, 146 (Fla. 1st DCA 1983) ("contradictory allegations within a single count neutralize each other and render the count insufficient on its face", even where they are "incorporated in that count" from a prior count of the complaint).

52. Even assuming Plaintiff's allegations were not inconsistent and self-defeating, Plaintiff has failed to properly plead the elements required for the imposition of an equitable lien. Under Florida law, "the basis of equitable liens may be estoppel or unjust enrichment." *Golden v. Woodward*, 15 So.3d 664 (Fla. 1st DCA 2009). In Count VIII, Plaintiff appears to be proceeding under a theory of unjust enrichment, however, Plaintiff has failed to properly plead the elements of an unjust enrichment claim to support an equitable lien claim.[9] Instead, Plaintiff merely alleges an equitable lien should be imposed "out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings." *See* Complaint at ¶ 61.

53. Further, Plaintiff has failed to properly state a claim for the imposition of a constructive trust.[10] A constructive trust may be imposed only where there is a wrongful taking of the property of another. *Finkelstein v. Southeast Bank, N.A.*, 490 So. 2d 976, 984 (Fla. 4th DCA 1986). To establish a claim for the imposition of a constructive trust, a plaintiff must

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[8] As discussed above, the statute of limitations prevents Plaintiff from seeking an equitable lien over commissions purportedly due and payable to him prior to "early 2008", when his compensation allegedly changed.

[9] The elements of a claim for unjust enrichment are: "(1) plaintiff has conferred a benefit on the defendant, who has knowledge thereof; (2) defendant voluntarily accepts and retains the benefit conferred; and (3) the circumstances are such that it would be inequitable for the defendant to retain the benefit without paying the value thereof to the plaintiff." *Hillman Const. Corp. V. Wainer*, 636 So. 2d 576, 577 (Fla. 4th DCA 1994).

[10] Plaintiff's allegations in Count VIII (Equitable Lien) and IX Constructive Trust are virtually indistinguishable. While Plaintiff's Complaint fails to identify which of the four (4) Defendants Plaintiff is suing in Counts VIII and X and prays for judgment against "Plaintiffs" in the WHEREFORE clause to both counts, Plaintiff's Equitable Lien and Constructive Trust claims are subject to dismissal at least against Defendant Ted, individually, for the reasons set forth in III.B. *supra.*

prove: "(1) a promise, express or implied; (2) a transfer of the property and reliance thereon; (3) a confidential relationship; and (4) unjust enrichment." *Abreu v. Amaro*, 534 So. 2d 771, 772 (Fla. 3d DCA 1988).

54. Here, Plaintiff was never the legal holder of the property for which he seeks to have the Court impose a constructive trust, thereby subjecting Count X to dismissal. At most, Plaintiff was entitled to a percentage of the commissions, well prior to his compensation allegedly changing in "early 2008" and the running of the statute of limitations. *See* Complaint at ¶ 21. Plaintiff's allegations admit that Plaintiff never owned the commissions he now claims he is entitled to have a constructive trust placed over.[11] Thus, Plaintiff's claim for imposition of a constructive trust should be dismissed.

55. Moreover, to obtain a constructive trust, the *res* over which the trust is sought must be specifically identifiable property. *Trend Setter Villas of Deercreek v. Villas on the Green, Inc.*, 569 So. 2d 766, 768 (Fla. 4th DCA 1990). Here, Plaintiff alleges generally that he did not receive certain compensation rather than an entitlement to ***specific*** dollars capable of identification. Plaintiff's allegations admit that he was entitled to payment generally, rather than to receive specific dollars. Thus, Plaintiff cannot state a viable claim for the imposition of a constructive trust. Accordingly, Count X should be dismissed.

K. Counts VIII (Equitable Lien) and IX (Contract Implied in Law) Should be Dismissed for Failure to State a Cause of Action

56. In pleading an unjust enrichment claim, where an express contract exists, a claim for unjust enrichment will fail.[12] Similarly, where an express contract exists, a claim for an

[11] Once again, it is insufficient for Plaintiff to broadly lump the Defendants together as he does throughout Count X. Plaintiff fails to allege to which of the Defendants he purportedly transferred any property.

[12] Among the elements required for pleading a claim for unjust enrichment is that the plaintiff "conferred a benefit upon the defendant, who has knowledge thereof." *Hillman* 636 So. 2d at 577. Here, Plaintiff broadly alleges he

equitable lien premised upon allegations of unjust enrichment must also fail. *Diamond "S" Development Corp. v. Mercantile Bank*, 989 So. 2d 696 (Fla. 1st DCA 2008). Here, paragraph 59 of Count VIII reincorporates the allegations of paragraph 21, which allege an express contract. Similarly, paragraph 62 of Count IX reincorporates the allegations of paragraph 21.[13] Thus, Plaintiff's Counts VIII and IX must be dismissed.

L. Count XI (Indemnification) Should Be Dismissed As Premature and For Failure to State a Cause of Action

57. In Count X, Plaintiff seeks indemnification from Defendants from ***potential future claims*** by insurance companies which may seek a refund of commissions allegedly paid to Plaintiff. Although it is unclear as to whether Count XI is a claim for common law indemnification or statutory indemnification, Count XI is premature under either theory of recovery and, therefore, should be dismissed.

58. "In order for a common law indemnity claim to stand, a two-pronged test must be satisfied: (1) the indemnitee must be faultless and (2) the indemnitee's liability must be solely vicarious for the wrongdoing of another." *Zeiger Crane Rentals, Inc. v. Double A Indus., Inc.*, 16 So. 3d 907, 911 (Fla. 4th DCA 2009) (citing *Gen. Portland Land Dev. Co. v. Stevens,* 395 So. 2d 1296, 1299 (Fla. 4th DCA 1981)). A common law indemnity claim is ***premature*** if a judgment has not been entered. *Mellish Enters., Inc. v. Weatherford Int'l, Inc.*, 678 So. 2d 913,

conferred upon Defendants the benefit of "possessing and controlling the paperwork revealing commissions received and by agreeing that Defendants would assume the function of calculating amounts due the parties...." However, in paragraph 62, Plaintiff incorporates paragraph 6 into Count IX. Paragraph 6 alleges, in relevant part, that Ted and Simon "both own and control all of the corporate Defendants." Taking this allegation regarding the ownership and control of the Corporate Defendants as true for the purposes of this motion, as the shareholder/managing members of the Corporate Defendants, Ted (and Simon) were undoubtedly entitled to "possess and control the paperwork of the Corporate Defendants" and to "calculat[e] the amounts due the parties." Plaintiff's suggestion that he somehow broadly conferred a benefit upon ***all*** the Defendants, particularly Ted, turns the rights and benefits of corporate ownership on its head and ignores corporate law. Accordingly, because Plaintiff has not conferred a benefit upon the Defendants, collectively, or individually, Count IX should be dismissed.

[13] While Plaintiff seeks judgment against all of the Defendants in Count IX, Plaintiff's Contract Implied In Law claim is subject to dismissal against Ted individually for the reasons set forth in III.B. *supra*.

914 (Fla. 4th DCA. 1996) ("The entry of a judgment provides the prerequisite for an indemnification action, not payment of the judgment.") (citing *Flagship Nat'l Bank v. Gray Distrib. Sys., Inc.*, 485 So. 2d 1336, 1342 (Fla. 3d DCA 1986)).

59. Here, assuming that Count XI is a common law indemnification claim, the claim is premature and subject to dismissal because a judgment has not been entered against Plaintiff, nor has Plaintiff made such an allegation.

60. Similarly, statutory indemnification, which is governed by Section 607.0850(3), Florida Statutes, states:

> To the extent that a director, officer, employee, or agent of a corporation has ***been successful on the merits or otherwise in defense of any proceeding*** referred to in subsection (1) or subsection (2), or in defense of any claim, issue, or matter therein, ***he or she shall be indemnified against expenses actually and reasonably incurred by him or her in connection therewith.***

(emphasis added).

61. Plaintiff is currently not "a party to any proceeding" as required in subsections (1) and (2) of the statute, nor is Plaintiff currently defending a proceeding which may result indemnification under subsection (3). Accordingly, Count XI should be dismissed as premature.

62. Further, with respect to Defendant Ted, Plaintiff has failed to allege how Ted could be personally liable to indemnify Plaintiff. Plaintiff does not allege that he entered into any contract or agreement whereby Ted agreed to indemnify and hold Plaintiff harmless. Moreover, to the extent Count XI is a claim for statutory indemnification, such a claim would not cover Defendant Ted, a mere shareholder/officer of the Corporate Defendants.

IV. ALTERNATIVE MOTION FOR MORE DEFINITE STATEMENT

63. In the event the Court is not inclined to grant any portion of Defendants' Motion to Dismiss, Defendants Ted, LIC and AIM move for a more definite statement.

64. Florida R. Civ. P. 1.140(e) provides that "[i]f a pleading . . . is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, that party may move for a more definite statement before interposing a responsive pleading." *See also Conklin v. Bpyd*, 189 So. 2d 401, 403 (Fla. 1st DCA 1996) (holding that the "function of a motion for a more definite statement is to require that a vague, indefinite or ambiguous pleading be so amended so as to enable the party required to respond thereto, to intelligently discern the issues to be litigated and to properly frame its answer or reply.").

65. As set forth above, Plaintiff's Complaint is so vague, confusing, contradictory and meandering that it is virtually impossible to prepare a response to the allegations.

66. Among other things, Plaintiff lumps all four (4) Defendants -- which are separate and distinct individuals and legal entities -- together in his allegations, essentially alleging that everyone did everything. This type of pleading makes it virtually impossible for each of the Defendants to frame an appropriate response. Plaintiff's improper grouping of all of the Defendants in this action fails to distinguish each Defendant's particular conduct, fails to put each Defendant on adequate notice of the claims asserted against them and thereby fails to meet basic pleading requirements.

67. Moreover, Plaintiff fails to allege the which of the Corporate Defendants were parties to the purported oral contract(s) which serve the basis for Plaintiff's suit. In fact, it is unclear from the Complaint whether Plaintiff contends that multiple alleged oral contracts were

entered into. Plaintiff also fails to outline the material terms of the alleged oral contract(s) and fails to allege when the purported breach(es) occurred.

68. At the very least, Plaintiff should be required to provide a more definite statement of his allegations against each specific Defendant and a more definite statement regarding the parties and terms of the alleged oral contract(s) upon which this action is purportedly based.

WHEREFORE, Defendants, TED S. BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C., respectfully request entry of an Order: (i) granting this Motion and dismissing Plaintiff's Complaint in its entirety; (ii) awarding Defendants' their reasonable attorneys' fees and costs pursuant to Fla. Stat. §§ 772.11 and 812.035(7); (iii) or, in the alternative, requiring Plaintiff file a more definite statement as to any count not dismissed, and (iv) for such other relief as this Court deems just and proper.

Dated this 1st day of October, 2012.

GREENBERG TRAURIG, P.A.
401 East Las Olas Boulevard, Suite 2000
Fort Lauderdale, Florida 33301
Telephone: (954) 765-0500
Facsimile: (954) 765-1477

By: _____
JON L. SWERGOLD
Florida Bar No. 0108510
swergoldj@gtlaw.com
KRISTINA L. ARNSDORFF
Florida Bar No. 0040596
arnsdorffk@gtlaw.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-mail upon: **Peter M. Feaman, Esq.** and **Kenneth D. Stern, Esq.**, pfeaman@feamanlaw.com, kdstern@gmail.com, 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, on this 1st day of October, 2012.

KRISTINA L. ARNSDORFF

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

CASE NO: 502012CA013 933XXXXMB AA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN, SIMON BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C.,

Defendants.

ORDER SETTING HEARING

FILED
2012 OCT 15 PM 12:31
JOHN R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

The following matter has been specially set for hearing before Judge Glenn D. Kelly in Courtroom 11A of the Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401.

DATE: **January 14, 2013**

TIME: **10:00 am (30 Minutes Reserved)**

MATTER: **Motion to Dismiss or, in the Alternative, Motion for More Definite Statement**

NOTE: THIS HEARING IS SPECIALLY SET BY COURT ORDER AND CANNOT BE CANCELLED OR RESET EXCEPT BY COURT ORDER. ALL MEMORANDA MUST BE SUBMITTED TO JUDGE'S CHAMBERS NO LATER THAN FIVE (5) DAYS PRIOR TO HEARING.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this 12th day of October, 2012.

GLENN D. KELLEY
CIRCUIT COURT JUDGE

Copies furnished:
Jon L. Swergold, Esq., Greenberg Traurig, P.A., 401 E. Las Olas Blvd., Ste. 2000, Ft. Lauderdale, FL 33301
Peter M. Feaman, Esq. and Kenneth D. Stern, Esq., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436

This notice is provided pursuant to Administrative Order No. 2.207-2/12

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Katrina Manuel, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

"Si usted es una persona minusválida que necesita algún acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Katrina Manuel, 205 N. Dixie Highway, West Palm Beach, Florida 33401; teléfono número (561) 355-4380, por lo menos 7 días antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente después de recibir esta notificación si el tiempo antes de la comparecencia que se ha programado es menos de 7 días; si usted tiene discapacitación del oído o de la voz, llame al 711."

"Si ou se yon moun ki enfim ki bezwen akomodasyon pou w ka patisipe nan pwosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kèk èd. Tanpri kontakte Katrina Manuel, kòòdonatè pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan 205 North Dixie Highway, West Palm Beach, Florida 33401; telefòn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou parèt nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si lè ou gen pou w parèt nan tribinal la mwens ke 7 jou; si ou gen pwoblèm pou w tande oubyen pale, rele 711."

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

IN RE: STANDING ORDER ON SPECIALLY SET MOTIONS

CIVIL DIVISION "AA"

_____/

This motion has been specially set by Court Order and cannot be canceled except by further Court Order.

It is the intent of this Court to dispose of the subject matter of the specially set motion on the date and time appearing on the order. Accordingly, counsel must either: (1) argue the motion on the date and time set for the hearing; (2) submit an agreed order disposing of the motion; or (3) show good cause why the hearing should be canceled. Any request to cancel a hearing for good cause shall be made by motion and shall be set for hearing on the Court's Uniform Motion Calendar.

All memoranda and/or case authority shall be delivered to my office and to all parties no later than five business days in advance of the hearing and no sooner than ten days prior to the hearing and should designate the date and time of the hearing which they reference.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 4th day of September, 2012.

JUDGE GLENN D. KELLEY
CIRCUIT COURT JUDGE

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

CASE NO. 502012CA013933XXXXMB

WILLIAM E. STANSBURY,

Plaintiff,

v.

TED S. BERSTEIN;
SIMON BERNSTEIN;
LIC HOLDINGS, INC.; and
ARBITRAGE INTERNATIONAL
MANAGEMENT, L.L.C., f/k/a
ARBITRAGE INTERNATIONAL
HOLDINGS, L.L.C.

Defendants.
_____/

Division: AA-Kelley

FILED
2012 NOV -6 PM 12:01
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 8

MOTION FOR SUBSTITUTION OF PARTY

Plaintiff, WILLIAM E. STANSBURY ("Plaintiff"), by and through his undersigned counsel and pursuant to Rule 1.260(a) of the Florida Rules of Civil Procedure, hereby moves this Court for entry of an Order substituting the personal representative of the ESTATE OF SIMON BERNSTEIN (the "Estate") in place of SIMON BERNSTEIN (the "Decedent") as a party to this action, and in support thereof state as follows:

1. On or about July 30, 2012, Plaintiff filed the Complaint that initiated this action against the defendants named therein, including the Decedent.

2. The Decedent died on September 13, 2012. A Suggest of Death statement was served by Defendants in this action on or about September 19, 2012. The personal representative

of the Estate is now the proper party to this action, and the Decedent is no longer a proper party to this action.

WHEREFORE, Plaintiff, WILLIAM E. STANSBURY, respectfully requests (i) that this Court substitute the personal representative of the ESTATE OF SIMON BERNSTEIN in place of the Decedent as a party to this action, and (ii) such further relief as the Court deems just and equitable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail at swergoldj@gtlaw.com; arnsdorffk@gtlaw.com; steffesj@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301 and at kdstern@gmail.com to Plaintiff's co-counsel, Kenneth D. Stern, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, this 5th day of November, 2012.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: */s/ Peter M. Feaman*
Peter M. Feaman
Florida Bar No.: 0260347

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; SIMON BERNSTEIN; LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC.
Defendants.
_____/

FILED
2012 NOV 14 PM 2:44
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL

MOTION FOR DISQUALIFICATION

COMES NOW WILLIAM E. STANSBURY, by and through his undersigned counsel and moves for disqualification of Defendants' counsel and states as follows:

1. Counsel for Defendants is Jon Swergold of the law firm of Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, Florida.

2. In a 2010 action in this Circuit, Plaintiff WILLIAM E. STANSBURY, was represented by Jon Swergold of Greenberg Traurig, P.A. in the matter of *Wright v. Helmer, et al,* Case No.: 50 2012 CA 017249 MB AN.

3. In that action, Jon Swergold represented both Mr. Stansbury, the Plaintiff in this action, and ARBITRAGE INTERNATIONAL MARKETING, INC., in matters arising out of certain insurance business transactions, some of which form the basis of the Complaint in this case.

4. Rule 4-1.9 of the Rules Regulating the Florida Bar governs conflicts of interest with former clients. The Rule provides:

> "A lawyer who has formerly represented a client in a matter shall not thereafter:

> (a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent;
>
> (b) use information relating to the representation to the disadvantage of the former client except as these rules would permit with respect to a client or when the information has become generally known."

5. It is undisputed that Greenberg Traurig represented Stansbury in the 2010 action of *Wright v. Helmer, et al, supra.*

6. The comment to Rule 4-1.9 provides:

> "When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited."

7. Any doubt as to what disclosures may have been made by Plaintiff, STANSBURY to Defendants' counsel when he represented STANSBURY must be resolved in favor of the presumption that confidential information was disclosed and therefore in favor of disqualification. *See, McPartland v. ISI Investment Services,* 890 F. Sup. 1029 (MD Fla. 1995); *Brent v. Smathers,* 529 So.2d 1267 (Fla. 3d DCA 1988); and *Metcalf v. Metcalf,* 785 So.2d 747 (Fla. 5th DCA 2001).

8. Notes to Rule 4-1.9 indicate that this Rule creates an "irrefutable presumption that confidences were disclosed." *See, Gaton v. Health Coal, Inc.,* 745 So.2d 510 (Fla. 3rd DCA 1999); and *Hopper v. Frank,* 16 F. 2d 92 (5th Cir. 1994).

9. Rule 4-1.9 also imposes upon a lawyer a duty of loyalty. Rule 4-1.7 of Rules Regulating the Florida Bar and a comment thereunder states that "common representation does not diminish the rights of each client in the lawyer-client relationship. Each has a right to loyal and diligent representation ... and the protection of Rule 4-1.9..."

WHEREFORE, Plaintiff respectfully requests this Honorable Court to grant his Motion for Disqualification of Defendants' counsel for the reasons set forth herein, and for any such other relief as this Court would deem just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail at swergoldj@gtlaw.com; arnsdorffk@gtlaw.com; steffesj@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301 this 12TH day of NOVEMBER, 2012.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: */s/ Peter M. Feaman*
Peter M. Feaman
Florida Bar No.: 260347

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; SIMON BERNSTEIN; LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC.
Defendants.
_____/

FILED
2012 NOV 14 PM 2:44
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL

NOTICE OF FILING AFFIDAVIT IN SUPPORT OF MOTION FOR DISQUALIFICATION

COMES NOW Plaintiff, WILLIAM E. STANSBURY, by and through his undersigned attorneys and hereby files the original of his Affidavit in Support of Motion for Disqualification, attached hereto as Exhibit "A."

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail at swergoldj@gtlaw.com; arnsdorffk@gtlaw.com; steffesj@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301 this 12th day of NOVEMBER, 2012.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No.: 0260347

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; SIMON BERNSTEIN; LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC.
Defendants.
_____/

AFFIDAVIT IN SUPPORT OF MOTION FOR DISQUALIFICATION

STATE OF FLORIDA)
ss
COUNTY OF PALM BEACH)

Before me, the undersigned personally appeared WILLIAM E. STANSBURY who, after first being duly sworn, deposes and states as follows:

1. I am William E. Stansbury, Plaintiff in the above-styled action.

2. In the case of *Wright v. Helmer, et al,* I was represented by Jon Swergold of the law firm of Greenberg Traurig, P.A.

3. In the course of that representation, I believe Mr. Swergold became privy to various matters pertaining to my association and employment with ARBITRAGE INTERNATIONAL MANAGEMENT and its affiliated companies and interactions which I had with Defendants, SIMON BERNSTEIN and TED BERNSTEIN.

4. Mr. Swergold now represents the Defendants in this action.

EXHIBIT A

5. I do not consent to Mr. Swergold or the law firm of Greenberg Traurig, P.A. representing interests adverse to me in this action, which arises out of similar business transactions for which Mr. Swergold represented me in the *Wright v. Helmer, et al* case.

5. Further, I do not waive the attorney-client relationship with Mr. Swergold and that of the firm of Greenberg Traurig.

Further affiant sayeth naught.

WILLIAM E. STANSBURY

The foregoing instrument was acknowledged before me this 9th day of NOVEMBER, 2012 by WILLIAM E. STANSBURY, who is X personally known to me or ____ produced _____ as identification, and who did take an oath that the matters contained herein are true and correct.

MARYANNE KOSKEY
MY COMMISSION # EE 012598
EXPIRES: September 4, 2014
Bonded Thru Notary Public Underwriters

Signature: maryanne Koskey

Print name: MARYANNE KOSKEY
Notary Public, State of Florida

My commission expires:

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

WILLIAM E. STANSBURY, an individual,

Plaintiff,

v.

CASE NO.: 50 2012CA013933 XXXX(NB)
(AA)

TED S. BERNSTEIN, an individual,
SIMON L. BERNSTEIN, an individual,
LIC HOLDINGS, INC., a Florida Corporation, **ARBITRAGE INTERNATIONAL MARKETING, LLC**, a Florida Corporation f/k/a **ARBITRAGE INTERNATIONAL HOLDINGS, LLC.**,

Defendants.

FILED
12 DEC 11 PM 2:20
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

MOTION FOR PROTECTIVE ORDER

Defendants, TED S. BERNSTEIN ("Ted"), LIC HOLDINGS, INC. ("LIC") and ARBITRAGE INTERNATIONAL MARKETING, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC ("Arbitrage") (Ted, LIC and Arbitrage are, collectively, the "Defendants"), pursuant to Florida Rule of Civil Procedure 1.280(c), move for entry of a protective order relative to the First Requests for Production served by Plaintiff William E. Stansbury ("Stansbury"), and in support states:

1. On July 31, 2012, Plaintiff served Defendants with his eleven count Complaint.

2. On October 1, 2012, Defendants filed their Motion to Dismiss or, in the Alternative, Motion for More Definite Statement (the "Motion to Dismiss").

3. On November 5, 2012, Stansbury served separate Requests for Production directed to each of the Defendants (collectively, the "Discovery Requests").

4. On November 12, 2012, just one week later, Stansbury served a Motion for Disqualification of Defendants' counsel, Jon L. Swergold, Esq. and the law firm of Greenberg Traurig, P.A. (the "DQ Motion"). Defendants intend to oppose the DQ Motion, as it is without any merit.

5. A hearing on the Motion to Dismiss is scheduled for January 14, 2012.

6. A hearing on the DQ Motion has not been scheduled.

7. Florida courts have discretion in granting protective orders pending the resolution of motions to dismiss. Feigin v. Hosp. Staffing Serv., Inc., 569 So. 2d 941 (Fla. 4th DCA 1990).

8. Until the DQ Motion and the Motion to Dismiss are resolved, it would be inappropriate for the Defendants' counsel to respond to the Discovery Requests, a task that will undoubtedly take significant time and expense given the overly broad and burdensome nature of the Discovery Requests. More importantly, until Stansbury actually states a viable claim, it is unfair to require the Defendants to incur the cost of responding to the Discovery Requests.

WHEREFORE, Defendants respectfully requests entry of an Order (i) protecting Defendants from having to respond to Stansbury's Discovery Requests until thirty (30) days following the latter of (a) the Court's denial of Defendant's Motion to Dismiss or (b) Stansbury's filing of viable claims in an amended complaint, and (ii) granting such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

GREENBERG TRAURIG, P.A.
401 East Las Olas Boulevard
Suite 2000
Fort Lauderdale, Florida 33301
Telephone: (954) 765-0500
Facsimile: (954) 765-1477

By: _____
Jon L. Swergold
Fla. Bar No. 108510
swergoldj@gtlaw.com
Kristina L. Ciaffi
Florida Bar No. 0040596
ciaffik@gtlaw.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the has been sent via e-mail and U.S. Mail to: Peter M. Feaman, Esq.(pfeaman@feamanlaw.com), Kenneth D. Stern, Esq. (kdstern@gmail.com), 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436 on this 10th day of December, 2012.

_____
KRISTINA L. CIAFFI

FTL109,012,575 1

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: 50 2012 CA 013933 MB AA

v.

TED S. BERNSTEIN; SIMON BERNSTEIN; LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC.
Defendants.
_____/

FILED
2013 JAN -8 PM 4:07
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL

RESPONSE OF PLAINTIFF WILLIAM E. STANSBURY TO DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT

Plaintiff WILLIAM E. STANSBURY, through undersigned counsel, hereby responds to Defendants' Motion to Dismiss or, in the Alternative, Motion for More Definite Statement, and states:

1. **General Response**

When considering a Motion to Dismiss, the standard to be applied by the trial court is that every allegation must be accepted as true, and every inference must be drawn in favor of the Plaintiff; the pleader is only required to set forth "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." *See*, Rule 1.110(b), Fla. R.Civ. P.

The facts pled in the Complaint that support the various legal theories set forth in each Count are contained in paragraphs 8 through 25 of the Complaint. They establish that:

- Plaintiff was an employee and minority owner of LIC Holdings, Inc. (LIC); he was promised but not paid compensation that he was due for the years 2008 through 2011;

and he was denied promised profit distributions on his 10% ownership interest. *See*, paragraphs 13, 18, 20 21 and 22.

- That the officers of Defendants LIC and Arbitrage International Management (AIM), Simon and Ted Bernstein, made false and misleading representations to Plaintiff with respect to the compensation and distributions due him by falsely stating, among other things, that Defendants Bernstein as well as Plaintiff were not receiving full compensation when, in fact, Defendants Bernstein were being fully paid. *See*, paragraphs 21, 22 and 25.
- This concealment and other representations, and reliance thereon, induced Plaintiff to delay pursuing his rights until he did so by the filing of the Complaint in 2012. *See*, paragraph 25.

Plaintiff's Complaint clearly sets forth the ultimate facts supporting Plaintiff's claims against the Defendants. The Defendants' assertion that the Plaintiff's factual allegations as "confusing," "riddled with ambiguities," "vague," and "contradictory" (which they are not) is simply wrong.

2. **The Statute of Limitations Does Not Bar Plaintiff's Claims.** Defendants seek to dismiss the Counts alleging Accounting (Counts I and II), Breach of Oral Contract (Count III), Breach of Implied Covenant of Good Faith and Fair Dealing (Count IV), Breach of Fiduciary Duty (Count V), Fraud (Count VII), Equitable Lien (Count VIII), Contract Implied in Law (Count IX) and Constructive Trust (Count X) on the ground that these claims are barred by the four-year statute of limitations found in §95.11(3) Fla. Stat. (2012). Defendants contend the limitations period began to run prior to July 31, 2008 based solely on Plaintiff's allegation that Simon Bernstein made certain representations to him in "early 2008" (Complaint, Par. 21) and that Plaintiff represented that he had been deprived of his money due him for "approximately four and a half years" (Complaint, Par. 28). These statements, according to the Defendants,

somehow indicate that Plaintiff was aware of his claims prior to July 31, 2008, and thus they are now time barred.

Defendants' argument is fatally flawed for several reasons:

(a) These averments in the Complaint are clearly retrospective recollections made by Plaintiff as to the sequence of events that ultimately gave rise to his claims. They do not suggest that, at the time, Plaintiff realized, or should have realized, that any conduct by the Defendants was actionable.

(b) Defendants ignore the allegations of Paragraph 22 of the Complaint:

> 22. Through misrepresentations made from 2008 through the date of filing of this Complaint, Defendants knowingly made false statements to Plaintiff to hide their scheme to withhold from Plaintiff money to which he was entitled. For example, at times they claimed that money being received was not being paid as salary or distributions to either of Defendants BERNSTEIN but was being withheld and placed in a company account, for eventual distribution. **As Plaintiff and Defendants could afford to wait until year's end to be paid their distributions, and as Defendants BERNSTEIN assured Plaintiff that the payment arrangement would apply to all three equally, Plaintiff did not question the truthfulness of their representations** (emphasis added).

In light of these allegations, three things are readily apparent. First, Plaintiff has alleged that, due to the representations of the Bernstein Defendants, he was pursuaded to wait until the end of the year 2008 to be paid. As a result, the statute of limitations would not begin to run, at the earliest, until sometime after January 1, 2009 when he was not paid as promised. Therefore, these claims are timely filed. Secondly, Plaintiff is alleging he was induced to his detriment into delaying action on the Defendants failure to pay him by the false and fraudulent misrepresentations of the Bernsteins. Fraudulent misrepresentations operate to toll the statute of limitations. *See, San Pedro v. San Pedro,* 910 So. 2d 426, 430 (Fla. 4th DCA 2005). Further, if there is some question as to when the applicable statute of limitations began to run in this case,

the commencement date is a fact question for the trier of fact to resolve. *See, J.A. Cantor Associates, Inc. v. Brenner*, 363 So. 2d 204 (Fla. 3d DCA 1978).

For the foregoing reasons, Defendant's Motion to Dismiss based on the statute of limitations should be denied.

3. **Allegations Against Ted Bernstein Personally for Accounting**

The allegations contained in paragraphs 11 through 25 of the Complaint clearly establish that the Bernstein Defendants and Ted Bernstein in particular, engaged in a campaign of misrepresentation and deceit with respect to their interaction and dealings with Plaintiff on compensation and ownership distribution issues. The Plaintiff admits, however, at least at this time, that the allegations against Ted Bernstein individually, as to an Accounting, as set forth in Count II, may be premature. As such, Plaintiff agrees to voluntarily dismiss that Count, without prejudice, at this time.

4. **Dismissal of Count I for an Accounting Against LIC and AIM is Not Warranted.**

The test in *Bankers Trust Realty, Inc. v. Kluger,* 672 So. 2d 897 (Fla. 3d DCA 1996), as set forth in Defendants' Motion, requires Plaintiff to allege that: 1) Plaintiff and Defendant shared a fiduciary relationship **OR** entered a complex transaction, and 2) a remedy at law is inadequate. Plaintiff contends that the parties entered into a complex transaction, and Plaintiff has alleged the existence of a fiduciary relationship (*see,* Count V). Plaintiff has also alleged that a remedy at law is inadequate (*see,* Count I, par. 28). As such, Plaintiff has met the pleading requirements of *Kluger* and has stated a cause of action for an accounting against the Corporate Defendants.

5. **Plaintiff's claim for Breach of Implied Covenant of Good Faith and Fair Dealing (Count IV) Will Be Dismissed at This Time without Prejudice**

6. **Breach of Fiduciary Duty (Count V), Civil Theft (Count VI) and Fraud (Count VII) Are Not Barred by the Economic Loss Rule**

Claims for Breach of Fiduciary Duty and Civil Theft are causes of action arising under statutory law. The alleged Breach of fiduciary duty claim made by Plaintiff against the Defendants is supported by Florida law, including the fiduciary obligations of corporate officers and directors, which are specifically set forth in Florida Statutes §607, *et seq.* Civil Theft is articulated in Florida Statutes §772.11 (Complaint, Par. 48). The Plaintiff's Complaint has clearly stated a claim under that statute. The Supreme Court of Florida has unequivocally stated that the economic loss rule cannot be used to eliminate statutory causes of action. *See, Comptech International, Inc. v. Milam Commerce Park, LTD,* 753 So. 2d 1219 (Fla. 1999). Moreover, the economic loss rule does not abolish the cause of action for breach of fiduciary duty, even if there is an underlying contract. *See, Invo Florida, Inc. v. Somerset Venturer, Inc.,* 751 So. 2d 1263 (Fla. 3d DCA 2000).

As to Plaintiff's fraud claim against Defendants, the economic loss rule does not bar tort actions where a legal duty independent of the contract itself has been violated. *HTP, Ltd. v. Lineas Aereas Costarricenses, S.A.,* 685 So. 2d 1238, 1239 (Fla. 1996). In addition to the contract claims alleged, Plaintiff has specifically alleged that the Defendants deceived him into surrendering his 10% ownership interest in LIC. The fraudulent misrepresentations and subsequent reliance by plaintiff constitute an independent claim that is not related to the contract. Therefore, the fraud claim is not barred by the economic loss rule.

7. **The Breach of Fiduciary Duty (Count V) and Fraud (Count VII) Claims Should Not Be Dismissed.**

For the reasons set forth in paragraphs 8 and 9 below, the Plaintiff's breach of fiduciary duty and fraud claims against the Defendants should clearly not be dismissed.

8. **The Breach of Fiduciary Duty Claim (Count V) States a Cause of Action.**

Florida law provides that corporate officers and directors owe a duty of loyalty and a duty of care to the corporation and its shareholders. *Cohen v. Hattaway*, 595 So.2d 105 (Fla. 5th DCA 1992). In particular, Fla. Stat. § 607.0830 provides:

> (1) A director shall discharge his or her duties as a director ...
>
> (a) In good faith;
>
> (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
>
> (c) In a manner he or she reasonably believes to be in the best interests of the corporation.

These fiduciary duties are generally described as the duties of care and the duty of loyalty. *See, In re Aqua Clear Technologies, Inc.*, 361 B.R. 567, 575 (Bankr. S.D. Fla. 2007). Each of these duties is of equal and independent significance. *Id.* The duty of care requires the directors of a company to act on an informed basis. *Id.* The duty of loyalty requires the officer or director to act in good faith and in the best interests of the company. Fla. Stat. § 607.0830(1)(c); *In re Aqua Clear Technologies, Inc.*, 361 B.R. 567. A corporate officer or director breaches the duty of loyalty if that person "depart[s] from his corporate responsibility and start[s] serving himself." *In re Aqua Clear Technologies, Inc.*, 361 B.R. at 575, citing *Intercarga Internacional de Carga, S.A. v. Harper Group, Inc.*, 659 So.2d 1208, 1210 (Fla. 3d DCA 1995). An officer or director may be held "strictly accountable and liable if corporate funds or property are wasted or mismanaged due to their inattention to their duties." *Id.*

In this case, the Complaint specifically alleges that Simon and Ted Bernstein owned and controlled the corporate Defendants (LIC and AIM), worked closely together with respect thereto, and were one another's alter egos. (Complaint, Par. 6) As such, the Bernsteins are (or were at the time the claims arose – Simon Bernstein is now deceased) clearly both "officers and directors" of the corporate Defendants and exclusively made all decisions regarding the operations of these corporate Defendants. The Complaint also alleges that both Bernsteins made false and misleading misrepresentations to Plaintiff, an employee and minority shareholder of Defendant LIC, relating to Plaintiff's compensation and distributions on his ownership interest, and the Bernsteins falsely stated that their compensation was being withheld and maintained by the corporation, the same as Plaintiff's, when in reality they had paid themselves. (Complaint, Pars. 20, 22) It has also been alleged that the Bernsteins intercepted mail addressed to the Plaintiff and converted checks intended for Plaintiff for their own personal use or the use of the corporate Defendants. (Complaint, Par. 23) All these allegations were expressly incorporated by reference into Count V. (Complaint, Par. 41) This conduct clearly establishes a claim for breach of fiduciary duty as to the Bernsteins. As officers/directors, they failed to act in good faith and in the best interests of the company or its employee/minority shareholder, the Plaintiff, and breached their duty of loyalty when they departed from their corporate responsibilities and started serving themselves. Accordingly, Defendants' Motion to Dismiss the claim for breach of fiduciary duty should be denied.

9. **The Civil Theft Claim (Count VI) States a Cause of Action.**

As stated in Paragraph 8, above, the Complaint alleges that the Bernsteins intercepted mail addressed to the Plaintiff and converted checks intended for Plaintiff for their own personal use or the use of the corporate Defendants. (Complaint, Par. 23). All these allegations were

expressly incorporated by reference into the Civil Theft claim, Count VI (Complaint, Par. 49) and were included in the all-inclusive references contained in Par. 50. Paragraph 51 makes specific reference to the Defendants' criminal intent consistent with *Palmer v. Gotta Have It Golf Collectibles, Inc.*, 106 F. Supp.2d 1289 (S.D. Fla. 2000) a case cited and relied on by Defendants at p. 15 of Defendants' Motion. While not using the specific language "sophisticated scheme of deceit and theft," that is the gist of Plaintiff's claim as alleged in Paragraph 51 and in the Fraud claim, Count VII (Par. 58). Finally, other than the general allegation relating to the failure to pay due compensation, the allegation of specific, identifiable checks made payable to Plaintiff that were converted by the Bernstein defendants is sufficient to meet the "specific money capable of identification" requirement of *Belford Trucking Company v. Zagar,* 243 So. 2d 646, 648 (Fla. 4th DCA 1970), and cited in the Defendants' Motion at p. 15. For these reasons, the Motion to Dismiss the Civil Theft count should be denied.

10. **The Fraud Claim (Count VII) States a Cause of Action**

In order to sufficiently plead a fraud claim in Florida, the pleader must allege: a) a false representation of fact, known by the party making it to be false at the time it was made; (b) that the representation was made for the purpose of inducing another to act in reliance on it; (c) actual reliance on the representation; and (d) resulting in damage to the plaintiff. *Essex Ins. Co., Inc. v. Universal Entertainment & Skating Center, Inc.*, 665 So. 2d 360 (Fla. 5th DCA 1995). *See also, Peninsular Fla. Dist. Council of Assemblies of God v. Pan American Investment and Development Corp.*, 450 So. 2d 1231 (Fla. 4th DCA 1984).

In this case, Plaintiff's Complaint has alleged sufficient, particular facts to state a cause of action for fraud. Paragraphs 11 through 25 set out in detail the misrepresentations and falsehoods stated by the Bernstein Defendants in their interaction and business discussions with Plaintiff, all of which were incorporated by reference into the Count VII by Par. 53. Of

particular interest is Paragraph 24, which alleges how Defendants deceived Plaintiff into surrendering his 10% interest in LIC, which he did. It is also alleged that the Defendants intended for Plaintiff to rely on the false statements (or omissions of fact), that these statements or omissions were material, that Plaintiff relied on these falsehoods and was damaged thereby. *See*, Complaint, Pars. 47, 56, 57. Plaintiff was damaged by these false representations when he was denied his due compensation and, more importantly, when he surrendered his ownership interest in the LIC. The Motion to Dismiss as to Count VII should be denied.

11. **The Equitable Lien (Count VIII), Constructive Trust (Count X), the Contract Implied in Law (Count VIII), and the Indemnification (Count XI) Claim Will Be Dismissed At This Time Without Prejudice.**

WHEREFORE, Plaintiff requests this Honorable Court to deny Defendants' Motion to Dismiss as to Counts I, III, V, VI and VII, and such other relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at swergoldj@gtlaw.com; arnsdorffk@gtlaw.com; steffesj@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301; and at kdstern@gmail.com to Kenneth D. Stern, Esq., Kenneth D. Stern, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436 this 8th day of January, 2013.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No.: 0260347

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

CASE NO: 502012CA013 933XXXXMB AA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN, SIMON BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C.,

Defendants.

AMENDED NOTICE OF DESIGNATION OF PRIMARY AND SECONDARY E-MAIL ADDRESSES

FILED
JAN 14 PM 12:05
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT PROBATE 3

Defendants, TED S. BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C., by and through undersigned counsel, and in accordance with Florida Rule of Civil Procedure 1.080 (as amended effective September 1, 2012) and new Florida Rule of Judicial Administration 2.516 (as enacted effective September 1, 2012), hereby designate undersigned counsel's primary and secondary electronic mail addresses in the above styled cause and respectfully requests that the copies of all orders, process, pleadings and other documents filed or served in this matter be served at the primary and secondary e-mail addresses listed below, with such service complying by new Rule 2.516(b)(1)(E). Initiating documents shall be served by hard copy in addition to e-mail service required by new Rule 2.516(b)(1)(A).

Primary: swergoldj@gtlaw.com, ciaffik@gtlaw.com
Secondary: steffesj@gtlaw.com, FLService@gtlaw.com

Respectfully submitted,

JON L. SWERGOLD
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KRISTINA L. CIAFFI
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Telephone: (954) 765-0500
Facsimile: (954) 765-1477
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail to: pfeaman@feamanlaw.com and kdstern@gmail.com, **Peter M. Feaman, Esq.**, **Kenneth D. Stern, Esq.**, 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, on this 11th day of January, 2013

KRISTINA L. CIAFFI

FTL 109,054,638.1 - 141289.010100

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; SIMON BERNSTEIN; LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC.
Defendants.
_____/

FILED
2013 JAN 14 PM 4:15
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

ORDER ON DEFENDANTS' MOTION FOR PROTECTIVE ORDER

THIS CAUSE came on to be heard before this Honorable Court on Monday, January 14, 2013, upon Defendants' Motion for Protective Order and the Court having reviewed the file, heard argument of counsel and being duly advised in the premises, it is hereby

ORDERED and ADJUDGED:

1. Defendants' Motion is hereby denied.
2. Twenty days to respond.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida on this 14th day of January, 2013.

Honorable Glenn Kelley
Circuit Judge

Copies to:

Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301; swergoldj@gtlaw.com;
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL; pfeaman@feamanlaw.com.

Copies furnished by e-mail

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; SIMON BERNSTEIN; LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC.
Defendants.
_____/

FILED
2013 JAN 17 AM 11:24
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

ORDER SETTING HEARING

The following matter has been specially set for hearing before Judge Glenn D. Kelley in Courtroom 11A of the Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, FL 33401.

DATE: **March 25, 2013**

TIME: ~~9:30~~ 10:30 **a.m. (time allotted: 30 minutes)**

MATTER: **MOTION FOR DISQUALIFICATION**

NOTE: THIS HEARING IS SPECIALLY SET BY COURT ORDER AND CANNOT BE CANCELLED OR RESET EXCEPT BY COURT ORDER. ALL MEMORANDA MUST BE SUBMITTED TO JUDGE'S CHAMBERS NO LATER THAN FIVE (5) DAYS PRIOR TO HEARING.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this 16 day of January, 2013.

Honorable Glenn Kelley
Circuit Judge

Copies to:
Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301; swergoldj@gtlaw.com;
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL; pfeaman@feamanlaw.com.

Copies furnished by e-mail

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355 4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

"Si usted es una persona minusválida que necesita algún acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida 33401; teléfono número (561) 355-4380, por lo menos 7 días antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente después de recibir esta notificación si el tiempo antes de la comparecencia que se ha programado es menos de 7 días; si usted tiene discapacitación del oído o de la voz, llame al 711."

"Si ou se yon moun ki enfim ki bezwen akomodasyon pou w ka patisipe nan pwosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kèk èd. Tanpri kontakte Germaine English, kòòdonatè pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan 205 North Dixie Highway, West Palm Beach, Florida 33401; telefòn li se (561) 355 4380 nan 7 jou anvan dat ou gen randevou pou parèt nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si lè ou gen pou w parèt nan tribinal la mwens ke 7 jou; si ou gen pwoblèm pou w tande oubyen pale, rele 711."

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

IN RE: STANDING ORDER ON SPECIALLY SET MOTIONS

CIVIL DIVISION "AA"

_____/

This motion has been specially set by Court Order and cannot be canceled except by further Court Order.

It is the intent of this Court to dispose of the subject matter of the specially set motion on the date and time appearing on the order. Accordingly, counsel must either: (1) argue the motion on the date and time set for the hearing; (2) submit an agreed order disposing of the motion; or (3) show good cause why the hearing should be canceled. Any request to cancel a hearing for good cause shall be made by motion and shall be set for hearing on the Court's Uniform Motion Calendar.

All memoranda and/or case authority shall be delivered to my office and to all parties no later than five business days in advance of the hearing and no sooner than ten days prior to the hearing and should designate the date and time of the hearing which they reference.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 4th day of September, 2012.

JUDGE GLENN D. KELLEY
CIRCUIT COURT JUDGE

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

CASE NO: 502012CA013933XXXXMB AA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN, SIMON BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C.,

Defendants.

ORDER ON DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT

THIS CAUSE having come before the Court on January 14, 2013, on Defendants' Motion to Dismiss Or, In The Alternative, Motion For More Definite Statement (the "Motion"), and Plaintiff's Response in Opposition to the Motion, and the Court having heard argument of counsel , and being otherwise fully advised, does hereby

FILED
2013 JAN 23 PM 1:00
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

ORDER and ADJUDGE:

1. Defendants' Motion to Dismiss Count I is hereby DENIED.

2. Defendants' Motion to Dismiss Count III is hereby GRANTED without prejudice.

3. Defendants' Motion to Dismiss Count V is hereby GRANTED without prejudice.

4. Defendants' Motion to Dismiss Count VI is hereby GRANTED without prejudice.

5. Defendants' Motion to Dismiss Count VII is hereby GRANTED without prejudice.

Copies furnished by e-mail

6. Plaintiff has agreed to voluntarily withdraw Count II (Accounting - Against Ted Bernstein and Simon Bernstein), Count IV (Breach of Implied Covenant of Good Faith and Fair Dealing - Against All Defendants), Count VIII (Equitable Lien - Against All Defendants), Count IX (Contract Implied in Law - Against All Defendants), Count X (Constructive Trust - Against All Defendants) and Count XI (Indemnification - Against All Defendants) without prejudice.

7. That part of the Motion to Dismiss asserting the Statute of Limitations is hereby denied.

8. The Court finds that Defendants' request for legal fees and costs under Florida Statute §§ 772.11 and 812.035(7) due to the Court's dismissal of Count VI (Civil Theft) with leave to amend is premature at this time.

9. Plaintiff shall have twenty (20) days from the date of this Order to amend his Complaint.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County Florida this 23rd day of January, 2013.

HON. GLENN D. KELLEY
CIRCUIT JUDGE

Copies to:

Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301; swergoldj@gtlaw.com; ciaffik@gtlaw.com; and
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL; pfeaman@feamanlaw.com; kdstern@gmail.com.

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

FILED
13 FEB 14 AM 11:23
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 2

AMENDED COMPLAINT

WILLIAM E. STANSBURY, by and through undersigned counsel, sues the Defendants and states:

1. This is an action for money damages in excess of $15,000, and for equitable relief.

2. Plaintiff (hereinafter referred to as "STANSBURY") is *sui juris*, and a resident of Palm Beach County, Florida.

3. Defendant TED S. BERNSTEIN ("TED BERNSTEIN"), is *sui juris*, and a resident of Palm Beach County, Florida.

4. SIMON L. BERNSTEIN ("SIMON BERNSTEIN") died on or about September 13, 2012, after the filing of the initial Complaint in this action. At the time of his death, SIMON BERNSTEIN was *sui juris*, and was a resident of Palm Beach County, Florida. Defendants

Donald R. Tescher and Robert L. Spallina are serving as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN (the "ESTATE")which ESTATE is presently open and pending in the Palm Beach County Circuit Court, *In re: Estate of Simon L. Bernstein*, Case No. 502012CP004391XXXXSB (the "Estate Proceeding"). In accordance with Section 733.705, Florida Statutes, STANSBURY hereby brings this independent action against the ESTATE with respect to his Statement of Claim that was filed and objected to in the Estate Proceeding.

5. Defendant, LIC HOLDINGS, INC. ("LIC Holdings") is a Florida corporation with its principal place of business in Palm Beach County, Florida.

6. Defendant, ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, formerly known as ARBITRAGE INTERNATIONAL HOLDINGS, LLC, ("ARBITRAGE") is a Florida limited liability company with its principal place of business in Palm Beach County, Florida.

7. Defendant, BERNSTEIN FAMILY REALTY, LLC is a Florida limited liability company doing business in Palm Beach County.

8. Defendant, the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008 ("SHIRLEY'S TRUST"), owns real property in Palm Beach County, Florida. Based upon information and belief, Donald R. Tescher and Robert L. Spallina are serving as co-trustees of SHIRLEY'S TRUST. This Court has personal jurisdiction over the trustees and the beneficiaries of SHIRLEY'S TRUST under Section 736.0202, Florida Statutes, as the principal place of administration of SHIRLEY'S TRUST is in Palm Beach County, Florida. This court has subject matter jurisdiction over this action under Section 736.0203, Florida Statutes. Venue is proper in Palm Beach County, Florida, under Section 736.0204, Florida Statutes, as the principal place of administration of SHIRLEY'S TRUST is in Palm Beach County, Florida and one or more of the beneficiaries of SHIRLEY'S TRUST reside in Palm Beach County, Florida.

9. The acts and incidents giving rise to the causes of action alleged herein arose in Palm Beach County, Florida.

Background

10. STANSBURY has worked in the insurance industry for virtually all of his adult life. After 30 years, he had become well-known and highly regarded by major insurance companies, their principals and others throughout the insurance industry, at all levels thereof, as well as by professionals, including attorneys, CPA's, financial advisors, wealth managers and others who were involved in serving, or otherwise dealing with insurers, insurance brokers and life insurance products.

11. SIMON BERNSTEIN dealt at sophisticated levels of the insurance industry and specialized in developing and marketing insurance concepts suitable for persons of high net worth to incorporate into their wealth management and estate planning.

12. TED BERNSTEIN, the son of SIMON BERNSTEIN, was also actively involved in selling life insurance products in conjunction with attorneys, CPAs and other professionals, to be incorporated into high net worth individuals' financial and estate planning.

13. TED BERNSTEIN approached STANSBURY, urging STANSBURY to spearhead the marketing of a unique insurance concept, newly developed by a prominent law firm, which was designed for use in the financial and estate planning of high net worth individuals.

14. TED BERNSTEIN told STANSBURY that he knew of STANSBURY's expertise and reputation in the insurance and related industries, and that STANSBURY was skilled at and accustomed to speaking and marketing insurance products to groups of professionals. He realized that STANSBURY, because of his knowledge, reputation and abilities, would be well suited to market this concept nationwide through prominent and experienced professionals.

15. In 2006, SIMON BERNSTEIN and TED BERNSTEIN (collectively, "BERNSTEIN" or the "BERNSTEINS") formed Defendants LIC Holdings and ARBITRAGE for the purpose of marketing and selling certain life insurance products to high net worth individuals for their wealth management and estate planning needs.

16. STANSBURY agreed to become an employee of LIC Holdings, Inc. and ARBITRAGE and agreed to a salary of 15% of net commissions received on all products, including renewals.

17. STANSBURY worked with diligence and skill, traveling throughout the United States, generating ever-increasing sales and generating very large commissions. By 2006, nationwide sales were resulting in substantial commissions on new policies and renewal commissions.

18. Also in 2006, SIMON BERNSTEIN told STANSBURY that STANSBURY was being rewarded for his efforts and the explosive growth of the business, such that he would receive a 10% ownership interest in LIC Holdings, Inc.

19. In February of 2008, SIMON BERNSTEIN approached STANSBURY with the suggestion that rather than STANSBURY performing computations on a monthly basis as to how much should be paid to him based upon 15% of the commissions derived from policies sold by STANSBURY, the BERNSTEINS and STANSBURY should forego monthly payouts and defer compensation until the end of 2008, when year-end computations could be made. It was suggested that in December, year-end computations would be made and salaries would be paid in December 2008 or January of 2009. It was specifically represented to STANSBURY that neither SIMON BERNSTEIN, TED BERNSTEIN nor STANSBURY would take any compensation until the year-end accounting was performed in December of 2008 or January, 2009.

20. STANSBURY relied on SIMON BERNSTEIN's representations that, among other things, his time would be better spent building the business rather than performing monthly calculations of income. STANSBURY relied on SIMON BERNSTEIN's representation that they would all be paid identical annual salaries of not less than $1,000,000 at the end of 2008 to be applied against STANBURY's 15%. Any compensation to STANSBURY over and above his 15% would be paid to him in accordance with his ownership percentage of 10%.

21. STANSBURY, having no reason to believe that the representations by SIMON BERNSTEIN were false and only a ruse to keep him from inquiring as to corporate revenue and distributions, acceded to his being relieved of the bookkeeping duties regarding calculating the disposition of monies on a monthly basis throughout the year.

22. In 2008, STANSBURY received only $420,018.00, all from commissions earned for sales in 2007 but paid in the January of 2008. STANSBURY received no payments for commissions received after January, 2008.

23. Unbeknownst to STANSBURY at that time, SIMON BERNSTEIN was paid $3,756,229.00 and TED BERNSTEIN was paid $5,225,825.00 in 2008.

24. The net retained commissions by LIC Holdings and ARBITRAGE, not including renewals for 2008 were approximately $13,442,549.00. As such, STANSBURY was entitled to, at the very minimum, 15% of $13,442,549.00, or $2,016,382.35.

25. Since that time, SIMON BERNSTEIN and TED BERNSTEIN have secreted commissions received by LIC Holdings and ARBITRAGE into Bernstein family trusts and other entities as more specifically set forth below. Those trusts have since invested in real estate, also as more particularly set forth below.

26. Throughout 2009, SIMON BERNSTEIN and TED BERNSTEIN continued to make false statements to STANSBURY to hide the fact that they had looted the corporations for their

own personal benefit by withdrawing millions in 2008 and 2009, all to the financial detriment of STANSBURY. The BERNSTEINS represented that the money was not being paid as salary or distributions because the funds needed to be held in the corporate bank accounts to show to potential lenders the financial stability of the company.

27. STANSBURY relied upon these continuing representations of Defendants to his detriment. Because STANSBURY was told that potential funding sources for the business needed to see that capital of the company was available, he took no action when he did not receive any compensation for 2009 and paid only $30,000 in 2010.

28. STANSBURY believes that some or all of the funds to which he was entitled and/or assets attributable to such funds were placed into certain entities, including but not limited to BERNSTEIN FAMILY REALTY, LLC and SHIRLEY'S TRUST. For example, based on information and belief, some or all of the funds to which STANSBURY was entitled were invested in certain parcels of real property, which parcels were conveyed to the trustee of SHIRLEY'S TRUST on or about May 20, 2008, including but not limited to a 4,220 square foot oceanfront condominium unit in a complex known as "The ARAGON" in Boca Raton, located at 2494 So. Ocean Boulevard, Boca Raton, Florida and a mansion in St. Andrew's Country Club located at 7020 Lions Head Lane, Boca Raton, Florida.

29. In order to continue their scheme to defraud, SIMON BERNSTEIN and TED BERNSTEIN failed and refused to account for renewal commissions and failed to supply any financial information to STANSBURY concerning LIC Holdings, Inc. or ARBITRAGE INTERNATIONAL MANAGEMENT, LLC.

30. In furtherance of their scheme to deprive STANSBURY of salary he had earned and shareholder distributions to which he was entitled, SIMON BERNSTEIN and TED BERNSTEIN intercepted mail addressed to STANSBURY, removing commission checks representing

commissions due to STANSBURY, deposited the funds into their own accounts and otherwise converted the funds. SIMON BERNSTEIN and TED BERNSTEIN also opened STANSBURY's mail containing checks payable to him which were unrelated to them and the businesses.

31. In 2011, the Defendants BERNSTEIN decided to deceive STANSBURY further. STANSBURY had for years been given K-1 statements reflecting his 10% ownership of LIC Holdings. At the end of 2011, TED BERNSTEIN told STANSBURY that the company accountant had discovered a taxable event which could cause STANSBURY, as an owner of LIC Holdings to pay taxes on phantom income. TED BERNSTEIN promised that if STANSBURY would sign a paper ceding his 10% interest in LIC Holdings, he would not have to pay the tax. TED BERNSTEIN promised he would hold the paper, promising it would not become operative until STANSBURY and the Defendants BERNSTEIN discussed the situation further in the first quarter of 2012.

32. Because of the misrepresentations, willful concealments of material facts, duplicity and deceit practiced by Defendants upon STANSBURY, STANSBURY reasonably believed that Defendants had complied, or intended to comply with their obligations to STANSBURY under the contract between them. STANSBURY, therefore, was prevented from knowing for a period of years that the causes of action ASSERTED HEREIN existed.

33. By the second quarter of 2012, STANSBURY developed the belief that the BERNSTEINS' representations over the years were wholly false and he sought legal counsel.

34. STANSBURY has retained the law firm of Peter M. Feaman, P.A. and has agreed to pay it a reasonable fee for its services rendered herein.

COUNT I - ACCOUNTING
(Against LIC Holdings and ARBITRAGE, for Accounting)

35. STANSBURY hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

36. The relationship between STANSBURY and the Defendants, particularly as affected by Defendants' acts described in preceding paragraphs 19 through 27 created a situation where Defendants had sole access to receipts generated by STANSBURY's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to STANSBURY under his arrangement with Defendants.

37. The period of time during which STANSBURY has been deprived of monies due him spans approximately four and a half years. The various sources of revenue to Defendants of monies from which the amounts due STANSBURY may be calculated, the manner in which STANSBURY was to be paid, and the amount due STANSBURY all involve extensive and complicated accounts, and STANSBURY's remedy at law cannot be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff STANSBURY prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, LIC Holdings and ARBITRAGE, and for such orders of Court as will require such Defendants to provide STANSBURY with all records and copies of documents from January 1, 2006 to the present, in order to reveal his right to, and the amount of all sums: (a) received as commissions to which STANSBURY was entitled to a share; (b) due to STANSBURY, whether paid or not; (c) paid to STANSBURY, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the BERNSTEIN Defendants out of monies received as commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the

entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid , to be paid, or not to be paid to STANSBURY, together with an award of court costs and such other and further relief as the Court may deem just and proper.

II. BREACH OF ORAL CONTRACT
(Against LIC Holdings, Inc. and Arbitrage International Management, LLC)

38. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

39. The arrangement between STANSBURY and Defendants as described in paragraphs 16 and 24 above, constituted a contract between them.

40. An express term of that contract involved the commitment of LIC Holdings and ARBITRAGE to calculate and to pay to STANSBURY all sums due to him under the contract, whether as commissions, salary, distributions, expenses or any other reason.

41. The Defendants initially performed the duties required of them under said contract.

42. However, Defendants breached their contract with STANSBURY by withholding from STANSBURY monies due him under the contract.

43. The withholding of such monies constitutes a material breach of the contract between STANSBURY and LIC Holdings and ARBITRAGE.

44. There is due to STANSBURY from such Defendants all amounts due under said contract, together with prejudgment and post-judgment interest on said amounts.

WHEREFORE, Plaintiff prays for judgment against Defendants, LIC Holdings, Inc. and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, jointly and severally, in excess of $1,500,000.00 for the amounts due to Plaintiff under the terms of their contract, together with

prejudgment and post-judgment interest, court costs and such other relief as the Court may deem just and proper.

III. BREACH OF FIDUCIARY DUTY
(Against SIMON BERNSTEIN and TED BERNSTEIN ["BERNSTEINS"])

45. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

46. At all material times hereto, SIMON BERNSTEIN and TED BERNSTEIN were officers and majority shareholders of LIC Holdings and ARBITRAGE.

47. As shareholders and officers of LIC Holdings and ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN did have and have a fiduciary duty to STANSBURY to act in good faith towards STANSBURY and to act in the best interests of LIC Holdings and ARBITRAGE.

48. At all material times hereto, STANSBURY was and is a shareholder of LIC Holdings.

49. STANSBURY reposed trust and confidence in SIMON BERNSTEIN and TED BERNSTEIN as a result of their position as majority shareholders and officers of LIC Holdings and ARBITRAGE.

50. Further, SIMON BERNSTEIN and TED BERNSTEIN held positions of advantage and control over STANSBURY, not only by virtue of their majority shareholder status, but by having access to the accounting books and records of LIC Holdings and ARBITRAGE, to the exclusion of STANSBURY.

51. STANSBURY reasonably believed that the BERNSTEIN Defendants would deal with STANSBURY honestly and fairly and believed that such Defendants had no intention of

hiding from STANSBURY any information as to the amounts due STANSBURY or payment of the money due to STANSBURY.

52. Moreover, when Defendants proposed to STANSBURY that STANSBURY cease being the one to calculate monies due from the commissions received, STANSBURY trusted the BERNSTEINS to make proper, accurate and complete calculations just as STANSBURY had done and to pay STANSBURY accordingly. As majority shareholders and directors of LIC Holdings and ARBITRAGE, the BERNSTEINS were in a superior position of knowledge and control concerning the finances and affairs of those companies.

53. As a result of the foregoing, a fiduciary relationship existed between the BERNSTEINS and STANSBURY and there existed in STANSBURY complete trust in the BERNSTEIN Defendants.

54. The BERNSTEIN Defendants accepted the trust which STANSBURY reasonably placed in them.

55. The BERNSTEIN Defendants breached their fiduciary duty to STANSBURY by repeated conduct of self-dealing and violations of corporate protocol, including:

a) directing LIC Holdings and ARBITRAGE to make payments to third parties not employed by the corporations and who had performed no services on behalf of the corporations for the personal benefit of the BERNSTEINS;

b) directing the corporations to pay for personal expenses of the wives and other friends of the BERNSTEIN Defendants through corporate credit cards and other forms of payment, notwithstanding that they provided no services for the corporations;

c) transferring monies from LIC Holdings and ARBITRAGE to third party entities including the BERNSTEIN Defendants, the BERNSTEIN FAMILY REALTY, LLC and the

SHIRLEY BERNSTEIN TRUST AGREEMENT for the benefit of the BERNSTEINS, personally;

d) paying themselves exorbitant compensation to the exclusion of STANSBURY;

e) treating LIC Holdings and ARBITRAGE as alter egos of themselves and otherwise handling the affairs of LIC Holdings and ARBITRAGE without regard to corporate protocol;

f) failing to convene annual meetings of the stockholders of LIC Holdings and ARBITRAGE, in violation of Florida law;

g) committing corporate waste by unnecessarily expending corporate assets on unrelated corporate activities;

h) failing to account for the revenue and expenses of LIC Holdings and ARBITRAGE to STANSBURY, who was entitled to compensation as an employee and as a minority shareholder;

i) directing LIC Holdings and ARBITRAGE to take actions to reduce the profit of LIC Holdings and ARBITRAGE so as to prevent STANSBURY from earning his just compensation, in violation of prior agreement of the parties.

56. SIMON BERNSTEIN further breached his fiduciary duty owed to STANSBURY as a minority shareholder by neglecting to perform his duties as an officer and director in a prudent and reasonable fashion.

57. Through Defendants BERNSTEINS' willful misrepresentations and withholding of material information as to their intentions and the purposes for which STANSBURY's payments were not being paid, and through their diversion from STANSBURY of amounts which should have been paid to him, such Defendants abused and betrayed STANSBURY's trust and confidence in them to STANSBURY's great detriment. STANSBURY has been deprived of the amounts due him, the precise amount of which cannot be calculated without access to Defendants' books and records and a full accounting by them.

58. The monetary damages suffered by STANSBURY as a result of the foregoing conduct was suffered by STANSBURY individually and not to the corporation LIC Holdings as a whole, because the conduct as described above prevented STANSBURY from obtaining the benefits of the bargain of his oral agreement with the corporations as more particularly described in Count II above.

59. The foregoing conduct by the BERNSTEINS was done with gross and intentional disregard of the rights of STANSBURY as an employee and minority shareholder of LIC Holdings.

WHEREFORE, Plaintiff prays for judgment against Defendants, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, for damages in excess of $1,500,000.00 together with prejudgment and post-judgment interest, court costs and such other relief as the Court may deem just and proper. STANSBURY reserves the right to move to amend to request punitive damages in accordance with Florida Law.

IV. CIVIL THEFT
(Against ARBITRAGE INTERNATIONAL MARKETING, LLC)

60. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

61. This is an action for Civil Theft under Chapter 772, Florida Statutes, more specifically §772.11, Fla.Stat.

62. In February, 2012 and March, 2012, Defendant ARBITRAGE intercepted two separate checks made payable to William STANSBURY intended as payment to STANSBURY for matters arising wholly outside his business transactions with the BERNSTEINS, LIC Holdings and ARBITRAGE.

63. Notwithstanding that the checks made payable to William STANSBURY was for sums due STANSBURY by a third party not in connection with the aforesaid business transactions, ARBITRAGE and/or someone acting on its behalf, caused the negotiation of STANSBURY's checks, wrongfully endorsing the checks and retaining the sums that should have been payable to STANSBURY.

64. As a result of the foregoing, Defendant ARBITRAGE has been guilty of criminal theft by conversion with the criminal intent to steal his money and deprive STANSBURY of his possession and use thereof.

65. Written demand for payment of all amounts due STANSBURY has been made to Defendants, more than 30 days preceding the filing of this Complaint, to no avail. A copy of the demand letter is attached hereto as Exhibit "A."

WHEREFORE, Plaintiff prays for judgment against Defendant, ARBITRAGE for three times the full amount of the check made payable to STANSBURY, together with pre-judgment interest and post-judgment interest, attorneys' fees, court costs and any other relief this Court deems just and proper.

V. CONVERSION

66. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 60 through 65, inclusive.

67. Further, during 2012, Defendants TED BERNSTEIN, SIMON BERNSTEIN, LIC Holdings, Inc., ARBITRAGE, or someone acting on their behalves, received and cashed in excess of $30,000.00 worth of commissions checks otherwise payable to Plaintiff.

WHEREFORE, Plaintiff prays for judgment for damages against Defendant, ABRITRAGE, SIMON BERNSTEIN, LIC Holdings, Inc. and TED BERNSTEIN, together with

pre-judgment interest and post-judgment interest, court costs and any other relief this Court deems just and proper.

VI. FRAUD IN THE INDUCEMENT
(Against Ted Bernstein and LIC Holdings, Inc.)

68. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

69. In the fourth quarter of 2011, TED BERNSTEIN embarked upon a plan to defraud from STANSBURY his 10% ownership interest in LIC Holdings, Inc. As set forth in paragraph 31 above Defendant TED BERNSTEIN fraudulently induced STANSBURY to sign a document giving up his 10% interest in and to LIC Holdings, Inc.

70. The ceding of his shares in LIC Holdings, Inc. was procured by fraud and STANSBURY relied upon the representations made by BERNSTEIN with regard to signing the document apparently ceding his stock.

71. It was reasonable for STANSBURY to rely on the representations made by BERNSTEIN because at that time STANSBURY was unaware of the breaches of fiduciary duty and breaches of the oral contract that had taken place.

72. As a result of STANSBURY's reliance, STANSBURY has been damaged by the loss of 10% of the shares of LIC Holdings and the rights and remedies to a shareholder related thereto.

WHEREFORE, Plaintiff prays for a judgment for damages against Defendants BERNSTEIN and LIC Holdings, Inc. for the damages caused by the fraudulent conduct of BERNSTEIN as described herein, together with reasonable costs, pre-judgment interest and any other relief this Court deems just and proper.

VII. EQUITABLE LIEN

73. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, paragraphs 1 through 34, above.

74. Defendants, SIMON BERNSTEIN and/or TED BERNSTEIN wrongfully diverted funds from LIC Holdings and ARBITRAGE that rightfully should have been paid to STANSBURY pursuant to their oral agreement.

75. Upon information and belief, SIMON BERNSTEIN and/or TED BERNSTEIN, or both, wrongfully diverted funds from LIC Holdings and/or ARBITRAGE and acquired and/or maintained or improved property located at 7020 Lion's Head Lane, Boca Raton, Florida, legally described as

> Lot 781, St. Andrews Country Club (a PUD) Plat No. 14 according to the plat thereof recorded in Plat Book 57, Page 132 of the public records of Palm Beach County, Florida.

76. Further, upon information and belief, as a result of the funds being wrongfully diverted from LIC Holdings and/or ARBITRAGE, which otherwise rightfully belonged to and should have been paid to STANSBURY, the property legally described as

> Lot 68, Block G Boca Madeira, Unit 2 according to the plat thereof recorded in Plat Book 32, Pages 59 and 60 of the public records of Palm Beach County, Florida, with a property address of 2753 NW 34 Street, Boca Raton, Florida,

was encumbered with a mortgage representing wrongfully diverted funds which were loaned in the form of a second mortgage to Defendant, BERNSTEIN FAMILY REALTY, LLC, a Florida limited liability company.

77. Upon information and belief, as a result of the funds being wrongfully diverted from LIC Holdings and/or ARBITRAGE which otherwise should have been paid to STANSBURY, such funds were used to satisfy a mortgage for the benefit of TED BERNSTEIN on property legally described as

Lot 139, Saturnia Isles, Plat One, recorded in Plat Book 91 at Page 108 of the property records of Palm Beach County, Florida, with a property address of 15807 Menton Bay Court, Delray Beach, Florida

WHEREFORE, Plaintiff prays for the Court to declare and establish an equitable lien in favor of Plaintiff in an amount equal to the funds wrongfully diverted, on the property described herein, and on all other assets of Defendants or third parties as yet unknown, which assets have been purchased wholly or in part, improved or benefitted by the diverted funds due Plaintiff, together with court costs and such other and further relief as this Court may deem just and proper.

VIII. CONSTRUCTIVE TRUST

78. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 73 through 77 above.

WHEREFORE, Plaintiff prays for the Court to declare and establish a constructive trust in favor of Plaintiff on the property described in paragraphs 75 through 77 in an amount equal to the funds wrongfully diverted and on all assets of Defendants or third parties as yet unknown, which assets have been purchased wholly or partly, improved or mortgaged by the diversion of said funds due Plaintiff. Plaintiff further prays for an award of court costs and such other and further relief as the Court may deem just and proper.

IX. VIOLATION OF FLA. STAT. 607.1602
(As to Defendant, LIC Holdings, Inc.)

79. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, paragraphs 1 through 34, above.

80. STANSBURY owns 10% of the issued and outstanding shares of LIC Holdings and has owned these shares since 2006.

81. Pursuant to §607.1602 Fla. Stat. (2012), STANSBURY made demand on LIC Holdings to inspect and copy certain records. A copy of the Demand is attached hereto as Exhibit "A." LIC Holdings refused to respond to the request in direct violation of 607.1602 Fla. Stat. (2012).

82. Section 607.1604(2) Fla. Stat. (2012) states:

> If a corporation does not, within a reasonable time, allow a shareholder to inspect and copy any other record, the shareholder who complies with §607.1602(2) and (3) may apply to the Circuit Court in the county where the corporation's principal office is located for an order to permit inspection and copying of the records demanded.

83. Section 607.1604 Fla. Stat. (2012) requires that the court dispose of an application brought under this section "on an expedited basis."

84. Pursuant to §607.1604(2) Fla. Stat. (2012), Plaintiff requests that this court summarily order inspection and copying of the record previously demanded at the corporation's expense.

85. Pursuant to §607.1604(3) Fla. Stat. (2012), STANSBURY is entitled to an award of his costs including reasonable attorneys' fees incurred in order to obtain the order and enforce his rights unless the corporation or its officers, director or agent proves that the refusal of the inspection is made in good faith because the corporation had a reasonable basis for doubt about the right of the shareholder to inspect or copy the records demanded.

WHEREFORE, Plaintiff, WILLIAM E. STANSBURY requests this Honorable Court to summarily order inspection and copying of the records of LIC Holdings, Inc. previously demanded, at the corporation's expense, together with an award of reasonable costs and attorneys' fees incurred herein.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail at swergoldj@gtlaw.com; ciaffik@gtlaw.com; steffesj@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301 this 12th day of FEBRUARY, 2013.

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June 20, 2012

Via Certified Mail, Return Receipt Requested

PERSONAL and CONFIDENTIAL
Mr. Ted Bernstein, President
LIC Holdings, Inc.
950 Peninsula Corp Circle
Suite 3010
Boca Raton, FL 33487

Re: William (Bill) Stansbury

Dear Mr. Bernstein:

The undersigned represents William (Bill) Stansbury and we are writing this letter on his behalf. Mr. Stansbury received your proposed letter agreement reflecting LIC Holdings' proposal to indemnify its shareholders concerning policies sold under the Cambridge Financing Program. As a result of your proposal, Mr. Stansbury has reviewed with me in detail his dealings with you and your companies over the past 4 to 5 years.

After reviewing the facts with Mr. Stansbury, some of which will be summarized below, I was shocked that he had not consulted legal counsel until now. Be that as it may, and based upon the facts presented to us, we believe you have engaged in fraud, civil theft, breaches of fiduciary duties, and breach of contract, just to name a few. The purpose of this letter is to a). respond to your indemnity proposal and b). request that you pass this letter on to your counsel immediately in the off-chance that these very serious matters can be resolved prior to the filing of legal action. The issues can be summarized as follows:

1. The first issue concerns you and your company's failure to pay salary compensation to Mr. Stansbury. Mr. Stansbury has been making inquiries concerning this for the past 5 months, but to no avail. Mr. Stansbury's claim for unpaid salary arises from three categories:

EXHIBIT A

a. Failure to pay salary based on net retained commissions.

i. Based upon reports prepared by your company for the period of 2007 through 2011, LIC Holdings, Inc. and/or Arbitrage International Holdings, n/k/a Arbitrage International Management, LLC, received $35,384,246.00 in net retained commissions. According to Mr. Stansbury's salary arrangement, he is entitled to 15% of those net retained commissions, which amounts to $5,307,636.90. During this time period, Mr. Stansbury's salary compensation was $2,844,910.00. The shortfall in salary owed to Mr. Stansbury is $2,462,726.90.

ii. There is salary compensation owed to Mr. Stansbury as a result of bridge loans in 2008. You received a $2,000,000.00 settlement in 2010 resulting from the resolution of a lawsuit involving Global Secured Capital. Mr. Stansbury is entitled to 15% of those funds, which is $300,000.00.

iii. In addition, you received $507,891.00 in commissions in connection with the Biviano matter. Mr. Stansbury is entitled to 15% of those funds, which is $76,183.65.

iv. In April of 2012, you received three commissions totaling approximately $200,000.00 in the Levine, Wiss and Berley matters. Mr. Stansbury has been requesting payment of this for weeks, again to no avail. Mr. Stansbury is due salary compensation for these items in the amount of $30,000.00.

Therefore, Mr. Stansbury's total claim for salary arising out of net retained commissions is approximately $2,868,910.55.

The liability for payment of this salary is not limited to LIC Holdings, Inc. or Arbitrage International Management, LLC. This liability also flows to you individually as a result of your breaches of your fiduciary duty owed to Mr. Stansbury and utter failure to abide by corporate governance standards, which conduct is more particularly described below.

b. Mr. Stansbury is also due unpaid salary based on 15% of all renewal commissions since 2008. Mr. Stansbury's salary claim for renewal commissions cannot as yet be determined with specificity due to the fact that you and your office have been opening mail directed to Mr. Stansbury and negotiating checks made payable to him by falsifying his endorsement and depositing those checks into accounts which only you control. This conduct constitutes civil theft and breach of fiduciary duty. We believe this claim amounts to hundreds of thousands of dollars.

c. Salary compensation for 2008. Mr. Stansbury has recently learned that you and Mr. Simon Bernstein received $8,982,124.00 in salary in 2008. By contrast, Mr. Stansbury received $420,018.00, paid to him in January 2008, based on policies sold in 2007. He received zero (no salary compensation) for his 2008 production. It is obvious that you and Simon treated your corporations as personal ATM machines, while completely ignoring your fiduciary

responsibilities to your employee and minority shareholder, Mr. Stansbury. It further appears that after the exorbitant salaries were paid to you, you then loaned the money back to the corporation at an interest rate significantly above market rates in order to meet the cash flow needs of the various entities, again, clearly disregarding your corporate governance responsibilities.

2. Indemnification issues.

Mr. Stansbury has been served with three lawsuits from Phoenix Insurance Company and one from Mr. Wright seeking indemnification as a result of agent misconduct which was in no way attributable to the conduct of Mr. Stansbury. Although all of these matters have been settled, because he was the qualifying agent of record for other policies, he could be the subject of future litigation for refunds of commissions paid. All of these commissions were paid over to you or your companies.

The Indemnification Agreement which you sent to Mr. Stansbury is completely insufficient. You have a duty as a matter of law to indemnify Mr. Stansbury. Your offer of future indemnity is contingent upon "all" commissions that have been received by LIC's present or past shareholders be turned over to LIC. This is nothing short of extortion. Further, your second paragraph states that LIC is "presently insolvent" and has a "negative net worth." You then conclude with the sentence that with the indemnification agreement in place, LIC "may" have sufficient funds to meet its current obligations. Therefore, a simple indemnification from LIC Holdings to Mr. Stansbury is insufficient. Any such indemnification would have to be personally guaranteed by you and Mr. Simon Bernstein.

3. Unauthorized interception of U.S. Mail.

I have been given the understanding that your office has been opening mail directed to Mr. Stansbury personally. This is a federal offense and also constitutes a breach of the fiduciary duty you owe to Mr. Stansbury as an employee and minority shareholder.

There has been no accounting to Mr. Stansbury for any of the checks which may have been sent to him personally on which his signature has been forged, the checks cashed and placed out of the reach of Mr. Stansbury. In 2012, Mr. Stansbury has been receiving checks from Phoenix Life Insurance Company and TransAmerica Life Insurance Company. Mr. Stansbury has been holding these checks. They have now been remitted to the undersigned as attorney for Mr. Stansbury. This office is holding these funds in a separate interest-bearing trust account pending the resolution of this matter.

With regard to all of the other insurance companies for whom Mr. Stansbury is listed as the qualifying agent, he has now informed those companies that all future renewal commissions paid to him personally be sent to Mr. Stansbury at his home address. These funds will then be remitted to the undersigned counsel of record for Mr. Stansbury. We will place these funds in a separate interest-bearing trust account as well. Any attempts by you to contact these insurance

companies will be considered a tortious interference of his business relationship and such activity will be added as a claim in any future legal proceedings.

4. Shareholder status.

Mr. Stansbury has been a 10% shareholder of LIC Holdings, Inc., pursuant to the terms of a Shareholders Agreement. On behalf of Mr. Stansbury, demand is hereby made, pursuant to Florida Statute 607.1602, for inspection of the corporate records including the following:

I. Minutes of the Board of Directors meetings from January 1, 2008 to the present.

II. Minutes of Shareholders' meetings from January 1, 2008 to the present.

III. Records of any actions taken by the Shareholders and/or the Board of Directors without a meeting, from January 1, 2008 to the present.

IV. Accounting and financial records of LIC Holdings, Inc., Arbitrage International Management, LLC, formerly known as Arbitrage International Holdings, LLC, and all other subsidiary or affiliated companies under your control, including, without limitation, income tax returns, general ledgers, balance sheets, profit and loss statements, stock books, bank statements, loan agreements or guarantees, and any other financial books and records from January 1, 2008 to the present.

Mr. Stansbury is seeking to inspect these records in good faith and for the purpose of determining if misappropriation of corporate assets for improper purposes has previously taken or is presently taking place.

I have been made aware of a letter dated December 22, 2011 in which Mr. Stansbury purportedly "ceded" his shares of stock in LIC Holdings, Inc. back to the company. This letter was obtained under false pretenses and is not recognized by Mr. Stansbury as validly conveying his ownership interest in LIC Holdings, Inc.

Please have your legal counsel contact us within ten (10) days. Should we fail to receive a response within that time, Mr. Stansbury will take legal action to protect his rights and interests.

Very truly yours,

PETER M. FEAMAN, P.A.

By: Peter M. Feaman

Peter M. Feaman

PMF/mk
cc: William Stansbury
CC Riggs (e-mail)

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

WILLIAM E. STANSBURY,
Plaintiff,
vs.

Case No. 2012 CA 013933 XXXX MB (AA)

TED S. BERNSTEIN;
SIMON BERNSTEIN;
LIC HOLDINGS, INC.; and
ARBITRAGE INTERNATIONAL
MANAGEMENT, L.L.C., f/k/a
ARBITRAGE INTERNATIONAL
HOLDINGS, L.L.C.,
Defendants.
_____/

FILED
13 FEB 20 PM 3:56
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 2

MOTION OF KENNETH D. STERN, P.A. TO WITHDRAW AS CO-COUNSEL FOR PLAINTIFF

KENNETH D. STERN, P.A., undersigned co-counsel of record for Plaintiff ("Movant"), hereby moves for leave to withdraw as co-counsel for Plaintiff and as grounds therefor states:

1. Peter M. Feaman, P.A. is co-counsel for Plaintiff and intends to remain as such.

2. Movant, with the consent of Plaintiff, entered his appearance in this matter as co-counsel for Plaintiff.

3. Kenneth D. Stern, individually, has decided to seek certification by the Supreme Court of Florida as a Senior Judge.

4. In order to qualify as a Senior Judge, a retired Judge must first cease the private practice of law. *See,* Fla. R. Jud. Admin. 2.205(3)(C).

5. In order to satisfy this requirement, Movant is hereby seeking to withdraw from representing Plaintiff in this case.

6. Plaintiff, WILLIAM E. STANSBURY has authorized the undersigned to file this Motion to Withdraw and to seek a Court Order removing Movant as counsel of record herein, and relieving Movant of any and all further responsibilities with respect to this case.

7. Co-counsel for Plaintiff, Peter M. Feaman, P.A. by its signature, hereby confirms its agreement to this Motion, and further hereby confirms the agreement of Plaintiff and Plaintiff's authorization to Movant to file this Motion to Withdraw.

WHEREFORE, Kenneth D. Stern, P.A. requests this Honorable Court to enter an Order allowing it to withdraw as co-counsel for Plaintiff, WILLIAM E. STANSBURY, and to be relieved of any further responsibility in this matter.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No.: 0260347

KENNETH D. STERN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel.: 561-740-1413
Fax: 561-734-5554
kdstern@gmail.com

By: _____
Kenneth D. Stern
Florida Bar No.: 244929

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail at swergoldj@gtlaw.com; ciaffik@gtlaw.com; steffesj@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301 this 18th day of February, 2013.

KENNETH D. STERN, P.A.
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Boynton Beach, FL 33436
Tel: 561-740-1413
Fax: 561-734-5554
kdstern@gmail.com

By: _____
Kenneth D. Stern
Florida Bar No.: 244929

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

FILED
13 FEB 21 AM 11:23
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

PLAINTIFF WILLIAM E. STANSBURY'S MOTION TO COMPEL DEFENDANT LIC HOLDINGS, INC. TO PRODUCE DOCUMENTS RESPONSIVE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Plaintiff, WILLIAM STANSBURY, by and through his undersigned counsel, hereby moves this Court for an Order compelling Defendant LIC HOLDINGS, INC. ("LIC") to produce the documents requested in Plaintiff's First Request for Production of Documents. As grounds, Plaintiff states that the objections raised by LIC in its response are spurious and without merit. Specific responses to LIC's objections are set forth below.

A. Response to General Objections and General Responses

1. The Plaintiff's First Request for Production of Documents pursuant to Rule 1.350 of the Florida Rules of Civil Procedure. LIC objects to the extent these requests "seek to impose burdens or duties upon LIC that are greater than are required by the Florida Rules of Civil Procedure or applicable law." The bar is relatively low for the scope of discovery, requiring only

that the requested documents be "reasonably calculated to lead to the discovery of admissible evidence." Rule 1.280, Fla. Rules of Civ. Proc. These requests only seek documents that meet this standard, but as objectively determined by the Court, not subjectively determined by LIC.

2. Plaintiff does not seek documents that are subject to either attorney-client or work product privileges. However, subject to the response in 4, below, if LIC claims any documents are protected by either or both privileges, these documents must to listed in a privilege log and made available to the Court for inspection.

4. (Numbering error in LIC Objection) As stated in Response 2, Plaintiff does not seek legitimately privileged documents prepared by LIC counsel for LIC or prepared by LIC in connection with or in anticipation of this litigation. Hence, legal memoranda, drafts of pleadings, attorney notes or communications between counsel and LIC relating to this litigation are not required to be produced. Documents "assembled" by counsel for the purpose of preparing to represent LIC, however, are not automatically privileged and, if the privilege is asserted, these documents should be listed in a privilege log. Other documents, to the extent they include third parties or show a "cc" to counsel, are not privileged and, if the privilege is claimed, should be the subject of a privilege log as well.

5. Plaintiff is not contending that any or all documents to be produced hereunder are automatically admissible into evidence at trial or that LIC, by producing them, has waived the right to object to admissibility. Plaintiff only contends the documents are relevant for discovery purposes at this time.

6. LIC raises a temporal objection to many requests by refusing to produce any documents prior to 2008 on the grounds that Plaintiff admitted he was paid by Defendants through 2007, so allegedly prior records are irrelevant. This objection lacks merit. Plaintiff has

alleged in his Complaint, *inter alia,* breach of oral contract against LIC. Therefore, it is highly relevant for Plaintiff to show documentation from the year immediately preceding the breach as evidence of the breach in ensuing years. In other words, Plaintiff should be permitted to show documents from a year when compensation was paid in full and the oral agreement was honored, and compare it to documentation from subsequent years when the breach occurred and full compensation was withheld and denied. This evidence is relevant to the existence of the oral agreement, its breach and the resulting damages.

7. These General Responses apply to all specific responses set forth below.

B. Response to Objections to Specific Requests

1(a). LIC objects to the language of Plaintiff's question relating to documents that "show, evidence or reflect" communications between LIC or anyone acting on its behalf to or from Plaintiff from January 1, 2007 to present." LIC claims the question is overbroad and vague as the terms "show, evidence and reflect" are undefined. When construing statutory language, in the absence of a definition, the meaning of words of common usage can be ascertained by reference to a dictionary. *Jones v. Williams Pawn & Gun, Inc.,* 800 So. 2d. 267 (Fla. 4th DCA 2001). The same principle applies in this situation. Webster's II New College Dictionary (1999) defines, as is pertinent here, the following: **show:** *"to point out, to manifest, to indicate;"* **evidence:** *"something that indicates;"* **reflect:** *"to manifest as the result of one's actions."* Consequently, this request seeks communications that manifest, indicate or show written communications between the parties. This is not ambiguous or vague. As such, the objection is not well taken and this Court should order that the requested documents be produced.

(b). LIC also objects on relevance grounds. *See,* Plaintiff's response to General Objections and General Responses, number 1, Section A, above. LIC also asserted that the

requested documents were irrelevant in that they were not likely to lead to the discovery of admissible evidence because these documents have no tendency to "make the existence of any fact ... more probable or not, and will not prove or disprove any element of Plaintiff's cause of action for an accounting which is the sole claim pending against LIC." Section 90.402, Fla. Stat. (2012), the Florida Evidence Code, defines relevance for trial purposes as "evidence tending to prove or disprove a material fact." So, in essence, LIC claims the requested documents are not relevant for discovery purposes because they are not admissible under the Evidence Code. This is absurd on its face. The standard for discovery relevance is not its admissibility at trial. This objection should be dismissed out of hand.

(c). Finally, LIC concludes its objection by agreeing to produce "non-privileged responsive documents related solely to Plaintiff's compensation from 2008 to the present..." For the reasons stated above, Plaintiff is entitled to the 2007 documents as well. *See,* Plaintiff's Response to General Objections and General Responses, number 6, above. Additionally, while Plaintiff has raised multiple legitimate claims against LIC in its Complaint, the crux of Plaintiff's case against LIC (contrary to LIC's assertion that an accounting is the sole claim against LIC) is breach of oral contract (*See,* Amended Complaint, Count II). Hence ***all*** written communication between LIC or its agents and Plaintiff are relevant, for discovery purposes, as isolated statements or comments in **any** written communication or response, regardless of the subject matter, is, would or may be likely to lead to evidence of the existence and terms of the subject oral contract. LIC cannot subjectively decide what, in its opinion, is a compensation or relevant communication, then only produce those documents in response to this request. **All** written communications between the parties are relevant for discovery purposes under this request and this Court should order that they be produced.

2. LIC makes the same objections of over breadth, vagueness, ambiguity and relevance to request 2 as were raised in request 1. Please see Plaintiff's responses 1(a), 1(b) and 1(c) of this Section B, above.

3. LIC makes the same objections of over breadth, vagueness, ambiguity and relevance to request 3 as were raised in response to requests 1 and 2. Please see Plaintiff's responses 1(a), 1(b) and 1(c) of this Section B, above.

4. LIC objects to the breadth of the request once again based on the use of the terms "show, evidence and reflect." See Plaintiff's response in 1(a), above. Plaintiff also objects to the use of the term "business relationships" because it is undefined. As above, **relationship** is defined in Webster's II New College Dictionary (1999) as a "*particular state of affairs among people related to or dealing with one another.*" Therefore, the plain and ordinary meaning of all these terms as used in the context of this specific request makes clear that Plaintiff is requesting all documents that show, evidence or reflect business affairs or dealings among the parties, as opposed to personal or social relationships. As a result, this objection is not well taken and this Court should order that the requested documents be produced.

5. LIC makes the same objections of over breadth, vagueness, ambiguity and relevance as were made to requests 1 through 4. Please see Plaintiff's responses 1(a), 1(b) and 1(c) of this Section B, above. The request is clearly directed to all documents that evidence or show the payment of money from LIC or any of the Defendants to Plaintiff. The request is not vague or ambiguous and this Court should order that the requested documents be produced.

6. LIC makes the same objections to vagueness, ambiguity and relevance as were made to requests 1 through 5. Please see Plaintiff's responses 1(a), 1(b) and 1(c) of this Section B, above. The request is clearly directed to all documents that evidence or show that LIC or any

of the Defendants owe money to Plaintiff. The request is not vague or ambiguous and this Court should order that the requested documents be produced.

7. LIC objects to request 7 on relevance grounds. Please see Plaintiff's response to this objection in 1(b) of this section B, above. LIC also objects because the terms "memoranda" and "writings" are vague, ambiguous and undefined. Webster's II New College Dictionary (1999) defines, as is pertinent here, **memorandum or memoranda:** *"a written record or communication, as in a business office, or a short informal note written as a reminder," and* **writing:** *"written form, or characters written or imprinted on a surface, a written work."* Consequently, Plaintiff is requesting any internal memorandums or memoranda or other writings that evidence or relate to payments made to any third party. This is not vague or ambiguous. Additionally, if LIC claims that any such document is confidential for any reason, the documents should be listed in the privilege or a confidentiality log and submitted to this Court for *in camera* inspection. Therefore, LIC's objections should be overruled and this Court should order that the requested documents be produced.

8. LIC makes the same objections to vagueness, ambiguity and relevance as were made to requests 1 through 6. Please see Plaintiff's responses 1(a), 1(b) and 1(c) of this Section B, above. Additionally, LIC makes another temporal scope objection, presumably because the request seeks documents that disclose the identity of all persons with an ownership interest in LIC over the last 6 years. Six years prior would commence the time period at the beginning of 2007, which is the same time period Plaintiff explained was reasonable in this case in its Response to General Objections and General Responses, number 6 in Section A, above. The changes in ownership both before and after the claims for breach of contract (Count II of the Amended Complaint) and the breaches of fiduciary duty (Count III of the Amended Complaint)

accrued are highly relevant to Plaintiff's case as evidence of potential corporate waste. These objections should be overruled and the documents order produced without qualification.

9. LIC makes the same objections to vagueness, ambiguity and relevance as were made to requests 1 through 6. Please see Plaintiff's responses 1(a), 1(b) and 1(c) of this Section B, above. Additionally, LIC makes another temporal scope objection, presumably because the request seeks documents that disclose the identity of all officers of LIC over the last 6 years. Six years prior would commence the time period at the beginning of 2007, which is the same time period Plaintiff explained was reasonable in this case in its Response to General Objections and General Responses, number 6 in Section A, above. The identity of the officers over that period of time, both before and after the claims for breach of contract (Count II of the Amended Complaint) and the breaches of fiduciary duty (Count III of the Amended Complaint) accrued are highly relevant to Plaintiff's case as evidence of potential corporate waste. These objections should be overruled and the documents ordered produced without qualification.

10. LIC objects to request 10 on relevance grounds. Please see Plaintiff's response to this objection in 1(b) of this Section B, above. Additionally, LIC objects to the request for all cell phone payment records on the grounds that the request fails to identify for whom the records are sought or for whom the payments were made. This request is intentionally broad as it seeks all LIC cell phone payment records so that Plaintiff may determine on whose behalf LIC made those payments. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by Ted and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying out corporate monies to or on behalf of family members and friends that were not legitimate employees or third party

contractors of LIC. Plaintiff is therefore entitled to all documentation that evidences cell phone usage by **any** person for whom LIC made cell phone usage payments.

11. LIC once again raises a relevance objection. Please see Plaintiff's response to this objection in 1(b) of this section B, above. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by Ted and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying out corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of LIC. Plaintiff is therefore entitled to all documents that evidence or show that LIC paid for medical expenses incurred by persons or entities that were not legitimate employees or contractors of LIC.

12. LIC once again raises a relevance objection. Please see Plaintiff's response to this objection in 1(b) of this section B, above. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by Ted and Simon Bernstein. *See* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying out corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of LIC. Plaintiff is therefore entitled to all documents that evidence or show that LIC potentially paid compensation to individuals that were not legitimate employees or third party contractors of LIC.

13. LIC once again raises a relevance objection. Please see Plaintiff's response to this objection in 1(b) of this section B, above. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by Ted and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying out corporate monies to or on behalf of family members and friends that were not

legitimate employees or third party contractors of LIC. Plaintiff is therefore entitled to all documents that evidence or show that LIC potentially allowed non-employee friends or family members to participate in the company's Defined Benefit Pension Plan (mistakenly designated "Denied" Benefit Pension Plan in Plaintiff's original request).

14. LIC once again raises a relevance objection. Please see Plaintiff's response to this objection in 1(b) of this section B, above. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by Ted and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying out corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of LIC. Plaintiff is therefore entitled to all 1099s issued to any employee or contractor so Plaintiff can determine if LIC paid compensation to individuals that were not legitimate employees or third party contractors of LIC.

15. LIC once again raises a relevance objection. Please see Plaintiff's response to this objection in 1(b) of this Section B, above. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by Ted and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying out corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of LIC. Plaintiff is therefore entitled to all profit-sharing plan statements that show the names of all participants as these statement will or may show that LIC potentially included family members and friends that are not or were not legitimate employees of LIC.

16. Plaintiff seeks all documents and records of all payments made to Plaintiff by LIC since January 1, 2007 to present, without qualification. *See,* Plaintiff's response to LIC's

temporal objection in Plaintiff's response 6 of his Response to General Objections set forth in Section A, above.

WHEREFORE, Plaintiff requests this Honorable Court to overrule Defendant's objections as without merit, order that Defendant respond within 10 days and for an award of reasonable attorneys' fees incurred by Plaintiff in connection with Plaintiff's response to Defendant's frivolous objections.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at swergoldj@gtlaw.com; ciaffik@gtlaw.com; steffesj@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301 this 19 day of February, 2013.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No.: 0260347

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; ARBITRAGE HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

FILED
13 FEB 21 AM 11:23
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

PLAINTIFF WILLIAM E. STANSBURY'S MOTION TO COMPEL DEFENDANT ARBITRAGE INTERNATIONAL MANAGEMENT TO PRODUCE DOCUMENTS RESPONSIVE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Plaintiff, WILLIAM STANSBURY, by and through his undersigned counsel, hereby moves this Court for an Order compelling Defendant ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC ("ARBITRAGE") to produce the documents requested in Plaintiff's First Request for Production of Documents. As grounds, Plaintiff states that the objections raised by ARBITRAGE in its response are spurious and without merit. Specific responses to ARBITRAGE's objections are set forth below.

A. Response to General Objections and General Responses

1. The Plaintiff's First Request for Production of Documents pursuant to Rule 1.350 of the Florida Rules of Civil Procedure. ARBITRAGE objects to the extent these requests "seek

to impose burdens or duties upon ARBITRAGE that are greater than are required by the Florida Rules of Civil Procedure or applicable law." The bar is relatively low for the scope of discovery, requiring only that the requested documents be "reasonably calculated to lead to the discovery of admissible evidence." Rule 1.280, Fla. Rules of Civ. Proc. These requests only seek documents that meet this standard, but as objectively determined by the Court, not subjectively determined by ARBITRAGE.

2. Plaintiff does not seek documents that are subject to either attorney-client or work product privileges. However, subject to the response in 4, below, if ARBITRAGE claims any documents are protected by either or both privileges, these documents must to listed in a privilege log and made available to the Court for inspection.

4. (Numbering error in ARBITRAGE Objection) As stated in Response 2, Plaintiff does not seek legitimately privileged documents prepared by ARBITRAGE counsel for ARBITRAGE or prepared by ARBITRAGE in connection with or in anticipation of this litigation. Hence, legal memoranda, drafts of pleadings, attorney notes or communications between counsel and ARBITRAGE relating to this litigation are not required to be produced. Documents "assembled" by counsel for the purpose of preparing to represent ARBITRAGE, however, are <u>not</u> automatically privileged and, if the privilege is asserted, these documents should be listed in a privilege log. Other documents, to the extent they include third parties or show a "cc" to counsel, are not privileged and, if the privilege is claimed, should be the subject of a privilege log as well.

5. Plaintiff is not contending that any or all documents to be produced hereunder are automatically admissible into evidence at trial or that ARBITRAGE, by producing them, has

waived the right to object to admissibility. Plaintiff only contends the documents are relevant for discovery purposes at this time.

6. ARBITRAGE raises a temporal objection to many requests by refusing to produce any documents prior to 2008 on the grounds that Plaintiff admitted he was paid by Defendants through 2007, so allegedly prior records are irrelevant. This objection lacks merit. Plaintiff has alleged in his Complaint, *inter alia,* breach of oral contract against ARBITRAGE and Arbitrage International. Therefore, it is highly relevant for Plaintiff to show documentation from the year immediately preceding the breach as evidence of the breach in ensuing years. In other words, Plaintiff should be permitted to show documents from a year when compensation was paid in full and the oral agreement was honored, and compare it to documentation from subsequent years when the breach occurred and full compensation was withheld and denied. This evidence is relevant to the existence of the oral agreement, its breach and the resulting damages.

7. These General Responses apply to all specific responses set forth below.

B. Response to Objections to Specific Requests

1(a). ARBITRAGE objects to the language of Plaintiff's question relating to documents that "show, evidence or reflect" communications between ARBITRAGE or anyone acting on its behalf to or from Plaintiff from January 1, 2007 to present." ARBITRAGE claims the question is overbroad and vague as the terms "show, evidence and reflect" are undefined. When construing statutory language, in the absence of a definition, the meaning of words of common usage can be ascertained by reference to a dictionary. *Jones v. Williams Pawn & Gun, Inc.,* 800 So. 2d. 267 (Fla. 4th DCA 2001). The same principle applies in this situation. Webster's II New College Dictionary (1999) defines, as is pertinent here, the following: **show:**

"to point out, to manifest, to indicate;" **evidence:** *"something that indicates;"* **reflect:** *"to manifest as the result of one's actions."* Consequently, this request seeks communications that manifest, indicate or show written communications between the parties. This is not ambiguous or vague. As such, the objection is not well taken and this Court should order that the requested documents be produced.

(b). ARBITRAGE also objects on relevance grounds. *See,* Plaintiff's response to General Objections and General Responses, number 1, Section A, above. ARBITRAGE also asserted that the requested documents were irrelevant in that they were not likely to lead to the discovery of admissible evidence because these documents have no tendency to "make the existence of any fact ... more probable or not, and will not prove or disprove any element of Plaintiff's cause of action for an accounting which is the sole claim pending against ARBITRAGE." Section 90.402, Fla. Stat. (2012), the Florida Evidence Code, defines relevance for trial purposes as "evidence tending to prove or disprove a material fact." So, in essence, ARBITRAGE claims the requested documents are not relevant for discovery purposes because they are not admissible under the Evidence Code. This is absurd on its face. The standard for discovery relevance is not its admissibility at trial. This objection should be dismissed out of hand.

(c). Finally, ARBITRAGE concludes its objection by agreeing to produce "non-privileged responsive documents related solely to Plaintiff's compensation from 2008 to the present..." For the reasons stated above, Plaintiff is entitled to the 2007 documents as well. *See,* Plaintiff's Response to General Objections and General Responses, number 6, above. Additionally, while Plaintiff has raised multiple legitimate claims against ARBITRAGE in its Complaint, the crux of Plaintiff's case against ARBITRAGE (contrary to ARBITRAGE's

assertion that an accounting is the sole claim against ARBITRAGE) is breach of oral contract (*See,* Amended Complaint, Count II). Hence ***all*** written communication between ARBITRAGE or its agents and Plaintiff are relevant, for discovery purposes, as isolated statements or comments in **any** written communication or response, regardless of the subject matter, is, would or may be likely to lead to evidence of the existence and terms of the subject oral contract. ARBITRAGE cannot subjectively decide what, in its opinion, is a compensation or relevant communication, then only produce those documents in response to this request. **All** written communications between the parties are relevant for discovery purposes under this request and this Court should order that they be produced.

2. ARBITRAGE makes the same objections of over breadth, vagueness, ambiguity and relevance to request 2 as were raised in request 1. Please see Plaintiff's responses 1(a), 1(b) and 1(c) of this Section B, above.

3. ARBITRAGE makes the same objections of over breadth, vagueness, ambiguity and relevance to request 3 as were raised in response to requests 1 and 2. Please see Plaintiff's responses 1(a), 1(b) and 1(c) of this Section B, above.

4. ARBITRAGE objects to the breadth of the request once again based on the use of the terms "show, evidence and reflect." See Plaintiff's response in 1(a), above. Plaintiff also objects to the use of the term "business relationships" because it is undefined. As above, **relationship** is defined in Webster's II New College Dictionary (1999) as a "*particular state of affairs among people related to or dealing with one another.*" Therefore, the plain and ordinary meaning of all these terms as used in the context of this specific request makes clear that Plaintiff is requesting all documents that show, evidence or reflect business affairs or dealings among the

parties, as opposed to personal or social relationships. As a result, this objection is not well taken and this Court should order that the requested documents be produced.

5. ARBITRAGE makes the same objections of over breadth, vagueness, ambiguity and relevance as were made to requests 1 through 4. Please see Plaintiff's responses 1(a), 1(b) and 1(c) of this Section B, above. The request is clearly directed to all documents that evidence or show the payment of money from ARBITRAGE or any of the Defendants to Plaintiff. The request is not vague or ambiguous and this Court should order that the requested documents be produced.

6. ARBITRAGE makes the same objections to vagueness, ambiguity and relevance as were made to requests 1 through 5. Please see Plaintiff's responses 1(a), 1(b) and 1(c) of this Section B, above. The request is clearly directed to all documents that evidence or show that ARBITRAGE or any of the Defendants owe money to Plaintiff. The request is not vague or ambiguous and this Court should order that the requested documents be produced.

7. ARBITRAGE objects to request 7 on relevance grounds. Please see Plaintiff's response to this objection in 1(b) of this section B, above. ARBITRAGE also objects because the terms "memoranda" and "writings" are vague, ambiguous and undefined. Webster's II New College Dictionary (1999) defines, as is pertinent here, **memorandum or memoranda:** *"a written record or communication, as in a business office, or a short informal note written as a reminder," and* **writing:** *"written form, or characters written or imprinted on a surface, a written work."* Consequently, Plaintiff is requesting any internal memorandums or memoranda or other writings that evidence or relate to payments made to any third party. This is not vague or ambiguous. Additionally, if ARBITRAGE claims that any such document is confidential for any reason, the documents should be listed in the privilege or a confidentiality log and submitted

to this Court for *in camera* inspection. Therefore, ARBITRAGE's objections should be overruled and this Court should order that the requested documents be produced.

8. ARBITRAGE makes the same objections to vagueness, ambiguity and relevance as were made to requests 1 through 6. Please see Plaintiff's responses 1(a), 1(b) and 1(c) of this Section B, above. Additionally, ARBITRAGE makes another temporal scope objection, presumably because the request seeks documents that disclose the identity of all persons with an ownership interest in ARBITRAGE over the last 6 years. Six years prior would commence the time period at the beginning of 2007, which is the same time period Plaintiff explained was reasonable in this case in its Response to General Objections and General Responses, number 6 in Section A, above. The changes in ownership both before and after the claims for breach of contract (Count II of the Amended Complaint) and the breaches of fiduciary duty (Count III of the Amended Complaint) accrued are highly relevant to Plaintiff's case as evidence of potential corporate waste. These objections should be overruled and the documents order produced without qualification.

9. ARBITRAGE makes the same objections to vagueness, ambiguity and relevance as were made to requests 1 through 6. Please see Plaintiff's responses 1(a), 1(b) and 1(c) of this Section B, above. Additionally, ARBITRAGE makes another temporal scope objection, presumably because the request seeks documents that disclose the identity of all officers of ARBITRAGE over the last 6 years. Six years prior would commence the time period at the beginning of 2007, which is the same time period Plaintiff explained was reasonable in this case in its Response to General Objections and General Responses, number 6 in Section A, above. The identity of the officers over that period of time, both before and after the claims for breach of contract (Count II of the Amended Complaint) and the breaches of fiduciary duty (Count III of

the Amended Complaint) accrued are highly relevant to Plaintiff's case as evidence of potential corporate waste. These objections should be overruled and the documents ordered produced without qualification.

10. ARBITRAGE objects to request 10 on relevance grounds. Please see Plaintiff's response to this objection in 1(b) of this Section B, above. Additionally, ARBITRAGE objects to the request for all cell phone payment records on the grounds that the request fails to identify for whom the records are sought or for whom the payments were made. This request is intentionally broad as it seeks all ARBITRAGE cell phone payment records so that Plaintiff may determine on whose behalf ARBITRAGE made those payments. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by Ted and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying out corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of ARBITRAGE. Plaintiff is therefore entitled to all documentation that evidences cell phone usage by **any** person for whom ARBITRAGE made cell phone usage payments.

11. ARBITRAGE once again raises a relevance objection. Please see Plaintiff's response to this objection in 1(b) of this section B, above. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by Ted and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying out corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of ARBITRAGE. Plaintiff is therefore entitled to all documents that evidence or show that ARBITRAGE paid for medical expenses incurred by persons or entities that were not legitimate employees or contractors of ARBITRAGE.

12. ARBITRAGE once again raises a relevance objection. Please see Plaintiff's response to this objection in 1(b) of this section B, above. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by Ted and Simon Bernstein. *See* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying out corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of ARBITRAGE. Plaintiff is therefore entitled to all documents that evidence or show that ARBITRAGE potentially paid compensation to individuals that were not legitimate employees or third party contractors of ARBITRAGE.

13. ARBITRAGE once again raises a relevance objection. Please see Plaintiff's response to this objection in 1(b) of this section B, above. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by Ted and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying out corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of ARBITRAGE. Plaintiff is therefore entitled to all documents that evidence or show that ARBITRAGE potentially allowed non-employee friends or family members to participate in the company's Defined Benefit Pension Plan (mistakenly designated "Denied" Benefit Pension Plan in Plaintiff's original request).

14. ARBITRAGE once again raises a relevance objection. Please see Plaintiff's response to this objection in 1(b) of this section B, above. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by Ted and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying out corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of ARBITRAGE. Plaintiff is therefore entitled to

all 1099s issued to any employer or contractor so Plaintiff can determine if ARBITRAGE paid compensation to individuals that were not legitimate employees or third party contractors of ARBITRAGE.

15. ARBITRAGE once again raises a relevance objection. Please see Plaintiff's response to this objection in 1(b) of this Section B, above. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by Ted and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying out corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of ARBITRAGE. Plaintiff is therefore entitled to all profit-sharing plan statements that show the names of all participants as these statement will or may show that ARBITRAGE potentially included family members and friends that are not or were not legitimate employees of ARBITRAGE.

16. Plaintiff seeks all documents and records of all payments made to Plaintiff by ARBITRAGE since January 1, 2007 to present, without qualification. *See,* Plaintiff's response to ARBITRAGE's temporal objection in Plaintiff's response 6 of his Response to General Objections set forth in Section A, above.

WHEREFORE, Plaintiff requests this Honorable Court to overrule Defendant's objections as without merit, order that Defendant respond within 10 days and for an award of reasonable attorneys' fees incurred by Plaintiff in connection with Plaintiff's response to Defendant's frivolous objections.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at swergoldj@gtlaw.com; ciaffik@gtlaw.com; steffesj@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301 this 19 day of February, 2013.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No.: 0260347

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

FILED
13 FEB 25 PM 3:46
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 2

WILLIAM E. STANSBURY, an individual,

Plaintiff,

v.

CASE NO.: 50 2012CA013933 XXXX(NB)
(AA)

TED S. BERNSTEIN, an individual,
SIMON L. BERNSTEIN, an individual,
LIC HOLDINGS, INC., a Florida
Corporation, **ARBITRAGE**
INTERNATIONAL MARKETING, LLC, a
Florida Corporation f/k/a **ARBITRAGE**
INTERNATIONAL HOLDINGS, LLC.,

Defendants.

MOTION FOR ENLARGEMENT OF TIME
TO RESPOND TO AMENDED COMPLAINT

Defendants, TED S. BERNSTEIN ("Ted"), LIC HOLDINGS, INC. ("LIC") and ARBITRAGE INTERNATIONAL MARKETING, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC ("AIM") (Ted, LIC and AIM are, collectively, the "Defendants"), pursuant to Fla. R. Civ. P. 1.090(b), move for an enlargement of time to respond to Plaintiff, WILLIAM E. STANSBURY's, amended complaint, and in support state:

1. On February 12, 2013, Stansbury served his amended complaint.

2. The amended complaint purports to assert nine (9) counts.

3. Due to the press of other matters and the extent of the amended complaint, the undersigned has not had sufficient time to review, analyze and assess the amended complaint. Consequently, the undersigned seeks an enlargement of time through and including Monday, March 25, 2013, to respond to the amended complaint.

4. This motion is not made for the purpose of delay, or any other improper purpose. Indeed, the undersigned notes that the docket reflects that the new defendants added to the case have not yet been served with the amended complaint. Thus, no prejudice will be caused to Plaintiff by the granting of this motion.

5. The undersigned contacted Plaintiff's counsel to request his consent to the relief sought herein. However, Plaintiff's counsel was unavailable at the time and has not, as of the filing of this motion, returned the undersigned's call or e-mail.

WHEREFORE, Defendants Ted Bernstein, LIC Holdings, Inc. and Arbitrage International Marketing, LLC respectfully request entry of an order enlarging the time for the Defendants to serve their response to the complaint through and including Monday, March 25, 2013 and granting such other and further relief this Court deems just and appropriate.

Dated this 22nd day of February, 2013.

GREENBERG TRAURIG, P.A.
401 E. Las Olas Blvd., Suite 200
Telephone: (954) 765-0500
Facsimile: (954) 765-1477

Jon L. Swergold
Florida Bar No. 0108510
swergoldj@gtlaw.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the has been sent via e-mail and U.S. Mail to: Peter M. Feaman, Esq.(pfeaman@feamanlaw.com), Kenneth D. Stern, Esq. (kdstern@gmail.com), 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436 on this 22nd day of February, 2013.

JON L. SWERGOLD

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

FILED
2013 FEB 26 PM 3:14
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL/PROBATE

PLAINTIFF WILLIAM E. STANSBURY'S MOTION TO COMPEL DEFENDANT TED BERNSTEIN TO PRODUCE DOCUMENTS RESPONSIVE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Plaintiff, WILLIAM STANSBURY, by and through his undersigned counsel, hereby moves this Court for an Order compelling Defendant TED BERNSTEIN ("BERNSTEIN") to produce the documents requested in Plaintiff's First Request for Production of Documents. As grounds, Plaintiff states that the objections raised by BERNSTEIN in his response are spurious and without merit.

A. Response to General Objections and General Responses

1. In the Plaintiff's First Request for Production of Documents, BERNSTEIN objects to the extent the requests "seek to impose burdens or duties upon BERNSTEIN that are greater than are required by the Florida Rules of Civil Procedure or applicable law." This objection is without merit. The scope of discovery is very broad, requiring only that the requested documents be "reasonably calculated to lead to the discovery of admissible evidence."

Rule 1.280, Fla. Rules of Civ. Proc. These requests only seek documents that meet this standard, but as objectively determined by the Court, not subjectively determined by BERNSTEIN.

2. Plaintiff does not seek documents that are subject to either attorney-client or work product privileges. However, subject to the response in 4, below, if BERNSTEIN claims any documents are protected by either or both privileges, these documents must to listed in a privilege log and made available to the Court for inspection.

4. (Numbering error in BERNSTEIN Objection) As stated in Response 2, Plaintiff does not seek legitimately privileged documents or documents prepared by BERNSTEIN in connection with or in anticipation of this litigation. Hence, legal memoranda, drafts of pleadings, attorney notes or communications between counsel and BERNSTEIN relating to this litigation are not required to be produced. Documents "assembled" by counsel for the purpose of preparing to represent BERNSTEIN, however, are <u>not</u> automatically privileged and, if the privilege is asserted, these documents should be listed in a privilege log. Other documents, to the extent they include third parties or show a "cc" to counsel, are not privileged and, if the privilege is claimed, should be the subject of a privilege log as well.

5. Plaintiff is not contending that any or all documents to be produced hereunder are automatically admissible into evidence at trial or that BERNSTEIN, by producing them, has waived the right to object to admissibility. Plaintiff only contends the documents are relevant for discovery purposes at this time.

6. BERNSTEIN objects to <u>every</u> request on the ground that the subject request "is unduly burdensome and irrelevant, as there are no claims pending against BERNSTEIN individually, and this Request is nothing more than a fishing expedition." These objections are nothing short of frivolous.

a) **Burdensome** - BERNSTEIN claims the retrieval of the requested documents would be "unduly burdensome," yet BERNSTEIN submits no affidavit, or any evidence for that matter, from himself or any other representative of him or his company that purportedly establishes the burdensome nature of any of these requests. As such, the bare claim of burdensomeness is merely a smokescreen this Court should ignore.

b) **Claims against BERNSTEIN** - The Amended Complaint asserts breach of fiduciary duty (Count III), conversion (Count V), and fraud in the inducement (Count VI) as to BERNSTEIN. Hence, under the current status of the Pleadings there are multiple claims against BERNSTEIN that make discovery of the documents requested by Plaintiff highly relevant for discovery purposes. Finally, BERNSTEIN raises the time-honored discovery objection "fishing expedition" as a basis to avoid production. The Supreme Court of Florida, in *Allstate Insurance Company v. Boecher,* 733 So.2d 993 (Fla. 1999) made it very clear that the rules of discovery should be afforded "broad and liberal treatment to effectuate their purpose that trial should not be carried out in the dark." Our Supreme Court states:

> Our rules of civil procedure broadly allow parties to obtain discovery of "any matter, not privileged, that is relevant to the subject matter of the pending action," whether the discovery would be admissible at trial, or is merely "reasonably calculated to lead to the discovery of admissible evidence."

In this case, key allegations of misrepresentation, willful concealment, false statements, and active efforts by Ted and Simon Bernstein to defraud and deprive Plaintiff of his just compensation, along with allegations of breach of fiduciary duty (*see* Amended Complaint, paragraphs 19 through 33) all strongly indicate that BERNSTEIN and the other Defendants are in possession and control of important documents that could be vital to Plaintiff's case, documents Plaintiff may not know even exist.

B. Response to Objections to Specific Requests

1. BERNSTEIN also objects to the language of Plaintiff's question relating to documents that "show, evidence or reflect" communications between BERNSTEIN or anyone acting on his behalf to or from Plaintiff from January 1, 2007 to present." BERNSTEIN claims the question is overbroad and vague as the terms "show, evidence and reflect" are undefined and could include any communication. When construing statutory language, in the absence of a definition, the meaning of words of common usage can be ascertained by reference to a dictionary. *See, Jones v. Williams Pawn & Gun, Inc.,* 800 So. 2d. 267 (Fla. 4th DCA 2001). The same principle applies in this situation. Webster's II New College Dictionary (1999) defines, as is pertinent here, the following: **show:** *"to point out, to manifest, to indicate;"* **evidence:** "*something that indicates;*" **reflect:** "*to manifest as the result of one's actions.*" Consequently, this request seeks communications that manifest, indicate or show written communications between the parties. This is not overbroad, ambiguous or vague, and all written communications between BERNSTEIN and Plaintiff, even those pertaining to birthdays, vacations or lunch plans (how many of those can there be?) are discovery relevant. As such, the objection is not well taken and this Court should order that the requested documents be produced.

2. Please see response in paragraph 1, Section B, above.

3. Please see response in paragraph 1, Section B, above.

4. Please see response in paragraph 1, Section B, above. BERNSTEIN also objects to the use of the term "business relationships" because it is undefined. **Relationship** is defined in Webster's II New College Dictionary (1999) as a "*particular state of affairs among people relaBERNSTEIN to or dealing with one another.*" Therefore, the plain and ordinary meaning of all these terms as used in the context of this specific request makes clear that Plaintiff is

requesting all documents that show, evidence or reflect business affairs or dealings among the parties, as opposed to personal or social relationships. As a result, this objection is not well taken and this Court should order that the requested documents be produced.

5. Please see response in paragraph 1, Section B, above. Also, BERNSTEIN raises an overbreadth and relevance objection on the grounds that Plaintiff admitted he was paid by Defendants through 2007, so allegedly, prior records are irrelevant. This objection lacks merit. Plaintiff has alleged in his Complaint, *inter alia,* breach of oral contract against LIC HOLDINGS, INC. ("LIC") and ARBITRAGE INTERNATIONAL MARKETING, LLC) ("ARBITRAGE") (*see* Amended Complaint, Count II) and breach of fiduciary duty against BERNSTEIN (Amended Complaint, Count III). Therefore, it is highly relevant for Plaintiff to show documentation from the year immediately preceding the breach of contract, as evidence of the breach in ensuing years. In other words, Plaintiff should be permitted to show documents from a year when compensation was paid in accordance with the oral agreement, and compare it to documentation from subsequent years when the breach occurred and full compensation was withheld and denied. This evidence is relevant to the existence of the oral agreement, its breach and the resulting damages. The request is clearly directed to all documents that evidence or show the payment of compensation, monies from BERNSTEIN or any of the Defendants to Plaintiff from January 2007 to the present. The request is not vague or ambiguous and this Court should order that the requested documents be produced.

6. BERNSTEIN makes the same objections to request 6 as were made to request 5. Please see Plaintiff's responses to paragraph 5, above.

7. For Plaintiff's response to BERNSTEIN's burdensome, relevance and "fishing expedition" objections, please see response number 6 in Plaintiff's Response to General

Objections and General Responses, Section A, above. BERNSTEIN also asserts that the requested documents are irrelevant to any claim or defense in that they were not likely to lead to the discovery of admissible evidence because "documents relating to payments made to other 'agents, employees, officers, independent contractors or any other person or entity,' if any, have no tendency to make the existence of any fact that is of consequence more probable or not, and will not prove or disprove any element of Plaintiff's accounting claim" which is the sole claim pending against BERNSTEIN.

As stated, accounting is not the sole claim pending against BERNSTEIN. Moreover, Section 90.402, Fla. Stat. (2012), the Florida Evidence Code, defines relevance for trial purposes as "evidence tending to prove or disprove a material fact." So, in essence, BERNSTEIN claims the requested documents are not relevant for discovery purposes because they are not admissible under the Evidence Code. This objection is absurd on its face. The standard for discovery relevance is not its admissibility at trial. This objection should be dismissed out of hand for this reason alone. However, key allegations in this case against BERNSTEIN include breach of fiduciary duty and acts of corporate waste by BERNSTEIN and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying corporate monies to or on behalf of family members and friends who were not legitimate employees or third party contractors of Defendants. Plaintiff is therefore entitled to all documentation that evidences all payments made to **any** person, employee or third party contractor by TED BERNSTEIN, Simon Bernstein, LIC or ARBITRAGE by or on behalf of any of them.

BERNSTEIN also objects because the terms "memoranda" and "writings" are vague, ambiguous and undefined. Webster's II New College Dictionary (1999) defines, as is pertinent

here, **memorandum or memoranda:** *"a written record or communication, as in a business office, or a short informal note written as a reminder," and* **writing:** *"written form, or characters written or imprinted on a surface, a written work."* Consequently, Plaintiff is requesting any internal memorandums or memoranda or other writings that evidence or relate to payments made to any third party. This is not vague or ambiguous. Additionally, if BERNSTEIN claims that any such document is confidential for any reason, the documents should be listed in the privilege or a confidentiality log and submitted to this Court for *in camera* inspection. Therefore, BERNSTEIN's objections should be overruled and this Court should order that the requested documents be produced.

8. For Plaintiff' response to BERNSTEIN's burdensome, relevance and "fishing expedition" objections, please see response number 6 in Plaintiff's Response to General Objections and General Responses, Section A, above. BERNSTEIN also claims the question is overbroad and vague as the terms "show, evidence and reflect" are undefined. Please see Plaintiff's response in paragraph 1 of this Section B, above. Additionally, BERNSTEIN makes a temporal scope objection, presumably because the request seeks documents that disclose the identity of all persons with an ownership interest in LIC or ARBITRAGE over the last 6 years. Six years prior would commence the time period at the beginning of 2007, which is reasonable in this case. Plaintiff has alleged in his Complaint, *inter alia,* breach of oral contract against LIC and ARBITRAGE and breach of fiduciary duty by BERNSTEIN and Simon Bernstein (Counts II and III of the Amended Complaint) beginning in 2008 or 2009. Therefore, it is highly relevant for Plaintiff to show documentation from the year immediately preceding the alleged breaches as evidence of the breach in ensuing years, i.e., Plaintiff should be permitted to show documents from a year when compensation was paid in full and the oral agreement was honored, and

compare it to documentation from subsequent years when the breach occurred and full compensation was withheld and denied. As such, this also applies to the changes in ownership both before and after the claims for breach of contract and breach of fiduciary duty accrued, and these documents are highly relevant to Plaintiff's case as evidence of potential corporate waste. These objections should be overruled and the documents order produced without qualification.

9. For Plaintiff's response to BERNSTEIN's burdensome, relevance and "fishing expedition" objections, please see response number 6 in Plaintiff's Response to General Objections and General Responses, Section A, above. BERNSTEIN also claims the question is overbroad and vague as the terms "show, evidence and reflect" are undefined. Please see Plaintiff's response in paragraph 1 of this Section B, above. Additionally, BERNSTEIN makes a temporal scope objection, presumably because the request seeks documents that disclose the identity of all persons with an ownership interest in LIC or ARBITRAGE over the last 6 years. Six years prior would commence the time period at the beginning of 2007, which is reasonable in this case. Plaintiff has alleged in his Complaint, *inter alia,* breach of oral contract against LIC and ARBITRAGE and breach of fiduciary duty by BERNSTEIN and Simon Bernstein (Counts II and III of the Amended Complaint) beginning in 2008 or 2009. Therefore, it is highly relevant for Plaintiff to show documentation from the year immediately preceding the alleged breaches as evidence of the breach in ensuing years, i.e., Plaintiff should be permitted to show documents from a year when compensation was paid in full and the oral agreement was honored, and compare it to documentation from subsequent years when the breach occurred and full compensation was withheld and denied. As such, this also applies to the identity of the officers both before and after the claims for breach of contract and breach of fiduciary duty accrued, and

these documents are highly relevant to Plaintiff's case as evidence of potential corporate waste. These objections should be overruled and the documents order produced without qualification.

10. For Plaintiff's response to BERNSTEIN's burdensome, relevance and "fishing expedition" objections, please see response number 6 in Plaintiff's Response to General Objections and General Responses, Section A, above. BERNSTEIN also objects to request 10 on relevance grounds, arguing relevance for discovery purposes means relevance for admission at trial. Please see Plaintiff's response to this objection in paragraph 7 of this Section B, above. Additionally, BERNSTEIN objects to the request for all cell phone payment records on the grounds that the request fails to identify for whom the records are sought or for whom the payments were made. This request is intentionally broad as it seeks all cell phone payment records from BERNSTEIN so that Plaintiff may determine on whose behalf LIC or ARBITRAGE made those payments. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by TED BERNSTEIN and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of LIC or ARBITRAGE. Plaintiff is therefore entitled to all documentation that evidences cell phone usage by **any** person for whom LIC or ARBITRAGE, at BERNSTEIN and/or Simon Bernstein's direction, made cell phone usage payments with corporate funds.

11. For Plaintiff's response to BERNSTEIN's burdensome, relevance and "fishing expedition" objections, please see response number 6 in Plaintiff's Response to General Objections and General Responses, Section A, above. BERNSTEIN also objects to request 10 on relevance grounds, arguing relevance for discovery purposes means relevance for admission at

trial. Please see Plaintiff's response to this objection in paragraph 7 of this Section B, above. Additionally, BERNSTEIN objects to the production of documents pertaining to medical expenses paid for any person including Rachel Walker on relevance and confidentiality grounds. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by BERNSTEIN and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of LIC or ARBITRAGE. Plaintiff is therefore entitled to all documents that evidence or show that LIC, ARBITRAGE, at BERNSTEIN and/or Simon Bernstein's direction, paid for medical expenses incurred by persons or entities that were not legitimate employees or contractors of LIC or ARBITRAGE. There is no sustainable confidentiality objection to this information.

12. For Plaintiff' response to BERNSTEIN's burdensome, relevance and "fishing expedition" objections, please see response number 6 in Plaintiff's Response to General Objections and General Responses, Section A, above. BERNSTEIN also objects to request 10 on relevance grounds, arguing relevance for discovery purposes means relevance for admission at trial. Please see Plaintiff's response to this objection in paragraph 7 of this Section B, above. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by BERNSTEIN and Simon Bernstein. *See* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of BERNSTEIN. Plaintiff is therefore entitled to all documents that evidence or show that LIC, ARBITRAGE, at BERNSTEIN and/or Simon Bernstein's direction, potentially paid

compensation to individuals that were not legitimate employees or third party contractors of BERNSTEIN. There is no sustainable confidentiality objection to this information.

13. For Plaintiff's response to BERNSTEIN's burdensome, relevance and "fishing expedition" objections, please see response number 6 in Plaintiff's Response to General Objections and General Responses, Section A, above. BERNSTEIN also objects to request 10 on relevance grounds, arguing relevance for discovery purposes means relevance for admission at trial. Please see Plaintiff's response to this objection in paragraph 7 of this Section B, above. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by BERNSTEIN and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of BERNSTEIN. Plaintiff is therefore entitled to all documents that evidence or show that LIC or ARBITRAGE, at BERNSTEIN and/or Simon Bernstein's direction, potentially allowed non-employee friends or family members to participate in the company's Defined Benefit Pension Plan (mistakenly designated "Denied" Benefit Pension Plan in Plaintiff's original request). There is no sustainable confidentiality objection to this information.

14. For Plaintiff's response to BERNSTEIN's burdensome, relevance and "fishing expedition" objections, please see response number 6 in Plaintiff's Response to General Objections and General Responses, Section A, above. BERNSTEIN also objects to request 10 on relevance grounds, arguing relevance for discovery purposes means relevance for admission at trial. Please see Plaintiff's response to this objection in paragraph 7 of this Section B, above. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by BERNSTEIN and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through

59. Plaintiff contends that the Bernsteins were paying corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of BERNSTEIN. Plaintiff is therefore entitled to all 1099s issued to any employee or contractor so Plaintiff can determine if LIC or ARBITRAGE, at BERNSTEIN and/or Simon Bernstein's direction, paid compensation to individuals that were not legitimate employees or third party contractors of BERNSTEIN. There is no sustainable confidentiality objection to this information.

15. For Plaintiff's response to BERNSTEIN's burdensome, relevance and "fishing expedition" objections, please see response number 6 in Plaintiff's Response to General Objections and General Responses, Section A, above. Key allegations in this case include breach of fiduciary duty and acts of corporate waste by BERNSTEIN and Simon Bernstein. *See,* Amended Complaint, Count III, Paragraphs 45 through 59. Plaintiff contends that the Bernsteins were paying corporate monies to or on behalf of family members and friends that were not legitimate employees or third party contractors of LIC or ARBITRAGE. Plaintiff is therefore entitled to all profit-sharing plan statements that show the names of all participants as these statements will or may show that LIC or ARBITRAGE, at BERNSTEIN or Simon Bernstein's direction, potentially included family members and friends that are not or were not legitimate employees of BERNSTEIN. There is no sustainable confidentiality objection to this information.

16. For Plaintiff's response to BERNSTEIN's burdensome, relevance and "fishing expedition" objections, please see response number 6 in Plaintiff's Response to General Objections and General Responses, Section A, above. Additionally, BERNSTEIN makes a temporal scope objection, presumably because the request seeks all documents and records of all

payments made to Plaintiff by LIC or ARBITRAGE in BERNSTEIN's possession since January 1, 2007 to present, without qualification. Plaintiff seeks all documents and records of all payments made to Plaintiff by LIC or ARBITRAGE in BERNSTEIN's possession since January 1, 2007 to present, without qualification. Please see Plaintiff's response to this objection in paragraph 7 of this Section B, above.

WHEREFORE, Plaintiff requests this Honorable Court to overrule Defendant's objections as without merit, order that Defendant respond within 10 days and for an award of reasonable attorneys' fees incurred by Plaintiff in connection with Plaintiff's response to Defendant's frivolous objections.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at swergoldj@gtlaw.com; ciaffik@gtlaw.com; steffesj@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301 this 25th day of February, 2013.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
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By: _____
Peter M. Feaman
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Electronically Filed 03/05/2013 11:41:43 AM ET

*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CIVIL DIVISION

FILE NO: 502012CA013933 MB AA

DIVISION: KELLEY

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Mark R. Manceri, Esq., of MARK R. MANCERI, P.A., hereby appears as attorney of record on behalf of Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon L. Bernstein.

MARK R. MANCERI, P.A.● 2929 East Commercial Blvd.● Suite 702 ● Fort Lauderdale, FL 33308 ● (954) 491-7099

MARK R. MANCERI, P.A.
Attorney for Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives
2929 East Commercial Blvd., Suite 702
Ft. Lauderdale, FL 33308
Telephone: (954) 491-7099
E-mail: mrmlaw@comcast.net
mrmlaw1@gmail.com

By: _____
Mark R. Manceri, Esq.
Florida Bar No. 444560

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) and U.S. mail to all parties on the following Service List, this 5th day of March, 2013.

_____
Mark R. Manceri, Esq.

SERVICE LIST

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3615 West Boynton Beach Blvd.
Boynton Beach, Florida 33436

Jon Swergold, Esq.
Greenberg Traurig, P.A.
401 East Las Olas Blvd., Suite 2000
Fort Lauderdale, Florida 33301

*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

Electronically Filed 03/05/2013 11:41:43 AM ET

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.

_____/

CIVIL DIVISION

FILE NO: 502012CA013933 MB AA

DIVISION: KELLEY

NOTICE OF DESIGNATION OF E-MAIL ADDRESSES

COMES NOW, MARK R. MANCERI, ESQ. of MARK R. MANCERI, P.A. and hereby gives Notice, pursuant to Florida Rule of Judicial Administration 2.516, of the following e-mail addresses for electronic service on or after September 1, 2012:

A. Primary e-mail: mrmlaw@comcast.net

B. Secondary e-mail: mrmlaw1@gmail.com

MARK R. MANCERI, P.A. • 2929 East Commercial Blvd. • Suite 702 • Fort Lauderdale, FL 33308 • (954) 491-7099

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Fort Lauderdale, Florida 33301

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

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Defendants.
_____/

CIVIL DIVISION

FILE NO: 502012CA013933 MB AA

DIVISION: KELLEY

FILED
13 MAR -7 PM 2:54
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Mark R. Manceri, Esq., of MARK R. MANCERI, P.A., hereby appears as attorney of record on behalf of Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon L. Bernstein.

MARK R. MANCERI, P.A. • 2929 East Commercial Blvd. • Suite 702 • Fort Lauderdale, FL 33308 • (954) 491-7099

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By: _____
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Boynton Beach, Florida 33436

Jon Swergold, Esq.
Greenberg Traurig, P.A.
401 East Las Olas Blvd., Suite 2000
Fort Lauderdale, Florida 33301

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CIVIL DIVISION

FILE NO: 502012CA013933 MB AA

DIVISION: KELLEY

FILED
13 MAR -7 PM 2:54
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

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B. Secondary e-mail: mrmlaw1@gmail.com

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MARK R. MANCERI, P.A.
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Telephone: (954) 491-7099
E-mail: mrmlaw@comcast.net
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By: _____
Mark R. Manceri, Esq.
Florida Bar No. 444560

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SERVICE LIST

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Peter M. Feaman, P.A.
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Boynton Beach, Florida 33436

Jon Swergold, Esq.
Greenberg Traurig, P.A.
401 East Las Olas Blvd., Suite 2000
Fort Lauderdale, Florida 33301

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

FILED
2013 MAR 11 PM 3:57
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

ORDER ON DEFENDANTS' MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO AMENDED COMPLAINT

THIS CAUSE came on to be heard before this Honorable Court on Monday, March 11, 2013, upon Defendants' Motion for Enlargement of Time to Respond to Amended Complaint, and the Court having reviewed the file, heard argument of counsel and being duly advised in the premises, it is hereby

ORDERED and ADJUDGED:

1. Defendants' Motion is hereby granted.
2. Response due March 25, 2013.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida on this 11th day of March, 2013.

Honorable Glenn Kelley
Circuit Judge

Copies furnished by e-mail

Copies to:

Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301; swergoldj@gtlaw.com;
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL; pfeaman@feamanlaw.com.

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

WILLIAM E. STANSBURY,
Plaintiff,

v.

CASE NO: **50 2012 CA 013933 MB AA**

TED S. BERNSTEIN; SIMON BERNSTEIN; LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC.
Defendants.
_____/

FILED
2013 MAR 12 PM 12:14
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

ORDER SETTING HEARING

The following matter has been specially set for hearing before Judge Glenn D. Kelley in Courtroom 11A of the Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, FL 33401.

DATE: **April 15, 2013**

TIME: **9:30 a.m. (time allotted: 30 minutes)**

MATTER: **Plaintiff Stansbury's Motion to Compel Defendants to Produce Documents Responsive to Plaintiff's First Request for Production of Documents**

NOTE: THIS HEARING IS SPECIALLY SET BY COURT ORDER AND CANNOT BE CANCELLED OR RESET EXCEPT BY COURT ORDER. ALL MEMORANDA MUST BE SUBMITTED TO JUDGE'S CHAMBERS NO LATER THAN FIVE (5) DAYS PRIOR TO HEARING.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this 11 day of March, 2013.

Honorable Glenn Kelley
Circuit Judge

Copies to:
Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301; swergoldj@gtlaw.com;
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL; pfeaman@feamanlaw.com

Copies furnished by e-mail

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355 4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

"Si usted es una persona minusválida que necesita algún acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida 33401; teléfono número (561) 355-4380, por lo menos 7 días antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente después de recibir esta notificación si el tiempo antes de la comparecencia que se ha programado es menos de 7 días; si usted tiene discapacitación del oído o de la voz, llame al 711."

"Si ou se yon moun ki enfim ki bezwen akomodasyon pou w ka patisipe nan pwosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kèk èd. Tanpri kontakte Germaine English, kòòdonatè pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan 205 North Dixie Highway, West Palm Beach, Florida 33401; telefòn li se (561) 355 4380 nan 7 jou anvan dat ou gen randevou pou parèt nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si lè ou gen pou w parèt nan tribinal la mwens ke 7 jou; si ou gen pwoblèm pou w tande oubyen pale, rele 711."

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

IN RE: STANDING ORDER ON SPECIALLY SET MOTIONS

CIVIL DIVISION "AA"

_____/

This motion has been specially set by Court Order and cannot be canceled except by further Court Order.

It is the intent of this Court to dispose of the subject matter of the specially set motion on the date and time appearing on the order. Accordingly, counsel must either: (1) argue the motion on the date and time set for the hearing; (2) submit an agreed order disposing of the motion; or (3) show good cause why the hearing should be canceled. Any request to cancel a hearing for good cause shall be made by motion and shall be set for hearing on the Court's Uniform Motion Calendar.

All memoranda and/or case authority shall be delivered to my office and to all parties no later than five business days in advance of the hearing and no sooner than ten days prior to the hearing and should designate the date and time of the hearing which they reference.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 4th day of September, 2012.

JUDGE GLENN D. KELLEY
CIRCUIT COURT JUDGE

CLP 3-19-13 w-order

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

CASE NO.: 50 2012CA013933 XXXX(MB) (AA)

WILLIAM E. STANSBURY, an individual,

Plaintiff,

v.

TED S. BERNSTEIN, an individual, **SIMON L. BERNSTEIN**, an individual, **LIC HOLDINGS, INC.**, a Florida Corporation, **ARBITRAGE INTERNATIONAL MARKETING, LLC**, a Florida Corporation f/k/a **ARBITRAGE INTERNATIONAL HOLDINGS, LLC.**,

Defendants.

NOTICE OF SERVING GREENBERG TRAURIG, P.A.'S MOTION FOR LEAVE TO WITHDRAW

FILED
13 MAR 18 PM 3:44
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 2

Greenberg Traurig, P.A., by its undersigned counsel, hereby serves it's Motion for Leave to Withdraw.

Respectfully Submitted,

GREENBERG TRAURIG, P.A.
401 East Las Olas Boulevard
Suite 2000
Ft. Lauderdale, Florida 33301
Telephone: (954) 768-5201
Telefax: (954) 765-1477

By: _____
JON L. SWERGOLD
Florida Bar No. 108510

Attorneys for Ted S. Bernstein, LIC Holdings, Inc. and Arbitrage International Marketing, LLC f/k/a Arbitrage International Holdings, LLC

FTL 109132507v1 071433.010400

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via e-mail to:

Peter M. Feaman, Esq.
Kenneth D. Stern, Esq.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
service@feamanlaw.com; mkoskey@feamanlaw.com

Mark R. Manceri, Esq.
Mark R. Manceri, P.A.
2929 E. Commercial Blvd., Ste. 702
Fort Lauderdale, FL 33308
mrmlaw@comcast.net; mrmlaw1@gmail.com

Ted S. Bernstein
LIC Holdings, Inc.
Arbitrage International Marketing, LLC
950 Peninsula Corporate Circle
Suite 3010
Boca Raton, FL 33487

on this 15th day of March, 2013.

JON L. SWERGOLD

FTL 109132507v1 071433.010400

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

CASE NO.: 50 2012CA013933 XXXX(NB) (AA)

WILLIAM E. STANSBURY, an individual,

Plaintiff,

v.

TED S. BERNSTEIN, an individual,
SIMON L. BERNSTEIN, an individual,
LIC HOLDINGS, INC., a Florida Corporation, **ARBITRAGE INTERNATIONAL MARKETING, LLC**, a Florida Corporation f/k/a **ARBITRAGE INTERNATIONAL HOLDINGS, LLC.**,

Defendants.

GREENBERG TRAURIG, P.A.'S MOTION FOR LEAVE TO WITHDRAW

Greenberg Traurig, P.A. ("GT") respectfully moves for leave to withdraw as counsel for Defendants Ted S. Bernstein, LIC Holdings, Inc. and Arbitrage International Marketing, LLC f/k/a Arbitrage International Holdings, LLC (the "Defendants") and in support of its motion, GT states as follows:

1. GT has served as counsel for the Defendants in this case.

2. However, irreconcilable conflicts have arisen between GT and the Defendants, which preclude GT from effectively representing the Defendants.

3. GT has attempted to resolve the conflict and has notified the Defendants of its intention to withdraw from the representation if the conflict could not be resolved.

4. Unfortunately, GT has been unable to resolve the conflict.

WHEREFORE, GT respectfully requests leave to withdraw as counsel of record for the Defendants in this matter, to be relieved of all further responsibility in this matter and for such other and further relief the Court deems just and proper.

Respectfully Submitted,

GREENBERG TRAURIG, P.A.
401 East Las Olas Boulevard
Suite 2000
Ft. Lauderdale, Florida 33301
Telephone: (954) 768-5201
Telefax: (954) 765-1477

By: _____
JON L. SWERGOLD
Florida Bar No. 108510

Attorneys for Ted S. Bernstein, LIC Holdings, Inc. and Arbitrage International Marketing, LLC f/k/a Arbitrage International Holdings, LLC

CERTIFICATE OF SERVICE

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Peter M. Feaman, Esq.(pfeaman@feamanlaw.com),
Kenneth D. Stern, Esq. (kdstern@gmail.com),
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436

Ted S. Bernstein
LIC Holdings, Inc.
Arbitrage International Marketing, LLC
950 Peninsula Corporate Circle
Suite 3010
Boca Raton, FL 33487

on this 14th day of March, 2013.

_____
JON L. SWERGOLD

FTL 109102998v1 141289.010100

4p 3/19/13

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

CASE NO.: 50 2012CA013933 XXXX(NB) (AA)

WILLIAM E. STANSBURY, an individual,

Plaintiff,

v.

TED S. BERNSTEIN, an individual, **SIMON L. BERNSTEIN**, an individual, **LIC HOLDINGS, INC.**, a Florida Corporation, **ARBITRAGE INTERNATIONAL MARKETING, LLC**, a Florida Corporation f/k/a **ARBITRAGE INTERNATIONAL HOLDINGS, LLC.**,

Defendants.

FILED
13 MAR 18 PM 3:43
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 2

GREENBERG TRAURIG, P.A.'S MOTION FOR LEAVE TO WITHDRAW

Greenberg Traurig, P.A. ("GT") respectfully moves for leave to withdraw as counsel for Defendants Ted S. Bernstein, LIC Holdings, Inc. and Arbitrage International Marketing, LLC f/k/a Arbitrage International Holdings, LLC (the "Defendants") and in support of its motion, GT states as follows:

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Respectfully Submitted,

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Suite 2000
Ft. Lauderdale, Florida 33301
Telephone: (954) 768-5201
Telefax: (954) 765-1477

By: _____
JON L. SWERGOLD
Florida Bar No. 108510

Attorneys for Ted S. Bernstein, LIC Holdings, Inc. and Arbitrage International Marketing, LLC f/k/a Arbitrage International Holdings, LLC

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3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436

Ted S. Bernstein
LIC Holdings, Inc.
Arbitrage International Marketing, LLC
950 Peninsula Corporate Circle
Suite 3010
Boca Raton, FL 33487

on this 14th day of March, 2013.

_____
JON L. SWERGOLD

FTL 109102998v1 141289.010100

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

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Defendants.
_____/

CIVIL DIVISION

CASE NO: 502012CA013933 MB AA

DIVISION: KELLEY

FILED
13 MAR 21 AM 11:03
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 2

MOTION TO DISMISS COUNTS III, V, VII AND VIII OF THE AMENDED COMPLAINT

COME NOW, Defendants, Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon L. Bernstein, by and through their undersigned counsel and hereby files this their Motion to Dismiss Counts III, V, VII and VIII of the Amended Complaint pursuant to Florida Rules of Civil Procedure 1.140 and 1.130 and in support thereof state, as follows:

INTRODUCTION

1. This Motion will only address Counts III, V, VII and VIII of the Plaintiff's Amended Complaint dated February 12, 2013, as those are the only Counts with allegations

MARK R. MANCERI, P.A.● 2929 East Commercial Blvd.● Suite 702 ● Fort Lauderdale, FL 33308 ● (954) 491-7099

directed against the moving Defendants directed toward Simon L. Bernstein.

2. The Plaintiff's original Complaint dated July 30, 2012 may also be referred to herein as the "Pending Action".

I. COUNT III - BREACH OF FIDUCIARY DUTY

1. The Plaintiff's allegations in Court III are based on the premise that he was owed a fiduciary duty by Simon Bernstein as a result of being, at all material times, a shareholder of LIC Holdings. See paragraph 48 of the Amended Complaint.

3. However, the Plaintiff fails to attach any document as an Exhibit to the Amended Complaint evidencing an ownership interest of any kind in LIC Holdings.

4. Florida Rule of Civil Procedure 1.130(a) reads, as follows:

> (a) **Instruments Attached**. All bonds, notes, bills of exchange, contracts, accounts, or documents upon which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, **shall** be incorporated in or attached to the pleadings. No papers shall be unnecessarily annexed as exhibits. The pleadings shall contain no unnecessary recitals of deeds, documents, contracts, or other instruments. (emphasis added).

A copy of Florida Rule of Civil Procedure 1.130 is attached hereto as Exhibit "A" and incorporated hereto by reference.

5. As the Plaintiff has failed to attach any paper or other document to the Amended Complaint to substantiate his alleged shareholder status in LIC Holdings, a Florida Corporation there can be no cause of action against the moving Defendants for a breach of fiduciary duty.

6. As such, Count III must be dismissed for failure to state a cause of action.

MARK R. MANCERI, P.A.● 2929 East Commercial Blvd.● Suite 702 ● Fort Lauderdale, FL 33308 ● (954) 491-7099

II. COUNT V - CONVERSION

1. On November 6, 2012, the Plaintiff filed his Statement of Claim in the Estate of Simon Bernstein, pending in Palm Beach County, Florida. Exhibit "A" to the Statement of Claim is a copy of the Plaintiffs then pending Complaint and Jury Demand (identified as the "Pending Action") filed by the Plaintiff on July 30, 2012. A copy of the Statement of Claim (w/Exhibit "A" thereto) is attached hereto as Exhibit "B" and incorporated herein by reference.

3. Paragraph 3 of the Statement of Claim expressly states, "The amount of the Claim is in excess of 2.5 million dollars, which the Claimant is entitled to recover **under the claims set forth in the Complaint**..." (emphasis added).

4. As can be seen, the Pending Action does not contain a Count for Conversion.

5. Florida Statute 733.703(1) clearly states that, "no additional charge may be imposed by a Claimant who files a claim against the estate." A copy of Florida Statute 733.703 is attached hereto as Exhibit "C" and incorporated herein by reference.

6. As such, the Plaintiff cannot now bring an action for Conversion against the moving Defendants as he is limited to the claims in the Pending Action, incorporated by reference into his Statement of Claim.

7. Based on the foregoing, Count V of the Amended Complaint must be dismissed for failure to state of cause of action.

COUNT VII - EQUITABLE LIEN

1. Count VIII of the Pending Action is also titled "Equitable Lien", comprised of

MARK R. MANCERI, P.A.• 2929 East Commercial Blvd.• Suite 702 • Fort Lauderdale, FL 33308 • (954) 491-7099

paragraphs 59 through 61.

2. Paragraph 59 of the Pending Action refers to paragraphs 54 through 58, inclusive.

3. Paragraphs 54 through 58 of the Pending Action are part of Count VII, titled "Fraud", (against all Defendants).

4. While the Amended Complaint does include Count VI, titled "Fraud in the Inducement" against Ted Bernstein and LIC Holdings Inc., it does not contain a Count for Fraud against the moving Defendants.

5. As a result and to the extent Count VII of the Amended Complaint is based, in whole or in part, on an alleged Fraud, it cannot now be raised against the moving Defendants.

6. Additionally and more significantly, Count VII of the Pending Action is directed solely to "bank" or other "accounts" into which commissions were allegedly deposited.

7. However, Count VII of the Amended Complaint goes beyond such accounts and requests an equitable lien against three (3) parcels of real property located in Palm Beach County, Florida. See paragraphs 75, 76 and 77 of the Amended Complaint.

8. Florida Statute 733.703(1) clearly states that "no additional charge may be imposed by a Claimant who files a claim against the estate."

9. As such, the Plaintiff cannot now bring an action for an Equitable Lien against the referenced parcels of real property, as he is limited to the claims in the Pending Action incorporated by reference into his Statement of Claim.

10. Based on the foregoing, Count VII of the Amended Complaint must be dismissed

MARK R. MANCERI, P.A. • 2929 East Commercial Blvd. • Suite 702 • Fort Lauderdale, FL 33308 • (954) 491-7099

for failure to state a cause of action.

COUNT VIII - CONSTRUCTIVE TRUST

1. Count VIII of the Amended Complaint also refers to the same three (3) parcels of real property located in Palm Beach County, Florida which were not part of the Plaintiff's allegations in the Pending Action incorporated by reference into his Statement of Claim.

2. Count X of the Pending Action is titled "Constructive Trust", is comprised solely of paragraphs 66 through 68.

3. Paragraphs 67 and 68 refer to "bank" or "other accounts" into which commissions were deposited. There is no allegation of any kind directed to any parcel of real property.

4. Florida Statute 733.703(1) clearly states that "no additional charge may be imposed by a Claimant who files a claim against the Estate."

5. As such, the Plaintiff cannot now bring an action for a Constructive Trust against the three (3) parcels of real property referenced in Count VIII of the Amended Complaint, as he is limited to the claims in the Pending Action incorporated by reference into his Statement of Claim.

6. Based on the foregoing, Count VIII of the Amended Complaint must be dismissed for failure to state a cause of action.

MARK R. MANCERI, P.A. • 2929 East Commercial Blvd. • Suite 702 • Fort Lauderdale, FL 33308 • (954) 491-7099

GENERAL PRAYER FOR ATTORNEY'S FEES AND COSTS

Defendants, Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon L. Bernstein, hereby requests an award of attorney's fees and costs pursuant to Florida Statutes 733.106 and 733.609 and/or Florida decisional case law, and that same be taxed against the Plaintiff.

MARK R. MANCERI, P.A.
Attorney for Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives
2929 East Commercial Blvd., Suite 702
Ft. Lauderdale, FL 33308
Telephone: (954) 491-7099
E-mail: mrmlaw@comcast.net
mrmlaw1@gmail.com

By: _____
Mark R. Manceri, Esq.
Florida Bar No. 444560

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) and U.S. mail to all parties on the following Service List, this 18th day of March, 2013.

_____
Mark R. Manceri, Esq.

SERVICE LIST

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3615 West Boynton Beach Blvd.
Boynton Beach, Florida 33436

Jon Swergold, Esq.
Greenberg Traurig, P.A.
401 East Las Olas Blvd., Suite 2000
Fort Lauderdale, Florida 33301

Rule 1.130. Attaching Copy of Cause of Action and Exhibits

(a) Instruments Attached. All bonds, notes, bills of exchange, contracts, accounts, or documents upon which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the pleading. No papers shall be unnecessarily annexed as exhibits. The pleadings shall contain no unnecessary recitals of deeds, documents, contracts, or other instruments.

(b) Part for All Purposes. Any exhibit attached to a pleading shall be considered a part thereof for all purposes. Statements in a pleading may be adopted by reference in a different part of the same pleading, in another pleading, or in any motion.

Amended July 16, 1992, effective Jan. 1, 1993 (604 So.2d 1110).

EXHIBIT "A"

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

IN RE: **Case No. 502012CP004391XXXXSB**

ESTATE OF SIMON BERNSTEIN,
Deceased. **Division: IZ**

COPY
SOUTH COUNTY BRANCH OFFICE
ORIGINAL RECEIVED
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SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY

STATEMENT OF CLAIM BY WILLIAM E. STANSBURY

The undersigned hereby presents for filing against the above estate this Statement of Claim and alleges:

1. The basis for the claim is the action pending in Palm Beach County, Florida, *Stansbury v. Bernstein, et. al,* Case No. 502012CA 013933XXXX MB (the "Pending Action"). A true and correct copy of the Complaint filed by claimant that initiated the Pending Action is attached hereto as Exhibit "A" and is hereby incorporated by reference herein (the "Complaint").

2. The name and address of the claimant are William E. Stansbury, 6920 Caviro Lane, Boynton Beach, Florida 33437, and the name and address of the claimant's attorney is set forth below.

3. The amount of the claim is in excess of $2.5 million dollars, which the Claimant is entitled to recover under the claims set forth in the Complaint, which amount the Claimant believes is now due.

4. The claim is contingent or unliquidated and uncertain to the extent that the Claimant's claim is dependent on the outcome of the Pending Action. The specific amount of Claimant's claim will be determined in Pending Action and the Claimant expects to recover in excess of $2.5 million dollars in damages, as well as, but not limited to, treble damages, pre-judgment and post-judgment interest, and costs.

5. The claim is not secured.

[Signature page follows this page]

EXHIBIT "B"

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 November 6, 2012.

William E. Stansbury, Claimant

Attorneys for Claimant

Peter M. Feaman, Esq.
Florida Bar No.: 260347
PETER M. FEAMAN, P.A.
3615 West Boynton Beach Blvd.
Boynton Beach, FL 33436
Phone: (561) 734-5552
Facsimile: (561) 734-5554
Primary Electronic Mail Address:
pfeaman@feamanlaw.com

Copy mailed to attorney for Personal Representative on 11-7-2012.

MUST BE FILED IN DUPLICATE

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

WILLIAM E. STANSBURY,
Plaintiff,

vs. Case No. 50 2012 CA013 933XXXXMB

TED S. BERNSTEIN;
SIMON BERNSTEIN;
LIC HOLDINGS, INC.; and
ARBITRAGE INTERNATIONAL
MANAGEMENT, L.L.C., f/k/a
ARBITRAGE INTERNATIONAL
HOLDINGS, L.L.C.,
Defendants.
_____/

COPY
RECEIVED FOR FILING
JUL 30 2012
SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

COMPLAINT
And JURY DEMAND

WILLIAM STANSBURY (PLAINTIFF"), by and through his undersigned co-counsel, hereby demanding trial by jury of all issues so triable, hereby sues the Defendants, and says

1. This is an action for money damages in excess of $15,000, and for equitable relief.

2. Plaintiff is *sui juris*, and a resident of Palm Beach County, Florida.

3. Defendants TED S. BERNSTEIN ("TED BERNSTEIN"), and SIMON BERNSTEIN are both *sui juris*, and are both residents of Palm Beach County, Florida.

4. The corporate Defendants, LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C., are entities organized and existing under the laws of the State of Florida, all do business in the State of Florida and all have their principal offices in the State of Florida, and in Palm Beach County, Florida.

5. Defendants SIMON BERNSTEIN and TED BERNSTEIN (collectively "Defendants

BERNSTEIN") are, respectively, one another's father and son. They both own and control all of the corporate Defendants, and work closely together with respect thereto. In all matters involved herein, they worked closely together and were virtually one another's alter egos.

7. The acts and incidents giving rise to these causes of action occurred in Palm Beach County, Florida.

Background

8. Plaintiff has worked in the insurance field virtually all his adult life, and by 2003 had become well-known and highly regarded by major insurance companies, their principals, and by others throughout the insurance industry, at all levels thereof, as well as by professionals, including attorneys, CPAs, financial advisors, wealth managers and others who were involved in serving, or otherwise dealing with, insurers and insurance brokers.

9. SIMON BERNSTEIN dealt at high levels of the insurance industry, and specialized in developing and marketing insurance concepts suitable for persons of high net worth to incorporate in their wealth management and estate planning.

10. TED BERNSTEIN was actively involved in selling life insurance products in conjunction with attorneys, CPAs and other professionals, to be incorporated into clients' financial planning.

11. In 2003, TED BERNSTEIN approached Plaintiff, urging Plaintiff to spearhead the marketing of a unique insurance concept ("the said concept"), newly developed by a prominent law firm, which was designed for use in the financial and estate planning of wealthy individuals.

12. TED BERNSTEIN told Plaintiff that he knew of Plaintiff's knowledgeability, and reputation in the insurance and related industries and professions, and that Plaintiff was skilled

at, and accustomed to, speaking and marketing insurance products to, large groups of professionals, and that he realized that Plaintiff, because of his knowledgeability, reputation and abilities, would be ideal to market this concept nationwide, through prominent and experienced professionals,.

13. SIMON BERNSTEIN proposed that Plaintiff work as an independent contractor for the Corporate Defendants, marketing the product to the above-described He offered Plaintiff an arrangement whereby Plaintiff would receive twenty percent (20%) of all net retained amounts of commissions received from insurance companies and general agents' overrides (hereinafter, "commissions") which chose to issue policies of the type to be marketed, for use in the said financial and estate planning, and all other sales by the companies. Plaintiff would receive no other salary remuneration, but would have his travel and marketing expenses advanced or reimbursed. In time, when Plaintiff agreed to become an employee rather than an independent contractor, he agreed to a salary of the equivalent of 15% of commissions received on all products.

14. After reviewing the concept and considering the terms of the arrangement offered by SIMON BERNSTEIN, Plaintiff agreed with BERNSTEIN to accept the proposal described in preceding paragraph 13, and all the parties proceeded to act in accordance therewith.

15. Thereafter, Plaintiff worked with diligence and skill, traveling throughout the United States, generating ever increasing sales, and generating very large commissions for Defendants and for Plaintiff, who received the agreed salary equal to 15% thereof. By 2006, the parties hereto began receiving checks, not only for commissions on new policies sold, but also renewal commissions. Initially, the Plaintiff and Defendants BERNSTEIN, and one secretary, comprised the entire workforce. At the height of the sales campaign, Defendants' staff for serving the

business generated by Plaintiff consisted of more than 40 individuals.

16. In 2005, the Plaintiff was paid his commissions in the form of two IRS forms 1099, from National Services Association, and from Defendant ARBITRAGE INTERNATIONAL MARKETING, INC. for his services as an independent contractor.

17. In 2006, Plaintiff received his agreed salary as an employee, reflected in two IRS forms W-2., One W-2 was from ARBITRAGE INTERNATIONAL MARKETING, INC., and the other was from ARBITRAGE INTERNATIONAL HOLDINGS, INC., which later became Defendant ARBITRAGE INTERNATIONAL MANAGEMENT, INC.

18. Also in 2006, SIMON BERNSTEIN told Plaintiff that Plaintiff, was being rewarded for the explosive growth of business, through receiving a 10% interest in LIC.

19. In 2007, Plaintiff received his agreed salary as an employee, which salary was reflected in an IRS Form W-2.

20. With the economic downturn in 2008, Defendants looked for ways to withhold from Plaintiff compensation to which he was entitled, and to deceive him into believing that the money which would have been paid to both Defendants as well as to Plaintiff as compensation, was instead being held in the company's coffers.

21. In order to hide from Plaintiff the real fact that Defendants were paying to Defendants BERNSTEIN the full earnings received as commissions, and thereby depriving Plaintiff of the 15% thereof to which he was entitled, they knew they had to terminate Plaintiff's function of calculating each person's entitlement to payment out of commissions received. Therefore, in early 2008, SIMON BERNSTEIN told Plaintiff that the Defendants BERNSTEIN felt that Plaintiff was spending too much time on making the said calculations, and that Plaintiff's time would be better spent in building the business. SIMON BERNSTEIN told

Plaintiff that he and TED BERNSTEIN had decided to pay themselves and Plaintiff identical salaries of not less than $1,000,000 each for 2008, and to distribute any profits beyond the total thus paid to the three owners, the Defendants BERNSTEIN and Plaintiff, according to their respective percentages of ownership, Plaintiff's share being 10%. Plaintiff, having thus far believed he was receiving whatever compensation he was entitled to, and having no reason to realize that this was a ruse to keep him in the dark as to the true state of affairs, readily acceded to his being relieved of the bookkeeping duties regarding calculating the disposition of moneys received.

22. Through misrepresentations made from 2008 through the date of filing of this Complaint, Defendants knowingly made false statements to Plaintiff to hide their scheme to withhold from Plaintiffs money to which he was entitled. For example, at times they claimed that money being received was not being paid as salary or distributions to either of Defendants BERNSTEIN but was being withheld and placed in company accounts, for eventual distribution. As Plaintiff and Defendants could afford to wait until year's end to be paid their distributions, and as Defendants BERNSTEIN assured Plaintiff that the payment arrangement would apply to all three equally, Plaintiff did not question the truthfulness of their representations..

23. In furtherance of their scheme to deprive Plaintiff of salary he had earned and to which he was entitled, Defendants intercepted mail addressed to Plaintiff, removed therefrom commission checks representing full commissions, deposited the same to their own accounts or otherwise converted the funds,, and willfully withhold from Plaintiff his salary. Defendants BERNSTEIN also opened Plaintiff's mail containing checks payable to him which were unrelated to Defendants' business.

24. In 2011, the Defendants BERNSTEIN decided to deceive Plaintiff into giving up

his 10% share in the business. Although he had never seen a stock certificate, Plaintiff had in fact been given K-1 statements reflecting his salary, which appeared to approximate 10% of the net profits or losses of LIC, after salary was paid. TED BERNSTEIN told Plaintiff that their accountants had discovered a taxable event which could cause all the owners of the company to have to pay taxes, and that they thought it would be unfair for Plaintiff to have to pay 10% of that tax, so TED BERNSTEIN promised that if Plaintiff would sign a paper ceding his 10% interest, TED BERNSTEIN would simply hold it and it would not become operative unless the tax liability came to exist. Plaintiff was assured that nothing would happen with the stock ownership until Plaintiff and the Defendants BERNSTEIN discussed the situation further after the Holiday Season.

25. Because of the misrepresentations, willful concealments of material facts, duplicity and deceit practiced by Defendants upon Plaintiff as described in preceding paragraphs 20 through 24, Plaintiff was reasonably of the belief that Defendants had complied , or intended to comply, with their material obligations to Plaintiff under the contract between them, and therefore was prevented from knowing, for a period of years, that these causes of action existed. The acts of Defendants in making false statements and withholding material information continues from its inception to the date of the filing hereof.

I. ACCOUNTING
(Against LIC and ARBITRAGE, for Accounting as to Withholding of Money Due Plaintiff)

26. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

27. The relationship between Plaintiff and the Defendants, particularly as affected by

Defendants' acts described in preceding paragraphs 20 through 25, inclusive, created a situation where Defendants had sole access to, receipts generated by Plaintiff's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to Plaintiff under his arrangement with Defendants.

28, The period of time during which Plaintiff has been deprived of moneys due him spans approximately four and a half years, the numerosity of the sources of receipts by Defendants of moneys from which the amounts due Plaintiff may be calculated, and the changes in the formula under which, and manner in which, Plaintiff was to be paid, all involve extensive and complicated accounts, and Plaintiff's remedy at law could not be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, and for such orders of Court as will require the Defendants to provide Plaintiff with all records and copies of documents, dated from the date in 2003 when Plaintiff first began his efforts to generate sales of the concept described in paragraph 11 above to the present, as will reveal his right to, and the amount of, all amounts: (a) received as commissions on said concepts or any other commissions as to which Plaintiff was entitled to a share; (b) due to Plaintiff, whether paid or not; (c) paid to Plaintiff, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the Defendants out of moneys received as commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid , to be paid, or not to be paid to Plaintiff, together with such other and further relief as the Court may deem just

and appropriate.

II. ACCOUNTING
(Against TED S. BERNSTEIN and SIMON BERNSTEIN, for Accounting as to Money Due to Plaintiff Which Said Defendants Converted)

29. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

30. The relationship between Plaintiff and the Defendants, particularly as affected by Defendants' acts described in preceding paragraphs 20 through 25, inclusive, created a situation where Defendants had sole access to, receipts generated by Plaintiff's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to Plaintiff under his arrangement with Defendants.

31. The period of time during which Plaintiff has been deprived of moneys due him spans approximately four and a half years, the numerosity of the sources of receipts by Defendants of moneys from which the amounts due Plaintiff may be calculated, and the changes in the formula under which, and manner in which, Plaintiff was to be paid, all involve extensive and complicated accounts, and Plaintiff's remedy at law could not be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, and for such orders of Court as will require the Defendants to provide Plaintiff with all records and copies of documents, dated from the date in 2003 when Plaintiff first began his efforts to generate sales of the concept described in paragraph 11 above to the present, as will reveal his right to, and the amount of, all amounts: (a) received as commissions on said concepts or any other commissions as to which Plaintiff was entitled to a

share; (b) due to Plaintiff, whether paid or not; (c) paid to Plaintiff, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the Defendants out of moneys received as said commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid , to be paid, or not to be paid to Plaintiff, together with such other and further relief as the Court may deem just and appropriate.

III. BREACH OF ORAL CONTRACT
(Against All the Defendants)

32. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

33. The arrangement between Plaintiff and Defendants as described in paragraphs 11 and 13 above, and as modified by the parties as further described above, constituted a contract between them.

34. An express term of that contract involved the commitment of Defendants to calculate, and to pay to Plaintiff, fully and timely, all sums due to him under the parties' contract, whether as commissions, salary, distributions, expenses or any other reason

35. The parties initially performed the duties required of them under said contract.

36. However, as described above in paragraphs 20 through 25, inclusive, Defendants willfully and maliciously agreed to breach their contract with Plaintiff by withholding from Plaintiff moneys due him under the contract.

37. Defendants did withhold such moneys due Plaintiff.

38. The withholding of such moneys constituted a material breach of the contact between Plaintiff and Defendants.

39. There is therefore due to Plaintiff from Defendants all amounts due under said contract, together with prejudgment and post-judgment interest on said amounts.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

IV. BREACH OF IMPLIED COVENANT Of GOOD FAITH and FAIR DEALING

40. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive, and paragraphs 33 through 38, inclusive.

41. The said contract, as a matter of law, contained an implied covenant of good faith and fair dealing, obligating the parties to honor every express term of the agreement..

42. Among the express terms of the oral contract between the parties were (a) that Plaintiff would be constantly apprised, either through being permitted to calculate all amounts due the Defendants out of commissions, or through being advised of all receipts of commissions and the disposition thereof, or the amounts due to Plaintiff for any reason under the terms of the contract; and (b) that Plaintiff would be fully and promptly paid all such amounts due him.

43. Through their actions as described in preceding paragraphs 20 through 25, inclusive, the Defendants willfully breached the said express of the contract.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for

the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

V. BREACH OF FIDUCIARY DUTY

41. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

42. Plaintiff reposed full confidence in the defendants BERNSTEIN, and trusted them and relied on them to be as good as their word and to deal honestly with him, for a variety of reasons. Plaintiff knew of SIMON BERNSTEIN as a major figure in the insurance industry, prior to their becoming parties to the agreement involved herein. Moreover, Plaintiff and the Defendants BERNSTEIN had formed a social relationship which had grown into what Plaintiff regarded as friendship. Moreover, as the initial situation under their contractual relationship had Plaintiff receiving all information as to commissions received and calculating the amount of money due to Plaintiff and the Defendants BERNSTEIN, as ,mentioned in preceding paragraphs 21 and 22, and also because Plaintiff was told he had been given a minority shareholder interest in LIC, Plaintiff reasonably felt that the Defendants would deal with Plaintiff honestly and fairly, and that the Defendants had no intention of hiding from Plaintiff any information as to the amounts due Plaintiff or as to the Defendants' intention of paying said amounts to Plaintiff

43. Moreover, when Defendants proposed to Plaintiff that Plaintiffs cease being the one to calculate moneys due the parties out of commissions received, the Plaintiff trusted Defendants to make proper, accurate and complete calculations, as Plaintiff had done, and to pay Plaintiff accordingly.

44. Furthermore, when Defendants BERNSTEIN made statements to Plaintiff as to why payments due him were not being paid, as described, for example, in preceding paragraphs 22 through 25, inclusive, and 42, he trusted Defendants to be telling Plaintiff the truth,

45. As a result of the foregoing, a fiduciary relationship existed between Defendants BERNSTEIN and Plaintiff, and there existed in Plaintiff complete confidence and trust in the said Defendants, of which confidence and trust said Defendants were well aware.

46. Defendants BERNSTEIN accepted the trust which Plaintiff reasonably placed in them.

47 Through Defendants' willful misrepresentations and withholding of material information as to their intentions and the purposes for which Plaintiff's payments were not being paid, and through their diversion from Plaintiff of amounts which should have been paid to him, Defendants abused and betrayed Plaintiff's trust and confidence in them, to Plaintiff's great detriment, in that he has been deprived of the said amounts due him, the precise amount of which cannot be calculated without access to Defendants' books and records, and a full accounting by them.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

VI. CIVIL THEFT
Against All Defendants

48. This is an action for Civil Theft under Chapter 772, Florida Statutes, more

specifically §772.11, Fla.Stats.

49. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

50. All funds which Defendants' records will reveal are due to Plaintiff but which have been deposited to any of the Defendants' accounts or which have been received by any Defendant or diverted by any Defendant to any recipient but Plaintiff are the specific funds to which this Count relates.

51. By refusing to pay to Plaintiff funds due him under their agreement, and by paying said sums to themselves or to others, Defendants have been guilty of criminal theft by conversion, which has been and continues to be performed by Defendants with the criminal intent of stealing his money and depriving him of the possession and use thereof.

52. Written demand for payment of all amounts due Plaintiff has been made to Defendants, more than 30 days preceding the filing of this Complaint, to no avail.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for three times the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, and such other remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate, together with such other and further relief as the Court may deem just and appropriate.

VII. FRAUD
(Against All Defendants)

53. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated

herein, preceding paragraphs 1 through 24, inclusive.

54. Defendants, with the intent to defraud Plaintiff by preventing his receipt of moneys due him from Defendants as commissions, salary, distributions, expenses, and otherwise, made false statements to him and withheld material information from him, all as specifically set forth in preceding paragraphs 20 through 24 above.

55. At the time said statements were made, Defendants knew that they were material and false, and that Plaintiff would rely thereon. At the time said material information was withheld from Plaintiffs, Defendants knew that the information being withheld was material, and that the withholding of the information would cause Plaintiff to rely on the absence of said information

56. Defendants intended for Plaintiff to rely on said false statements of material fact and to rely on the absence of the material facts which were withheld.

57. Plaintiff did rely on the false statements and the withholding of material information, and was damaged thereby. Through the loss the possession and use of moneys due him but withheld by Defendants under their scheme to defraud him of said money.

58. The behavior of Defendants in deceiving Plaintiff and in abusing the trust they had engendered in Plaintiff, as set forth in preceding paragraphs 42 through 47, which are incorporated herein by reference as if expressly restated herein, was in willful and conscious disregard of his rights, and was of such a concerted, premeditated, and outrageous nature as to go beyond the bounds of decency, and constituted rampant fraud.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

VIII. EQUITABLE LIEN

59. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive, and paragraphs 54 through 58, inclusive.

60. The bank accounts into which any of the commissions received by Defendants as to which Plaintiff was to receive a share of commissions received, and the operating accounts and other accounts of the corporate Defendants into which said commission checks were deposited were intended by Defendants and by Plaintiff to be the source out of which Plaintiff would be paid, and they therefore were intended to be, and therefore should be, charged by this Court with the obligation of being the source of all amounts Plaintiff was and is to be paid, including amounts not yet paid.

61. Any and all other accounts into which were deposited said commissions or any part thereof, out of which Plaintiff was to be paid, should, out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings, be charged with the obligation of paying Plaintiff.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts. Plaintiff further prays for the Court to declare and establish an equitable lien in favor of Plaintiff on all the accounts described in preceding paragraphs 60 and 61, and for all other accounts into which said commissions have been or will be wholly or partly diverted, and on all assets of Defendants or third parties which have been purchased wholly or partly with the

diversion of said funds due Plaintiff. Plaintiff further prays for such other and further relief as the Court may deem just and appropriate.

IX. CONTRACT IMPLIED IN LAW

62. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 25, inclusive.

63. By keeping the moneys due Plaintiff, Defendants have been unjustly enriched.

64. By agreeing to permit Defendants to receive, possess and control the paperwork revealing commissions received, and by agreeing that Defendants would assume the function of calculating amounts due the parties, Plaintiff conferred on Defendants the benefit of controlling the disposition of the funds received, including those due Plaintiff. The Defendants, having induced Plaintiff to confer said benefit, knew of the benefit and accepted and retained the benefit and abused it to defraud the Plaintiff.

65. The Circumstances are such that it would be inequitable for the Defendants to retain the benefit of the possession and use of funds due Plaintiff

WHEREFORE, Plaintiff prays for judgment that there exists a contract implied in law with the terms against Defendants described above, and for judgment against all Defendants, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

X. CONSTRUCTIVE TRUST

66. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

67. The bank accounts into which any of the commissions received by Defendants as to which Plaintiff was to receive a share of commissions received, and the operating accounts and other accounts of the corporate Defendants into which said commission checks were deposited were intended by Defendants and by Plaintiff to be the source out of which Plaintiff would be paid, and they therefore were intended to be, and therefore should be, charged by this Court with the obligation of being the source of all amounts Plaintiff was and is to be paid, including amounts not yet paid.

68. Any and all other accounts into which were deposited said commissions or any part thereof, out of which Plaintiff was to be paid, should, out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings, be charged with the obligation of paying Plaintiff.

.WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts. Plaintiff further prays for the Court to declare and establish a constructive trust in favor of Plaintiff on all the accounts described in preceding paragraphs 60 and 61, and for all other accounts into which said commissions have been or will be wholly or partly diverted, and on all assets of Defendants or third parties which have been purchased wholly or partly with the diversion of said funds due Plaintiff. Plaintiff further prays for such other and further relief as the Court may deem just and appropriate.

XI. INDEMNIFICATION

69. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

70. When Defendants entered the arrangement with Plaintiff described in preceding paragraph 13, SIMON BERNSTEIN, acting for himself and on behalf of the corporate Defendants and TED BERNSTEIN, and for their collective and shared benefit, told Plaintiff that it would be better for the simplicity of administration, if Plaintiff would arrange for all commissions, paid by insurance companies for sales of the said product by the Defendant companies, to be paid in the name of Plaintiff., even though Plaintiff would ultimately receive only 15% thereof.

71. Plaintiff, believing the representation that this was being requested solely to simplify bookkeeping and administration, agreed to receive all commissions in his own name, even though the bulk of each commission would become the property of the various Defendants.

72. At the time Defendants, through SIMON BERNSTEIN, represented to Plaintiff that the reason for their request that Plaintiff receive all commissions solely in his own name was for administrative simplicity, they knew that they had an ulterior motive in making this request. Their said motive was that, in the event any insurance company which had paid a commission for sale of the said product were to request a full refund of the commission on the ground that the insurance client or the broker had falsified the application for the policy, Defendants intended to disclaim liability therefor, and to avoid personal and corporate responsibility for any requests for refund of commissions paid, even though they collectively have received 85% of each such commission.

73. Plaintiff, acting in good faith, did not realize that Defendants were concealing this motive, or that such was their motive, and he reasonably relied on their representations as to the reason for the request, to his detriment.

74. As a direct and proximate result of the Defendants' representations, Plaintiff will have nominal full liability for refund of any commissions thus sought to be refunded as described in preceding paragraph 72. Such liability creates the certainty that requests for refunds will be made solely to Plaintiff, even though Defendants received 85% of the commissions.. Such disproportionate and unfair liability has been caused by the willful misrepresentation by Defendants.

75. Plaintiff was without fault in reasonably relying on the said representations.

76. Defendants were solely at fault in creating the said liability.

77. There was a special relationship between Plaintiff and the Defendants, because Plaintiff was acting as the nominal agent for Defendants in receiving in his name 100% of the commissions, making him vicariously liable for the refund of the 85% of commissions which were retained by Defendants for their own benefit.

78. Moreover, Defendants had ceased to pay Plaintiff any commissions. Instead, as an employee he was now receiving a salary. To reflect Plaintiff's successful generation of Defendants' business, Defendants made Plaintiff's salary approximate 15% of the amount of commissions received. Nonetheless, as Plaintiff was not receiving any share of commissions *per se*, he should not have his indemnification limited to 85%, but rather it should be to the full 100% of all commissions being refunded.

WHEREFORE, Plaintiff prays for a Judgment in his favor, and against all Defendants, Adjudicating them under an obligation to defend, hold harmless and indemnify Plaintiff from

and against refund claims for said commissions, to the extent of 100% thereof, and for such other and further relief as the Court shall deem just and appropriate.

July 30, 2012

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3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
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pfeaman@feamanlaw.com

By: _____
Peter M. Feaman
Fla. Bar No. 260347

Kenneth D. Stern, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-740-1413 Fax: 561-734-5554
kdstern@gmail.com

By: _____
Kenneth D. Stern
Fla. Bar No. 0244929

The Florida Senate

2012 Florida Statutes

733.703 Form and manner of presenting claim.—

(1) A creditor shall file a written statement of the claim. No additional charge may be imposed by a claimant who files a claim against the estate.

(2) Within the time allowed by s. 733.702, the personal representative may file a proof of claim of all claims he or she has paid or intends to pay. A claimant whose claim is listed in a personal representative's proof of claim shall be deemed to have filed a statement of the claim listed. Except as provided otherwise in this part, the claim shall be treated as if the claimant had filed it.

History.—s. 1, ch. 74-106; s. 84, ch. 75-220; s. 5, ch. 81-27; s. 5, ch. 85-79; s. 6, ch. 89-340; s. 147, ch. 2001-226.

Note.— Created from former s. 733.16.

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EXHIBIT "C"

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

FILED
2013 MAR 22 AM 11:55
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

AGREED ORDER CANCELING MARCH 25, 2013 SPECIAL SET HEARING AS MOOT

THIS CAUSE came before the Court upon Plaintiff's request to cancel the scheduled March 25, 2013 special set 30-minute hearing at 10:30 a.m. on Plaintiff's Motion for Disqualification due to the filing of the Motion to Withdraw by Greenberg Traurig, which moots Plaintiff's Motion. Plaintiff's counsel has contacted opposing counsel, who is in agreement that this hearing be canceled.

The Court, having been fully advised in the premises does hereby:

ORDER and ADJUDGE that the special set hearing scheduled for March 25, 2013 at 10:30 a.m. is hereby CANCELED.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this 21st day of March, 2013.

Honorable Glenn E. Kelley
Circuit Judge

Copies furnished by e-mail

Copies to:

Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301; swergoldj@gtlaw.com;
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL; pfeaman@feamanlaw.com

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

CASE NO.: 50 2012CA013933 XX XX MB AA

WILLIAM E. STANSBURY, an individual,

Plaintiff,

v.

TED S. BERNSTEIN, an individual,
SIMON L. BERNSTEIN, an individual,
LIC HOLDINGS, INC., a Florida
Corporation, ARBITRAGE
INTERNATIONAL MARKETING, LLC, a
Florida Corporation f/k/a ARBITRAGE
INTERNATIONAL HOLDINGS, LLC.,

Defendants.

FILED
2013 MAR 25 AM 10:27
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

**ORDER ON GREENBERG TRAURIG, P.A.'S
MOTION FOR LEAVE TO WITHDRAW AND DIRECTING
CLERK TO UPDATE FILE WITH NEW CONTACT INFORMATION**

THIS CAUSE having come before the Court on Greenberg Traurig's Motion for Leave to Withdraw (the "Motion) as counsel for Defendants Ted S. Bernstein, LIC Holdings, Inc. and Arbitrage International Marketing, LLC f/k/a Arbitrage International Holdings, LLC (the "Defendants"), and the Court having reviewed the motion, heard argument, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED

1. That the Motion is GRANTED.

2. Greenberg Traurig, P.A. and its lawyers who have made an appearance on behalf of the Defendants, are hereby relieved of all further responsibility for the representation of Defendants Ted S. Bernstein, LIC Holdings, Inc. and Arbitrage International Marketing, LLC

Copies furnished by mail

f/k/a Arbitrage International Holdings, LLC in this case effective the date below.

3. The Clerk of the Court is hereby directed to remove the law firm of Greenberg Traurig, P.A., Jon L. Swergold, Esq. and Kristina L. Arnsdorff, Esq. (aka Krisitina L. Ciaffi, Esq.) as counsel of record for Defendants.

4. Until further notice, all pleadings and papers filed or served in this case shall be sent to the following address:

Ted S. Bernstein
LIC Holdings, Inc.
Arbitrage International Marketing, LLC
950 Peninsula Corporate Circle
Suite 3010
Boca Raton, FL 33487

5. Defendants shall have 20 days to obtain new counsel.

6. _____

_____

_____

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this 25th day of March, 2013.

_____
Hon. Glenn Kelley, Circuit Judge

Copies furnished: see following page

Copies furnished:

Jon Swergold, Esq., Greenberg Traurig, P.A., 401 E. Las Olas Blvd., Suite 200, Ft. Lauderdale, FL 33301 (*swergoldj@gtlaw.coml)*

Jason H. Okleshen, Esq., Greenberg Traurig, P.A., 777 So. Flagler Dr., Suite 300 E, West Pam Beach, FL 33401 (*okleshenj@gtlaw.com*)

Peter M. Feaman, Esq., and Kenneth D. Stern, Esq., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436 .(*pfeaman@feamanlaw.com and kdstern@gmail.com*)

Mark R. Manceri, Esq., Mark R. Manceri, P.A., 2929 E. Commercial Blvd., Suite 702, Ft. Lauderdale, FL 33308 (*mrmlaw@comcast.net and mrmlaw1@gmail.com*)

Ted S. Bernstein, LIC Holdings, Inc., Arbitrage Marketing, LLC, 950 Peninsula Corporate Circle, Suite 3010, Boca Raton, FL 33487

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CASE NO: 50 2012 CA 013933 MB AA

DEFENDANTS', TED S. BERNSTEIN, LIC HOLDINGS, INC., AND ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM

Defendants, Ted S. Bernstein ("Bernstein"), LIC Holdings, Inc. ("LIC"), and Arbitrage International Management, LLC ("Arbitrage") (collectively "Defendants"), file their answer, affirmative defenses, and counterclaim.

ANSWER

1. Admitted for jurisdictional purposes only and otherwise denied.

2. Without knowledge.

3. Admitted.

4. Admit the first and second sentence, and otherwise without knowledge.

5. Admitted.

6. Admitted.

7. Admitted.

8. Denied.

9. Admitted for jurisdictional purposes only and otherwise denied.

10. Without knowledge.

11. Admitted.

12. Admitted.

13. Admitted that Stansbury's role in the company involved the sale and marketing of certain insurance products, and otherwise denied.

14. Denied.

15. Admitted.

16. Admitted that Stansbury, for some time, worked as an employee of LIC or Arbitrage, and that, for some time period, Stansbury's compensation was based upon receiving 15% of the net retained commissions as that terms was understood by the parties, and otherwise denied.

17. Admitted that Stansbury, for some time, worked as an employee of LIC or Arbitrage, and that, for some time period, Stansbury's compensation was based upon receiving 15% of the net retained commissions as that terms was understood by the parties, and otherwise denied.

18. Admitted that Stansbury was given 10% of the stock of LIC, and otherwise denied.

19. Denied.

20. Denied.

21. Denied.

22. Admitted that Stansbury agreed to be paid no commission for sales or revenues after January 1, 2008; without knowledge of the specific amounts received by Stansbury in 2008; and otherwise denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Admitted that Stansbury returned, surrendered or ceded his 10% stock interest back to LIC, and otherwise denied.

32. Denied.

33. Denied.

34. Without knowledge.

COUNT I

35. Defendants restate responses 1 to 34 above.

36. Denied.

37. Denied.

COUNT II

38. Defendants restate responses 1 to 34 above.

39. Denied.

40. Admitted that Stansbury was paid in accordance with the parties' agreement, and otherwise denied.

41. Admitted that Stansbury was paid in accordance with the parties' agreement, and otherwise denied.

42. Denied.

43. Denied.

44. Denied.

COUNT III

45-59. There is a pending Motion to Dismiss directed to this Count.

COUNT IV

60. Defendants restate responses 1 to 34 above.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

COUNT V

66. Defendants restate responses 1 to 34 above.

67. Denied.

COUNT VI

68. Defendants restate responses 1 to 34 above.

69. Admitted that Stansbury returned, surrendered or ceded his 10% stock interest back to LIC, and otherwise denied.

70. Denied.

71. Denied.

72. Denied.

COUNT VII

73-77. There is a pending Motion to Dismiss directed to this Count.

COUNT VIII

78. There is a pending Motion to Dismiss directed to this Count.

COUNT IX

79. Defendants restate responses 1 to 34 above.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Admitted that there is a good faith basis to refuse any request by Stansbury, including because he no longer is a shareholder in LIC and his request is not made in good faith and for a proper purpose, and otherwise denied.

AFFIRMATIVE DEFENSES

86. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and/or laches.

87. Plaintiff's claims are barred in whole or in part by the statute of frauds.

88. Plaintiff's claims are barred in whole or in part because Plaintiff lacks standing to pursue derivative claims because he is no longer a shareholder in LIC and lacks standing to pursue other claims because is no longer an employee of LIC or Arbitrage.

89. Plaintiff's claims are barred in whole or in part by because Plaintiff has misjoined causes of action held in different capacities, and therefore, the Complaint is improper and, at a minimum, certain claims must be dismissed such that Plaintiff pursues only those claims he has in one capacity.

90. Plaintiff's claims are barred in whole or in part by the doctrine of waiver. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies and was aware of the alleged actions which form the basis of his claim, and waived any claims against Defendants.

91. Plaintiff's claims are barred in whole or in part by the doctrine of ratification. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and the alleged actions which form the basis of his claim, and ratified such alleged actions.

92. Plaintiff's claims are barred in whole or in part by the doctrine of estoppel. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions

and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore is estopped to assert any claims against Defendants.

93. Plaintiff's claims are barred in whole or in part by the doctrine of acquiescence. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore acquiesced in the conduct about which he now complains.

94. Plaintiff's claims against Ted Bernstein are barred in whole or in part by the corporate shield doctrine. All of the actions allegedly taken by Bernstein were actions taken on behalf of a legal entity (corporation or limited liability company), and not on behalf of himself individually, and therefore, any claims against Bernstein individually are barred.

94. Plaintiff has failed to comply with the requirements of section 607.07401 of the Florida Statutes.

WHEREFORE, having answered the Complaint, Defendants demand judgment in their favor, together with an award of costs and, pursuant to any applicable contract or statute, attorneys' fees, and such other relief as it just.

COUNTERCLAIM

Counter-Plaintiff, Arbitrage International Management, LLC ("Arbitrage"), sues Defendant, William E. Stansbury ("Stansbury"), and states:

1. Arbitrage is a Florida limited liability company with its principal place of business in Palm Beach County, Florida.

2. Stansbury is a resident of Palm Beach County, Florida.

3. As part of his work for Arbitrage and its affiliated company, LIC Holdings, Inc., Stansbury was listed as the licensed insurance agent of record on various contracts and policies of insurance with various insurance companies, under which those insurance companies would make payments of commissions and renewals due to Arbitrage only by way of a check payable to one of the individuals, including in many cases Stansbury individually.

4. Pursuant to the agreement of the parties, Stansbury was to deliver all such checks to Arbitrage, because all receipts for commissions, renewals or other revenue received by Stansbury for contracts or policies generated during the time of his employment were property of his employer.

5. Upon information and belief, before the time that Stansbury voluntarily terminated his employment with Arbitrage, Stansbury received and collected checks made payable to him, but which properly belonged to Arbitrage, and retained those funds for his sole and exclusive use and benefit.

6. Further, after Stansbury voluntarily terminated his employment with Arbitrage, Stansbury continued to receive checks made payable to him, but which properly belonged to Arbitrage, and Stansbury retained the benefit of such checks for his sole and exclusive use and benefit. In addition, for some period of time after he voluntarily terminated his employment, Stansbury has been depositing certain checks into the trust account of his attorney, Peter Feaman.

7. All conditions precedent to the bringing of his action have occurred, been satisfied, or waived.

COUNT I - BREACH OF CONTRACT

8. Arbitrage realleges paragraphs 1 though 7 above.

9. This is an action for breach of contract and seeks damages in excess of $15,000, exclusive of interest, costs and attorneys' fees.

10. Pursuant to the agreement between Arbitrage and Stansbury, Stansbury was required to deliver to Arbitrage all checks made payable to him for contracts or policies of insurance which relate to work done during the time of Stansbury's employment.

11. For the vast majority of the duration of Stansbury's employment, Stansbury complied with the parties' oral agreement and, as far as Arbitrage is presently aware, Stansbury did in fact deliver to Arbitrage all checks he received. However, upon information and belief, Stansbury may have withheld checks from Arbitrage at various times.

12. At some point before the voluntary termination of his employment, and for all times after the voluntary termination of his employment, Stansbury has retained for himself and refused to turn over to Arbitrage checks received by him, payable to him individually, but which otherwise should have been turned over to Arbitrage.

13. By his actions in retaining checks payable to him but which should have been turned over to Arbitrage, Stansbury has breached his agreement with Arbitrage.

14. As a direct and proximate result of Stansbury breach of the parties' agreement, Arbitrage has been damaged in an amount to be determined through discovery and at trial, including the amount held in the trust account of Peter Feaman.

WHEREFORE, Arbitrage demands judgment in its favor against Stansbury for compensatory damages, together with an award of costs and, pursuant to any applicable statute or contract, an award of attorneys' fees, and such other relief as is just.

COUNT II - DECLARATORY JUDGMENT

15. Arbitrage realleges paragraphs 1 though 7 and 10 through 13 above.

16. This is an action for a declaratory judgment and for supplemental relief.

17. There is a genuine and immediate dispute between the parties as to the entitlement to certain checks which are made payable to Stansbury individually, but which properly belong to Arbitrage as the commissions and renewals received for contracts and policies of insurance, and other revenues of Arbitrage which are payable directly to Stansbury individually.

18. There is a bona fide, actual, present and practical need for the declaration.

19. The declaration deals with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts regarding who is entitled to the checks held by Stansbury or his counsel.

20. An immunity, power, privilege or right of Arbitrage is dependent upon the facts or the law applicable to the facts.

21. Stansbury has, or reasonably may have, an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law.

22. The antagonistic and adverse interests are all properly before the Court.

23. The relief sought is not merely the giving of legal advice or the answer to questions propounded from curiosity.

24. Based upon the foregoing, Arbitrage seeks a declaration that Stansbury is required to turn over to Arbitrage all checks received by him, which are payable to Stansbury individually, but which relate to contracts or policies of insurance, or other revenues generated by Arbitrage or by Stansbury while he was employed by Arbitrage.

25. Moreover, Arbitrage requests a declaratory judgment that it is entitled to all funds currently being held in the trust account of Peter Feaman, which represent checks received by Stansbury which are made payable to Stansbury individually, but which otherwise properly belong to Arbitrage.

26. Arbitrage also seeks a declaration that its rights to all such funds are superior to the rights and claims of Stansbury.

WHEREFORE, Arbitrage seeks a declaratory judgment as to its rights to the personal property described above, together with supplemental relief to the extent necessary, an award of costs and, pursuant to any applicable statute or contract, an award of attorneys' fees, and such other relief as is just.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to the Service List set forth below by: ■ E-mail Electronic Transmission; ☐ Facsimile; ☐ U.S. Mail; ☐ Overnight Delivery; ☐ Hand-delivery, this 23rd day of April, 2013.

PAGE, MRACHEK, FITZGERALD, ROSE,
KONOPKA & DOW, P.A.
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West Palm Beach, Florida 33401
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Facsimile: (561) 655-5537
Email: arose@pm-law.com; mchandler@pm-law.com
Email: sshelley@pm-law.com; tclarke@pm-law.com
Email: phely@pm-law.com; mchandler@pm-law.com
Counsel for Ted S. Bernstein; LIC Holdings, Inc.; and Arbitrage International Management, LLC

By: /s/ Alan B. Rose
Alan B. Rose (Florida Bar No. 961825)
Stefanie R. Shelley (Florida Bar No. 514446)
N. Patrick Hely (Florida Bar No. 0091466

SERVICE LIST

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(561) 734-5552 - Telephone
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Email: (pfeaman@feamanlaw.com); (service@feamanlaw.com); (mkoskey@feamanlaw.com)
Counsel for Plaintiff

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2929 East Commercial Blvd., Suite 702
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(954) 491-7099
Email: (mrmlaw@comcast.net); (mrmlaw1@gmail.com)
Counsel for Donald R. Tescher and Robert L.
Spallina, as Co-Personal Representatives

*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

Electronically Filed 04/08/2013 02:45:42 PM ET

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: 502012CA013933 XXXX MB AA

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

NOTICE OF COMPLIANCE WITH RULE 2.516
AND DESIGNATION OF E-MAIL ADDRESSES

Plaintiff, WILLIAM E. STANSBURY, by and through his undersigned counsel, and pursuant to Rule 2.516 of Florida Rules of Judicial Administration, hereby designates the following e-mail addresses for receiving service of all Court documents:

1. Primary: service@feamanlaw.com

2. Secondary: mkoskey@feamanlaw.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308 on this 8 day of APRIL, 2013.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: */s/ Peter M. Feaman*
Peter M. Feaman
Florida Bar No.: 0260347

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

FILED
2013 APR 10 PM 3:47
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

ORDER ON CASE STATUS CONFERENCE

THIS CAUSE came on to be heard before this Honorable Court upon the Court's request for a Case Status Conference on Tuesday, April 9, 2013, and the Court having reviewed the file and being duly advised in the premises, it is hereby

ORDERED and ADJUDGED:

1. The hearing on ~~[redacted]~~ April 15, 2013, will continue as scheduled.

2. _____

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida on this 9th day of April, 2013.

Honorable Glenn Kelley
Circuit Judge

Copies furnished by e-mail

Copies to:

Peter M. Feaman, Esq., Peter M. Feaman, P.A., *Counsel for Plaintiff,* 3615 W. Boynton Beach Blvd., Boynton Beach, FL; pfeaman@feamanlaw.com.
Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Counsel for Donald Tescher and Robert Spallina as Co-Personal Representatives of the Estate of Simon Bernstein, Defendant,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; mrmlaw@comcast.net; and
via U.S. Mail to Ted S. Bernstein, LIC Holdings, Inc. and Arbitrage International Management, LLC, *Defendants,* 950 Peninsula Corp Circle, Suite 3010, Boca Raton, FL 33487. - via mail

*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

Electronically Filed 04/12/2013 05:54:50 PM ET

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CASE NO: 50 2012 CA 013933 MB AA

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Alan B. Rose, Esquire and the firm Page, Mrachek, Fitzgerald, Rose, Konopka & Dow, P.A., enter their appearance as counsel of record for Defendants, Ted S. Bernstein; LIC Holdings, Inc.; and Arbitrage International Management, LLC, in the above-styled cause and request that all notices, pleadings and other papers filed in this matter be served on the undersigned counsel at the address below.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to the Service List set forth below by: ■ E-mail Electronic Transmission; ☐ Facsimile; ☐ U.S. Mail; ☐ Overnight Delivery; ☐ Hand-delivery, this 15th day of April, 2013.

PAGE, MRACHEK, FITZGERALD, ROSE,
KONOPKA & DOW, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
Telephone: (561) 655-2250
Facsimile: (561) 655-5537
Email: arose@pm-law.com; mchandler@pm-law.com
Counsel for Ted S. Bernstein; LIC Holdings, Inc.; and Arbitrage International Management, LLC

By: /s/ Alan B. Rose
Alan B. Rose (Florida Bar No. 961825)

SERVICE LIST

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Boynton Beach, FL 33436
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(561) 734-5554 - Facsimile
Email: (pfeaman@feamanlaw.com)
Counsel for Plaintiff

Electronically Filed 04/16/2013 09:44:48 AM ET

*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.

_____/

CIVIL DIVISION

FILE NO: 502012CA013933 MB AA

DIVISION: KELLEY

NOTICE OF DESIGNATION OF E-MAIL ADDRESSES

COMES NOW, MARK R. MANCERI, ESQ. of MARK R. MANCERI, P.A. and hereby gives Notice, pursuant to Florida Rule of Judicial Administration 2.516, of the following e-mail addresses for electronic service on or after September 1, 2012:

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By: _____
Mark R. Manceri, Esq.
Florida Bar No. 444560

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) to the persons listed on the attached Service List, this 16th day of April, 2013.

_____
Mark R. Manceri, Esq.

SERVICE LIST

Alan B. Rose, Esq.
Page, Mrachek, Fitzgerald, et.al.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

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SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

OMNIBUS ORDER ON PLAINTIFF WILLIAM E. STANSBURY'S THREE MOTIONS TO COMPEL DEFENDANTS, LIC HOLDINGS, INC., ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDING, LLC AND TED BERNSTEIN TO PRODUCE DOCUMENTS RESPONSIVE TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS

THIS CAUSE came on to be heard before this Honorable Court on Monday, April 15, 2013, upon Plaintiff William E. Stansbury's Motions to Compel Defendants LIC Holdings, Inc. ("LIC"), Arbitrage International Management, LLC f/k/a Arbitrage International Holdings, LLC ("Arbitrage"), and Ted Bernstein to Produce Documents Responsive to Plaintiff's First Requests for Production of Documents. Plaintiff served one set of identical Requests for Production of Documents upon each of the above-named Defendants and this Order makes the same ruling in each of the three sets of propounded Requests. The Court having reviewed the file, heard argument of counsel and being duly advised in the premises, it is hereby

ORDERED and ADJUDGED:

Copies furnished by e-mail

1. Plaintiff's Motions to Compel are hereby GRANTED as to numbered requests 1, 2, 3, 4, 5, 6, 8, 9 and 16 of the Requests for Production of Documents (see "Attachment A");

2. Plaintiff's Motions to Compel are hereby DENIED, without prejudice, as to numbered requests 7, 10, 11, 12, 13, and 15 of the Requests for Production of Documents (see "Attachment A");

3. Plaintiff's Motions to Compel as to request number 14 on "Attachment A" are GRANTED with respect to 1099's issued by or to the principals of LIC or Arbitrage that would form the basis for commissions paid or to be paid, but DENIED, without prejudice, as to 1099's issued by the above-named Defendants to any other persons or entities.

4. The Defendants to whom this Order applies will produce the required documents to Plaintiff within twenty-five (25) days of the date of this Order.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida on this 19th day of April, 2013.

Honorable Glenn Kelley
Circuit Judge

Copies to:

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Alan B. Rose, Esq., Page, Mrachek, Fitzgerald, Rose, Konopka & Dow, 505 S. Flagler Drive, Suite 600, West Palm Beach, FL 33401; arose@pm-law.com

ATTACHMENT "A"

DOCUMENTS TO BE PRODUCED

1. All documents, including e-mails, that show, evidence, or reflect any and all communications between you or anyone acting on your behalf related to or from the Plaintiff from January 1, 2007 to present.

2. All documents, including e-mails, that show, evidence, or reflect any and all communications between you and any of the Defendants that mention the Plaintiff, from January 1, 2007 to present.

3. All documents, including e-mails, that show, evidence, or reflect any and all communications between you and any of the Defendants that are related to the Plaintiff, from January 1, 2007 to present.

4. All documents that show, evidence, or reflect any business relationships you have or had with the Plaintiff since January 1, 2007 to the present.

5. All documents that show, evidence, or reflect any compensation, monies, or payment of any nature, made by you or any of the Defendants to the Plaintiff from January 1, 2007 to the present.

6. All documents that show, evidence, or reflect any compensation, monies, or payment of any nature, that is owed by you or any of the Defendants to the Plaintiff from January 1, 2007 to present.

7. All documents, including, but not limited to, internal memoranda, e-mails, or any other writings, related to payments by you or by any of the Defendants to any agents, employees, officers, independent contractors, or any other person or entity performing work on behalf of any of the Defendants.

8. All documents that show, evidence, or reflect any person or entity that has or has had an ownership interest in Defendant ARBITRAGE and/or LIC HOLDINGS, INC. in the past 6 years.

9. All documents that show, evidence, or reflect any and all officers of ARBITRAGE and/or LIC HOLDINGS, INC. in the past 6 years.

10. All records of payments made for cell phone usage from January 1, 2007 to present.

11. All records concerning medical expenses paid for any person including but not limited to Rachel Walker since January 1, 2007.

12. List of all employees and their compensation since January 1, 2007.

13. List of all participants in any Defined Benefit Pension Plan.

14. Copies of all 1099's from 2007 to present.

15. All statements concerning any profit-sharing plan, including the names of all participants.

16. Records of any and all payments to Plaintiff since January 1, 2007 to present.

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*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CASE NO: 50 2012 CA 013933 MB AA

DEFENDANT'S, TED S. BERNSTEIN, MOTION TO DISMISS COUNTS III, VII, AND VIII

Defendant, Ted S. Bernstein ("Bernstein"), moves to dismiss Counts III, VII, and VIII of the Amended Complaint (the "Complaint"), and states:

1. The claims asserted in Counts III and VIII by Plaintiff against Bernstein belong to one or both of the legal entities known as LIC Holdings, Inc., a Florida corporation ("LIC") and/or Arbitrage International Management, LLC, a Florida limited liability company ("Arbitrage") (collectively the "Companies"). Plaintiff asserts that Bernstein breached a fiduciary duty owed to the Companies and seeks an award of monies which necessarily would flow back to the Companies, not directly to Plaintiff. Thus, in Counts III and VIII, Plaintiff asserts derivative claims on behalf of the Companies.

2. For example, in paragraph 47, Plaintiff alleges that Bernstein had a fiduciary duty "to act in good faith towards Stansbury and to act in the best interests of LIC Holdings and Arbitrage." The breaches alleged in paragraph 55, if proven, would result only in direct harm to the Companies by virtue, of among other things, (a) directing payments of Company money to third parties; (b) directing Companies to pay improper expenses; (c) transferring monies from Companies to third parties; (d) paying exorbitant compensation; and (e) committing corporate waste.

3. Any damages for these claims, if proven, would flow to and be property of the Companies, and nothing would flow directly to any shareholder. Thus, these are classic derivative claims. Plaintiff senses that, so he alleges that any damages were suffered by him individually and not to the corporation (Complaint, ¶58), but such allegation cannot change the character of these derivative claims. If, hypothetically, the Company paid $100 in extra compensation to someone, that would mean, at best, that the Company will receive $100, which the Company is under no obligation to distribute to anyone. In Counts III and VIII, Plaintiff does not assert any injury to himself which is separate from the injury allegedly suffered by the Companies, as the only injury claimed by Plaintiff would be a pro-rata percentage of the alleged damages which would have been suffered solely by the Companies. Thus, these claims are wholly (or at least partly) derivative.

4. The derivative action claims must be dismissed for several reasons. First, because Plaintiff in this case has direct and derivative claims filed in the same lawsuit, there is a misjoinder issue which mandates the dismissal of the Complaint. Plaintiff cannot sue in different capacities in the same lawsuit. *Department of Ins. v. Coopers & Lybrand*, 570 So. 2d 369, 370 (Fla. 3d DCA 1990); *Karnegis v. Lazzo*, 243 So. 2d 642 (Fla. 3d DCA 1971) (plaintiff may not by shareholders' derivative action seek in same lawsuit accounting from corporation when he personally sought

accounting and damages from majority stockholders, officers, and directors); 1 Am.Jur.2d *Actions* § 94 (1994) ("One cannot in the same action sue in more than one distinct right or capacity" citing *Coopers & Lybrand*); Fla. R. Civ. P. 1.110(g) ("A pleader may set up in the same action as many claims or causes of action ... *in the same right* as he has ...") (emphasis added).

5. Second, Plaintiff lacks standing to bring derivative claims on behalf of Arbitrage because he was never a shareholder of Arbitrage, and makes no such allegation in his Complaint.

6. Third, Plaintiff lacks standing to bring any derivative claims on behalf of LIC or Arbitrage because, as alleged in paragraph 31, Plaintiff ceded his 10% interest in LIC. Even if Plaintiff is no longer a shareholder as a result of alleged fraud, the fact remains that Plaintiff is not currently a shareholder of LIC. Therefore, Counts III and VIII of the Complaint should be dismissed. As a disgruntled former shareholder of the Corporation, Plaintiff has no legal standing to assert derivative claims at this juncture because he was not a shareholder at the time the suit was filed and he is no longer a shareholder of the Corporation, as required by Florida law. *See*§ 607.07401, Fla. Stat.; *Timko v. Triarsi*, 898 So. 2d 89, 91 (Fla. 5th DCA 2005) (holding that once the complaining shareholders' shares were repurchased, the complaining former shareholder could not continue to prosecute a derivative claim).

7. Fourth, Plaintiff also fails to state a derivative claim because the Complaint fails to allege that Plaintiff made a demand on the Corporation to bring these claims before filing their Counterclaim. Allegations of a demand is a statutory pre-requisite for maintaining a derivative action. § 607.07401(2). The Complaint also is not verified as required by that statute.

8. Fifth, as to the merits, Plaintiff's individual claim against Bernstein for the alleged breaches of fiduciary duty relating to Plaintiff's rights as shareholder of LIC are improper. As an

officer and director of LIC, Bernstein owed a fiduciary duty to the Company and the shareholders as a whole, not as to any particular shareholder or group of shareholders. Shareholders must bring a derivative action to pursue a claim against an officer or director unless the alleged injury is separate and distinct from any injury the complaining party suffered as a shareholder, in common with all other shareholders. Because Plaintiff fails to allege any injury separate and apart from the alleged injury Plaintiff suffered as a shareholder, in common with all other shareholders, Plaintiff lacks standing to bring any individual claim against Bernstein.

9. There is a clear and necessary distinction between an individual action and one brought in a derivative capacity. *Alario v. Miller*, 354 So. 2d 925, 926 (Fla. 2d DCA 1978). The body of the complaint determines whether the injury is direct to the stockholder making the cause of action individual to him or whether the injury is indirect as to the stockholder and the cause of action is derivative from the corporation. *Id.* The nature of the injuries alleged and the wrongs sought to be remedied are the key to determining whether an action is derivative or individual. *Id.*

10. The law "is well-established that if a plaintiff sues in a stockholder capacity for corporate mismanagement, she must sue derivatively in the corporation's name." *Kloha v. Duda*, 246 F. Supp. 2d 1237, 1242 (M.D. Fla. 2003)(citing *Empire Life Ins. Co. of Am. v. Valdak Corp.*, 468 F.2d 330, 335 (5th Cir. 1972)). This rule is a necessity because "[i]f each shareholder could sue individually for his losses, the wrongdoer would be subject to as many suits as there were stockholders in the corporation." *Empire Life*, 468 F.2d at 335 (citations and quotations omitted). If the injury to the individual shareholder is not direct, but rather indirect, the injury is insufficient to allow the shareholder to bring a direct claim. *Id.* In other words, the member can bring a direct claim:

> in a case where the stockholder shows a violation of duty owed directly to him. ***That exception to the general rule does not arise, however, merely because the acts complained of resulted in damage both to the corporation and to the stockholder, but is confined to cases where the wrong itself amounts to a breach of duty owed to the stockholder personally.***

Empire Life, 468 F.2d at 335 (citation omitted) (emphasis added).

WHEREFORE, Defendant, Ted S. Bernstein, respectfully requests that this Court dismiss Counts III, VII, and VIII; award Defendant his costs and attorneys' fees pursuant to any applicable contract or statute; and grant such other relief as is just.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to the Service List set forth below by: ■ E-mail Electronic Transmission; ☐ Facsimile; ☐ U.S. Mail; ☐ Overnight Delivery; ☐ Hand-delivery, this 23rd day of April, 2013.

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Counsel for Ted S. Bernstein; LIC Holdings, Inc.; and Arbitrage International Management, LLC

By: /s/ Alan B. Rose
Alan B. Rose (Florida Bar No. 961825)
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N. Patrick Hely (Florida Bar No. 0091466

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CASE NO: 50 2012 CA 013933 MB AA

DEFENDANTS', TED S. BERNSTEIN, LIC HOLDINGS, INC., AND ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM

Defendants, Ted S. Bernstein ("Bernstein"), LIC Holdings, Inc. ("LIC"), and Arbitrage International Management, LLC ("Arbitrage") (collectively "Defendants"), file their answer, affirmative defenses, and counterclaim.

ANSWER

1. Admitted for jurisdictional purposes only and otherwise denied.

2. Without knowledge.

3. Admitted.

4. Admit the first and second sentence, and otherwise without knowledge.

5. Admitted.

6. Admitted.

7. Admitted.

8. Denied.

9. Admitted for jurisdictional purposes only and otherwise denied.

10. Without knowledge.

11. Admitted.

12. Admitted.

13. Admitted that Stansbury's role in the company involved the sale and marketing of certain insurance products, and otherwise denied.

14. Denied.

15. Admitted.

16. Admitted that Stansbury, for some time, worked as an employee of LIC or Arbitrage, and that, for some time period, Stansbury's compensation was based upon receiving 15% of the net retained commissions as that terms was understood by the parties, and otherwise denied.

17. Admitted that Stansbury, for some time, worked as an employee of LIC or Arbitrage, and that, for some time period, Stansbury's compensation was based upon receiving 15% of the net retained commissions as that terms was understood by the parties, and otherwise denied.

18. Admitted that Stansbury was given 10% of the stock of LIC, and otherwise denied.

19. Denied.

20. Denied.

21. Denied.

22. Admitted that Stansbury agreed to be paid no commission for sales or revenues after January 1, 2008; without knowledge of the specific amounts received by Stansbury in 2008; and otherwise denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Admitted that Stansbury returned, surrendered or ceded his 10% stock interest back to LIC, and otherwise denied.

32. Denied.

33. Denied.

34. Without knowledge.

COUNT I

35. Defendants restate responses 1 to 34 above.

36. Denied.

37. Denied.

COUNT II

38. Defendants restate responses 1 to 34 above.

39. Denied.

40. Admitted that Stansbury was paid in accordance with the parties' agreement, and otherwise denied.

41. Admitted that Stansbury was paid in accordance with the parties' agreement, and otherwise denied.

42. Denied.

43. Denied.

44. Denied.

COUNT III

45-59. There is a pending Motion to Dismiss directed to this Count.

COUNT IV

60. Defendants restate responses 1 to 34 above.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

COUNT V

66. Defendants restate responses 1 to 34 above.

67. Denied.

COUNT VI

68. Defendants restate responses 1 to 34 above.

69. Admitted that Stansbury returned, surrendered or ceded his 10% stock interest back to LIC, and otherwise denied.

70. Denied.

71. Denied.

72. Denied.

COUNT VII

73-77. There is a pending Motion to Dismiss directed to this Count.

COUNT VIII

78. There is a pending Motion to Dismiss directed to this Count.

COUNT IX

79. Defendants restate responses 1 to 34 above.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Admitted that there is a good faith basis to refuse any request by Stansbury, including because he no longer is a shareholder in LIC and his request is not made in good faith and for a proper purpose, and otherwise denied.

AFFIRMATIVE DEFENSES

86. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and/or laches.

87. Plaintiff's claims are barred in whole or in part by the statute of frauds.

88. Plaintiff's claims are barred in whole or in part because Plaintiff lacks standing to pursue derivative claims because he is no longer a shareholder in LIC and lacks standing to pursue other claims because is no longer an employee of LIC or Arbitrage.

89. Plaintiff's claims are barred in whole or in part by because Plaintiff has misjoined causes of action held in different capacities, and therefore, the Complaint is improper and, at a minimum, certain claims must be dismissed such that Plaintiff pursues only those claims he has in one capacity.

90. Plaintiff's claims are barred in whole or in part by the doctrine of waiver. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies and was aware of the alleged actions which form the basis of his claim, and waived any claims against Defendants.

91. Plaintiff's claims are barred in whole or in part by the doctrine of ratification. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and the alleged actions which form the basis of his claim, and ratified such alleged actions.

92. Plaintiff's claims are barred in whole or in part by the doctrine of estoppel. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions

and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore is estopped to assert any claims against Defendants.

93. Plaintiff's claims are barred in whole or in part by the doctrine of acquiescence. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore acquiesced in the conduct about which he now complains.

94. Plaintiff's claims against Ted Bernstein are barred in whole or in part by the corporate shield doctrine. All of the actions allegedly taken by Bernstein were actions taken on behalf of a legal entity (corporation or limited liability company), and not on behalf of himself individually, and therefore, any claims against Bernstein individually are barred.

94. Plaintiff has failed to comply with the requirements of section 607.07401 of the Florida Statutes.

WHEREFORE, having answered the Complaint, Defendants demand judgment in their favor, together with an award of costs and, pursuant to any applicable contract or statute, attorneys' fees, and such other relief as it just.

COUNTERCLAIM

Counter-Plaintiff, Arbitrage International Management, LLC ("Arbitrage"), sues Defendant, William E. Stansbury ("Stansbury"), and states:

1. Arbitrage is a Florida limited liability company with its principal place of business in Palm Beach County, Florida.

2. Stansbury is a resident of Palm Beach County, Florida.

3. As part of his work for Arbitrage and its affiliated company, LIC Holdings, Inc., Stansbury was listed as the licensed insurance agent of record on various contracts and policies of insurance with various insurance companies, under which those insurance companies would make payments of commissions and renewals due to Arbitrage only by way of a check payable to one of the individuals, including in many cases Stansbury individually.

4. Pursuant to the agreement of the parties, Stansbury was to deliver all such checks to Arbitrage, because all receipts for commissions, renewals or other revenue received by Stansbury for contracts or policies generated during the time of his employment were property of his employer.

5. Upon information and belief, before the time that Stansbury voluntarily terminated his employment with Arbitrage, Stansbury received and collected checks made payable to him, but which properly belonged to Arbitrage, and retained those funds for his sole and exclusive use and benefit.

6. Further, after Stansbury voluntarily terminated his employment with Arbitrage, Stansbury continued to receive checks made payable to him, but which properly belonged to Arbitrage, and Stansbury retained the benefit of such checks for his sole and exclusive use and benefit. In addition, for some period of time after he voluntarily terminated his employment, Stansbury has been depositing certain checks into the trust account of his attorney, Peter Feaman.

7. All conditions precedent to the bringing of his action have occurred, been satisfied, or waived.

COUNT I - BREACH OF CONTRACT

8. Arbitrage realleges paragraphs 1 though 7 above.

9. This is an action for breach of contract and seeks damages in excess of $15,000, exclusive of interest, costs and attorneys' fees.

10. Pursuant to the agreement between Arbitrage and Stansbury, Stansbury was required to deliver to Arbitrage all checks made payable to him for contracts or policies of insurance which relate to work done during the time of Stansbury's employment.

11. For the vast majority of the duration of Stansbury's employment, Stansbury complied with the parties' oral agreement and, as far as Arbitrage is presently aware, Stansbury did in fact deliver to Arbitrage all checks he received. However, upon information and belief, Stansbury may have withheld checks from Arbitrage at various times.

12. At some point before the voluntary termination of his employment, and for all times after the voluntary termination of his employment, Stansbury has retained for himself and refused to turn over to Arbitrage checks received by him, payable to him individually, but which otherwise should have been turned over to Arbitrage.

13. By his actions in retaining checks payable to him but which should have been turned over to Arbitrage, Stansbury has breached his agreement with Arbitrage.

14. As a direct and proximate result of Stansbury breach of the parties' agreement, Arbitrage has been damaged in an amount to be determined through discovery and at trial, including the amount held in the trust account of Peter Feaman.

WHEREFORE, Arbitrage demands judgment in its favor against Stansbury for compensatory damages, together with an award of costs and, pursuant to any applicable statute or contract, an award of attorneys' fees, and such other relief as is just.

COUNT II - DECLARATORY JUDGMENT

15. Arbitrage realleges paragraphs 1 though 7 and 10 through 13 above.

16. This is an action for a declaratory judgment and for supplemental relief.

17. There is a genuine and immediate dispute between the parties as to the entitlement to certain checks which are made payable to Stansbury individually, but which properly belong to Arbitrage as the commissions and renewals received for contracts and policies of insurance, and other revenues of Arbitrage which are payable directly to Stansbury individually.

18. There is a bona fide, actual, present and practical need for the declaration.

19. The declaration deals with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts regarding who is entitled to the checks held by Stansbury or his counsel.

20. An immunity, power, privilege or right of Arbitrage is dependent upon the facts or the law applicable to the facts.

21. Stansbury has, or reasonably may have, an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law.

22. The antagonistic and adverse interests are all properly before the Court.

23. The relief sought is not merely the giving of legal advice or the answer to questions propounded from curiosity.

24. Based upon the foregoing, Arbitrage seeks a declaration that Stansbury is required to turn over to Arbitrage all checks received by him, which are payable to Stansbury individually, but which relate to contracts or policies of insurance, or other revenues generated by Arbitrage or by Stansbury while he was employed by Arbitrage.

25. Moreover, Arbitrage requests a declaratory judgment that it is entitled to all funds currently being held in the trust account of Peter Feaman, which represent checks received by Stansbury which are made payable to Stansbury individually, but which otherwise properly belong to Arbitrage.

26. Arbitrage also seeks a declaration that its rights to all such funds are superior to the rights and claims of Stansbury.

WHEREFORE, Arbitrage seeks a declaratory judgment as to its rights to the personal property described above, together with supplemental relief to the extent necessary, an award of costs and, pursuant to any applicable statute or contract, an award of attorneys' fees, and such other relief as is just.

CERTIFICATE OF SERVICE

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Counsel for Ted S. Bernstein; LIC Holdings, Inc.; and Arbitrage International Management, LLC

By: /s/ Alan B. Rose
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Stefanie R. Shelley (Florida Bar No. 514446)
N. Patrick Hely (Florida Bar No. 0091466

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Spallina, as Co-Personal Representatives

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Plaintiff,

vs.

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Defendants.
_____/

CASE NO: 50 2012 CA 013933 MB AA

DEFENDANTS', TED S. BERNSTEIN, LIC HOLDINGS, INC., AND ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM

Defendants, Ted S. Bernstein ("Bernstein"), LIC Holdings, Inc. ("LIC"), and Arbitrage International Management, LLC ("Arbitrage") (collectively "Defendants"), file their answer, affirmative defenses, and counterclaim.

ANSWER

1. Admitted for jurisdictional purposes only and otherwise denied.

2. Without knowledge.

3. Admitted.

4. Admit the first and second sentence, and otherwise without knowledge.

5. Admitted.

6. Admitted.

7. Admitted.

8. Denied.

9. Admitted for jurisdictional purposes only and otherwise denied.

10. Without knowledge.

11. Admitted.

12. Admitted.

13. Admitted that Stansbury's role in the company involved the sale and marketing of certain insurance products, and otherwise denied.

14. Denied.

15. Admitted.

16. Admitted that Stansbury, for some time, worked as an employee of LIC or Arbitrage, and that, for some time period, Stansbury's compensation was based upon receiving 15% of the net retained commissions as that terms was understood by the parties, and otherwise denied.

17. Admitted that Stansbury, for some time, worked as an employee of LIC or Arbitrage, and that, for some time period, Stansbury's compensation was based upon receiving 15% of the net retained commissions as that terms was understood by the parties, and otherwise denied.

18. Admitted that Stansbury was given 10% of the stock of LIC, and otherwise denied.

19. Denied.

20. Denied.

21. Denied.

22. Admitted that Stansbury agreed to be paid no commission for sales or revenues after January 1, 2008; without knowledge of the specific amounts received by Stansbury in 2008; and otherwise denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Admitted that Stansbury returned, surrendered or ceded his 10% stock interest back to LIC, and otherwise denied.

32. Denied.

33. Denied.

34. Without knowledge.

COUNT I

35. Defendants restate responses 1 to 34 above.

36. Denied.

37. Denied.

COUNT II

38. Defendants restate responses 1 to 34 above.

39. Denied.

40. Admitted that Stansbury was paid in accordance with the parties' agreement, and otherwise denied.

41. Admitted that Stansbury was paid in accordance with the parties' agreement, and otherwise denied.

42. Denied.

43. Denied.

44. Denied.

COUNT III

45-59. There is a pending Motion to Dismiss directed to this Count.

COUNT IV

60. Defendants restate responses 1 to 34 above.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

COUNT V

66. Defendants restate responses 1 to 34 above.

67. Denied.

COUNT VI

68. Defendants restate responses 1 to 34 above.

69. Admitted that Stansbury returned, surrendered or ceded his 10% stock interest back to LIC, and otherwise denied.

70. Denied.

71. Denied.

72. Denied.

COUNT VII

73-77. There is a pending Motion to Dismiss directed to this Count.

COUNT VIII

78. There is a pending Motion to Dismiss directed to this Count.

COUNT IX

79. Defendants restate responses 1 to 34 above.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Admitted that there is a good faith basis to refuse any request by Stansbury, including because he no longer is a shareholder in LIC and his request is not made in good faith and for a proper purpose, and otherwise denied.

AFFIRMATIVE DEFENSES

86. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and/or laches.

87. Plaintiff's claims are barred in whole or in part by the statute of frauds.

88. Plaintiff's claims are barred in whole or in part because Plaintiff lacks standing to pursue derivative claims because he is no longer a shareholder in LIC and lacks standing to pursue other claims because is no longer an employee of LIC or Arbitrage.

89. Plaintiff's claims are barred in whole or in part by because Plaintiff has misjoined causes of action held in different capacities, and therefore, the Complaint is improper and, at a minimum, certain claims must be dismissed such that Plaintiff pursues only those claims he has in one capacity.

90. Plaintiff's claims are barred in whole or in part by the doctrine of waiver. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies and was aware of the alleged actions which form the basis of his claim, and waived any claims against Defendants.

91. Plaintiff's claims are barred in whole or in part by the doctrine of ratification. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and the alleged actions which form the basis of his claim, and ratified such alleged actions.

92. Plaintiff's claims are barred in whole or in part by the doctrine of estoppel. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions

and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore is estopped to assert any claims against Defendants.

93. Plaintiff's claims are barred in whole or in part by the doctrine of acquiescence. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore acquiesced in the conduct about which he now complains.

94. Plaintiff's claims against Ted Bernstein are barred in whole or in part by the corporate shield doctrine. All of the actions allegedly taken by Bernstein were actions taken on behalf of a legal entity (corporation or limited liability company), and not on behalf of himself individually, and therefore, any claims against Bernstein individually are barred.

94. Plaintiff has failed to comply with the requirements of section 607.07401 of the Florida Statutes.

WHEREFORE, having answered the Complaint, Defendants demand judgment in their favor, together with an award of costs and, pursuant to any applicable contract or statute, attorneys' fees, and such other relief as it just.

COUNTERCLAIM

Counter-Plaintiff, Arbitrage International Management, LLC ("Arbitrage"), sues Defendant, William E. Stansbury ("Stansbury"), and states:

1. Arbitrage is a Florida limited liability company with its principal place of business in Palm Beach County, Florida.

2. Stansbury is a resident of Palm Beach County, Florida.

3. As part of his work for Arbitrage and its affiliated company, LIC Holdings, Inc., Stansbury was listed as the licensed insurance agent of record on various contracts and policies of insurance with various insurance companies, under which those insurance companies would make payments of commissions and renewals due to Arbitrage only by way of a check payable to one of the individuals, including in many cases Stansbury individually.

4. Pursuant to the agreement of the parties, Stansbury was to deliver all such checks to Arbitrage, because all receipts for commissions, renewals or other revenue received by Stansbury for contracts or policies generated during the time of his employment were property of his employer.

5. Upon information and belief, before the time that Stansbury voluntarily terminated his employment with Arbitrage, Stansbury received and collected checks made payable to him, but which properly belonged to Arbitrage, and retained those funds for his sole and exclusive use and benefit.

6. Further, after Stansbury voluntarily terminated his employment with Arbitrage, Stansbury continued to receive checks made payable to him, but which properly belonged to Arbitrage, and Stansbury retained the benefit of such checks for his sole and exclusive use and benefit. In addition, for some period of time after he voluntarily terminated his employment, Stansbury has been depositing certain checks into the trust account of his attorney, Peter Feaman.

7. All conditions precedent to the bringing of his action have occurred, been satisfied, or waived.

COUNT I - BREACH OF CONTRACT

8. Arbitrage realleges paragraphs 1 though 7 above.

9. This is an action for breach of contract and seeks damages in excess of $15,000, exclusive of interest, costs and attorneys' fees.

10. Pursuant to the agreement between Arbitrage and Stansbury, Stansbury was required to deliver to Arbitrage all checks made payable to him for contracts or policies of insurance which relate to work done during the time of Stansbury's employment.

11. For the vast majority of the duration of Stansbury's employment, Stansbury complied with the parties' oral agreement and, as far as Arbitrage is presently aware, Stansbury did in fact deliver to Arbitrage all checks he received. However, upon information and belief, Stansbury may have withheld checks from Arbitrage at various times.

12. At some point before the voluntary termination of his employment, and for all times after the voluntary termination of his employment, Stansbury has retained for himself and refused to turn over to Arbitrage checks received by him, payable to him individually, but which otherwise should have been turned over to Arbitrage.

13. By his actions in retaining checks payable to him but which should have been turned over to Arbitrage, Stansbury has breached his agreement with Arbitrage.

14. As a direct and proximate result of Stansbury breach of the parties' agreement, Arbitrage has been damaged in an amount to be determined through discovery and at trial, including the amount held in the trust account of Peter Feaman.

WHEREFORE, Arbitrage demands judgment in its favor against Stansbury for compensatory damages, together with an award of costs and, pursuant to any applicable statute or contract, an award of attorneys' fees, and such other relief as is just.

COUNT II - DECLARATORY JUDGMENT

15. Arbitrage realleges paragraphs 1 though 7 and 10 through 13 above.

16. This is an action for a declaratory judgment and for supplemental relief.

17. There is a genuine and immediate dispute between the parties as to the entitlement to certain checks which are made payable to Stansbury individually, but which properly belong to Arbitrage as the commissions and renewals received for contracts and policies of insurance, and other revenues of Arbitrage which are payable directly to Stansbury individually.

18. There is a bona fide, actual, present and practical need for the declaration.

19. The declaration deals with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts regarding who is entitled to the checks held by Stansbury or his counsel.

20. An immunity, power, privilege or right of Arbitrage is dependent upon the facts or the law applicable to the facts.

21. Stansbury has, or reasonably may have, an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law.

22. The antagonistic and adverse interests are all properly before the Court.

23. The relief sought is not merely the giving of legal advice or the answer to questions propounded from curiosity.

24. Based upon the foregoing, Arbitrage seeks a declaration that Stansbury is required to turn over to Arbitrage all checks received by him, which are payable to Stansbury individually, but which relate to contracts or policies of insurance, or other revenues generated by Arbitrage or by Stansbury while he was employed by Arbitrage.

25. Moreover, Arbitrage requests a declaratory judgment that it is entitled to all funds currently being held in the trust account of Peter Feaman, which represent checks received by Stansbury which are made payable to Stansbury individually, but which otherwise properly belong to Arbitrage.

26. Arbitrage also seeks a declaration that its rights to all such funds are superior to the rights and claims of Stansbury.

WHEREFORE, Arbitrage seeks a declaratory judgment as to its rights to the personal property described above, together with supplemental relief to the extent necessary, an award of costs and, pursuant to any applicable statute or contract, an award of attorneys' fees, and such other relief as is just.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to the Service List set forth below by: ■ E-mail Electronic Transmission; ☐ Facsimile; ☐ U.S. Mail; ☐ Overnight Delivery; ☐ Hand-delivery, this 23rd day of April, 2013.

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Counsel for Ted S. Bernstein; LIC Holdings, Inc.; and Arbitrage International Management, LLC

By: /s/ Alan B. Rose
Alan B. Rose (Florida Bar No. 961825)
Stefanie R. Shelley (Florida Bar No. 514446)
N. Patrick Hely (Florida Bar No. 0091466

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Counsel for Donald R. Tescher and Robert L.
Spallina, as Co-Personal Representatives

*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

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IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CIVIL DIVISION

FILE NO: 502012CA013933 MB AA

DIVISION: KELLEY

NOTICE OF APPEARANCE

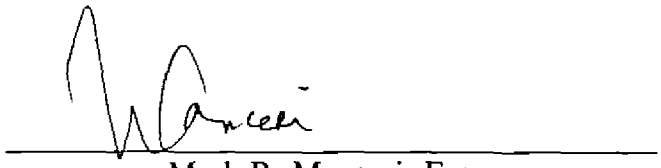
PLEASE TAKE NOTICE that Mark R. Manceri, Esq., of MARK R. MANCERI, P.A., hereby appears as attorney of record on behalf of Bernstein Family Realty, LLC.

MARK R. MANCERI, P.A.
Attorney for Bernstein Family Realty, LLC
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By: _____
Mark R. Manceri, Esq.
Florida Bar No. 444560

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) to all parties on the following Service List, this 10th day of May, 2013.



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Defendants.
_____/

CIVIL DIVISION

FILE NO: 502012CA013933 MB AA

DIVISION: KELLEY

NOTICE OF DESIGNATION OF E-MAIL ADDRESSES

COMES NOW, MARK R. MANCERI, ESQ. of MARK R. MANCERI, P.A. and hereby gives Notice, pursuant to Florida Rule of Judicial Administration 2.516, of the following e-mail addresses for electronic service.

A. Primary e-mail: mrmlaw@comcast.net

B. Secondary e-mail: mrmlaw1@gmail.com

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By: _____
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Florida Bar No. 444560

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_____
Mark R. Manceri, Esq.

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IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

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Defendants.
_____/

CIVIL DIVISION

CASE NO: 502012CA013933 MB AA

DIVISION: KELLEY

BERNSTEIN FAMILY REALTY, LLC'S MOTION FOR A MORE DEFINITE STATEMENT

COMES NOW, Defendant, Bernstein Family Realty, LLC, by and through it's undersigned counsel and hereby files this it's Motion for a More Definite Statement pursuant to Florida Rule of Civil Procedure 1.140(e) and in support thereof states, as follows:

1. The Plaintiff filed an 85 paragraph, 9 Count, Amended Complaint dated February 12, 2013.

2. Defendant, Bernstein Family Realty, LLC was served with the Amended Complaint on April 22, 2013.

3. There are only four (4) paragraphs in the Amended Complaint which refer to

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Bernstein Family Realty, LLC. They are paragraphs 7, 28, 55 and 76.

4. Paragraph 7 is an introductory paragraph that reads, as follows: "Defendant, Bernstein Family Realty, LLC is a Florida limited liability company doing business in Palm Beach County".

5. Paragraph 28 is part of the "Background" section of the Amended Complaint.

6. Paragraph 28 reads, as follows:

> "Stansbury **believes** that some or all of the funds to which he was entitled and/or assets attributable to such funds were placed into certain entities, including but not limited to Bernstein Family Realty, LLC and Shirley's Trust. For example, based on **information and belief** some or all of the funds to which Stansbury was entitled were invested in certain parcels of real property, which parcels were conveyed to the trustee of Shirley's Trust on or about May 20, 2008, including but not limited to a 4,220 square foot oceanfront condominium unit in a complex known as "The Aragon" in Boca Raton, located at 2492 S. Ocean Blvd., Boca Raton, Florida and a mansion in St. Andrew's Country Club located at 7020 Lions Head Lane, Boca Raton, Florida". (emphasis added).

7. As can be seen, the Plaintiffs allegations in paragraph 28 are based on what he "believed" and "information and belief". With no definitive factual allegations of any kind linking the funds in question with any transaction involving Bernstein Family Realty, LLC. The lack of such factual allegations renders paragraph 76 so vague and ambiguous that Bernstein Family Realty, LLC cannot reasonably form a response thereto.

8. Paragraph 55 is part of Count III of the Amended Complaint against the "Bernsteins" for Breach of Fiduciary Duty.

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9. Paragraph 55 reads, as follows:

> "The Bernstein Defendants breached their fiduciary duty to Stansbury by repeated conduct of self-dealing and violations of corporate protocol, including: (a) directing LIC Holdings and Arbitrage to make payments to third parties not employed by the corporations and who had performed no services on behalf of the corporations for the personal benefit of the Bernsteins; (b) directing the corporations to pay for personal expenses of the wives and other friends of the Bernstein Defendants through corporate credit cards and other forms of payment, notwithstanding that they provided no services for the corporations; (c) transferring monies from LIC Holdings and Arbitrage to third party entities including the Bernstein Defendants, the Bernstein Family Realty, LLC and the Shirley Bernstein Trust Agreement for the benefit of the Bernsteins, personally; (d) paying themselves exorbitant compensation to the exclusion of Stansbury; (e) treating LIC Holdings and Arbitrage without as alter egos of themselves and otherwise handling the affairs of LIC Holdings and Arbitrage without regard to corporate protocol; (f) failing to convene annual meetings of the stockholders of LIC Holdings and Arbitrate, in violation of Florida law; (g) committing corporate waste by unnecessarily expending corporate assets on unrelated corporate activities; (h) failing to account for the revenue and expenses of LIC Holdings and Arbitrage to Stansbury, who was entitled to compensation as an employee and as a minority shareholder; (i) directed LIC Holdings and Arbitrage to take actions to reduce the profit of LIC Holdings and Arbitrage so as to prevent Stansbury from earning his just compensation, in violation of prior agreement of the parties".

10. While paragraph 55 mentions Bernstein Family Realty, LLC, the allegations therein are expressly directed toward the "Bernstein" Defendants, which are defined in paragraph 15 of the Complaint as only being Simon Bernstein and Ted Bernstein. Additionally, the "Wherefore" clause of Count III does not mention Bernstein Family Realty, LLC.

11. As such, the Amended Complaint is inherently vague and ambiguous as to whether the Plaintiff is making any allegations or a claim for relief against Bernstein Family Realty, LLC in Count III.

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12. Paragraph 76 is part of Count VII of the Amended Complaint for an Equitable Lien.

13. Paragraph 76 reads, as follows:

> "Further, **upon information and belief**, as a result of the funds being wrongfully diverted from LIC Holdings and/or Arbitrage, which otherwise rightfully belonged to and should have been paid to Stansbury, the property legal described as "Lot 68, Block G Boca Madeira, Unit 2 according to the plat thereof recorded in Plat Book 32, Pages 59 and 60 of the public records of Palm Beach County, Florida with a property address of 2753 NW 34 Street, Boca Raton, Florida", was encumbered with a mortgage representing wrongfully diverted funds which were loaned in the form of a second mortgage to Defendant, Bernstein Family Realty, LLC, a Florida limited liability company". (emphasis added).

14. As can be seen, the allegations in paragraph 76 are based upon the Plaintiffs "information and belief" relating to funds allegedly lent by Simon Bernstein and/or Ted Bernstein in the form of a certain second mortgage to Bernstein Family Realty, LLC.

15. However, paragraph 76 fails to include any factual allegations relating to the wrongful acquisition and transfer of the alleged funds or the funding of the second mortgage and the ultimate delivery of those funds to the Mortgagor (i.e. Bernstein Family Realty, LLC) by Simon Bernstein and/or Ted Bernstein.

16. The lack of such factual allegations renders paragraph 76 so vague and ambiguous that Bernstein Family Realty, LLC cannot reasonably form a response thereto.

17. With respect to the Plaintiffs allegations that are based on what he "believes or "information and belief", such allegations are inherently vague and ambiguous as they fail to comply with the pleadings requirements of the Florida Rule of Civil Procedure 1.140(b) to

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sufficiently apprise Bernstein Family Realty, LLC of what it is being called upon to answer. See: **Kislak v. Kreedan**, 95 So.2d 512 (Fla. 1957).

18. Such "information and belief" are not sufficient to support the Plaintiff's vague and ambiguous allegations. See: **Lotenfoe v. Palik, 747 So.2d 422 (Fla. 2nd DCA 1999).**

19. Based on all of the foregoing, Bernstein Family Realty, LLC needs a more definite statement as to paragraphs 28, 55 and 76 of the Amended Complaint in order to be able to frame a responsive pleading.

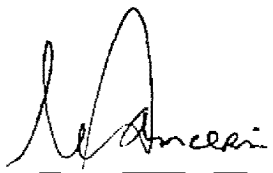
WHEREFORE, Bernstein Family Realty, LLC, hereby requests that this Honorable Court enter an Order consistent with the relief requested herein and award them attorney's fees and costs and any other relief this Honorable Court deems just, equitable and proper.

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By: _____
Mark R. Manceri, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) to all parties on the following Service List, this 10th day of May, 2013.



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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

CASE NO: 50 2012 CA 013933 MB AA

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

DEFENDANT'S, SHIRLEY BERNSTEIN TRUST, MOTION TO DISMISS

Defendant, Shirley Bernstein Trust Agreement dated May 20, 2008 ("Bernstein Trust"), by and through its Successor Trustee, Ted S. Bernstein ("Bernstein Trustee"), moves to dismiss the Amended Complaint served on April 22, 2013, upon Donald L. Tescher, as alleged Successor Trustee, and states:

1. The Amended Complaint should be dismissed for insufficient service of process. The Complaint was never served upon the Bernstein Trustee, and therefore, service is improper and should be quashed.

2. The Bernstein Trust adopts and incorporates herein the grounds for dismissal asserted by Bernstein Family Realty, LLC, in its motion served on May 10, 2013, as if fully set forth herein.

3. The Amended Complaint also does not assert any legally cognizable claim against the Bernstein Trust. First, the Amended Complaint fails to set forth sufficient allegations to support a claim for equitable lien or constructive trust over the Bernstein Trust or any property held or owned by such trust.

4. Second, the claims by Plaintiff belong, in whole or in part, to one or both of the legal entities known as LIC Holdings, Inc., a Florida corporation ("LIC") and/or Arbitrage International Management, LLC, a Florida limited liability company ("Arbitrage") (collectively the "Companies"). Plaintiff asserts that co-defendants, Ted S. Bernstein and Simon Bernstein , breached a fiduciary duty owed to the Companies and seeks an award of monies which necessarily would flow back to the Companies, not directly to Plaintiff. Thus, in Counts III and VIII, Plaintiff asserts derivative claims on behalf of the Companies. In this regard, Bernstein Trust adopts and incorporates herein the grounds for dismissal asserted by Ted S. Bernstein in his April 23, 2013, as if fully set forth herein.

5. Specifically, Plaintiff in this case has direct and derivative claims filed in the same lawsuit, there is a misjoinder issue which mandates the dismissal of the Complaint. Plaintiff cannot sue in different capacities in the same lawsuit. *Department of Ins. v. Coopers & Lybrand*, 570 So. 2d 369, 370 (Fla. 3d DCA 1990); *Karnegis v. Lazzo*, 243 So. 2d 642 (Fla. 3d DCA 1971); Fla. R. Civ. P. 1.110(g) ("A pleader may set up in the same action as many claims or causes of action ... *in the same right* as he has ...") (emphasis added).

6. Plaintiff lacks standing to bring any derivative claims on behalf of Arbitrage because he was never a shareholder of Arbitrage, and makes no such allegation in his Complaint.

7. Plaintiff lacks standing to bring any derivative claims on behalf of LIC or Arbitrage because, as alleged in paragraph 31, Plaintiff ceded his 10% interest in LIC. *See*§ 607.07401, Fla.

Stat.; *Timko v. Triarsi*, 898 So. 2d 89, 91 (Fla. 5th DCA 2005) (holding that once the complaining shareholders' shares were repurchased, the complaining former shareholder could not continue to prosecute a derivative claim).

8. Plaintiff failed to allege that Plaintiff made a demand on the Corporation to bring these claims before filing their Counterclaim. Allegations of a demand is a statutory pre-requisite for maintaining a derivative action. § 607.07401(2). The Complaint also is not verified as required by that statute.

WHEREFORE, Defendant, Bernstein Trust by and through Bernstein Trustee, respectfully requests that this Court dismiss the Amended Complaint; award Defendant its costs and attorneys' fees pursuant to any applicable contract or statute; and grant such other relief as is just.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to the Service List set forth below by: ■ E-mail Electronic Transmission; ☐ Facsimile; ☐ U.S. Mail; ☐ Overnight Delivery; ☐ Hand-delivery, this 13th day of May, 2013.

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Counsel for Shirley Bernstein Trust

By: /s/ Alan B. Rose
Alan B. Rose (Florida Bar No. 961825)
Stefanie R. Shelley (Florida Bar No. 514446)
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Counsel for Donald R. Tescher and Robert L.
Spallina, as Co-Personal Representatives

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

FILED
2013 MAY 17 PM 12:08
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

ORDER SETTING HEARING

The following matter has been specially set for hearing before Judge Glenn D. Kelley in Courtroom 11A of the Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, FL 33401.

DATE: **June 10, 2013**

TIME: **1:30 p.m. (time allotted: 30 minutes)**

MATTERS: **Defendants' (co-personal representatives of the Estate of Simon Bernstein) Motion to Dismiss; and**

Defendant's (Ted Bernstein) Motion to Dismiss

NOTE: THIS HEARING IS SPECIALLY SET BY COURT ORDER AND CANNOT BE CANCELLED OR RESET EXCEPT BY COURT ORDER. ALL MEMORANDA MUST BE SUBMITTED TO JUDGE'S CHAMBERS NO LATER THAN FIVE (5) DAYS PRIOR TO HEARING.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this 16th day of May, 2013.

Honorable Glenn Kelley
Circuit Judge

Copies furnished by e-mail

Copies to:
Alan Rose, Esq., Page Mrachek, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; e-mail: arose@pm-law.com;
Mark R. Manceri, Exq., Mark R. Manceri, P.A., 2929 E. Commercial Blvd., suite 702, Fort Lauderdale, FL 33308; e-mail: mrmlaw@comcast.net
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL; e-mail: pfeaman@feamanlaw.com

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355 4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

"Si usted es una persona minusválida que necesita algún acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida 33401; teléfono número (561) 355-4380, por lo menos 7 días antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente después de recibir esta notificación si el tiempo antes de la comparecencia que se ha programado es menos de 7 días; si usted tiene discapacitación del oído o de la voz, llame al 711."

"Si ou se yon moun ki enfim ki bezwen akomodasyon pou w ka patisipe nan pwosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kèk èd. Tanpri kontakte Germaine English, kòòdonatè pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan 205 North Dixie Highway, West Palm Beach, Florida 33401; telefòn li se (561) 355 4380 nan 7 jou anvan dat ou gen randevou pou parèt nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si lè ou gen pou w parèt nan tribinal la mwens ke 7 jou; si ou gen pwoblèm pou w tande oubyen pale, rele 711."

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

IN RE: STANDING ORDER ON SPECIALLY SET MOTIONS

CIVIL DIVISION "AA"

_____/

This motion has been specially set by Court Order and cannot be canceled except by further Court Order.

It is the intent of this Court to dispose of the subject matter of the specially set motion on the date and time appearing on the order. Accordingly, counsel must either: (1) argue the motion on the date and time set for the hearing; (2) submit an agreed order disposing of the motion; or (3) show good cause why the hearing should be canceled. Any request to cancel a hearing for good cause shall be made by motion and shall be set for hearing on the Court's Uniform Motion Calendar.

All memoranda and/or case authority shall be delivered to my office and to all parties no later than five business days in advance of the hearing and no sooner than ten days prior to the hearing and should designate the date and time of the hearing which they reference.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 4th day of September, 2012.

JUDGE GLENN D. KELLEY
CIRCUIT COURT JUDGE

*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

Electronically Filed 06/03/2013 03:05:49 PM ET

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

CASE NO: **50 2012 CA 013933 MB AA**

WILLIAM E. STANSBURY,
Plaintiff,

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

RESPONSE OF PLAINTIFF TO THE MOTION TO DISMISS FILED BY DEFENDANT TED S. BERNSTEIN

Plaintiff William E. Stansbury ("Plaintiff" or "Stansbury"), by and through his undersigned counsel, files this Response to the Motion to Dismiss as to Counts III, VII and VIII of the Amended Complaint filed by Defendant Ted S. Bernstein, as follows:

--- Count III - Breach of Fiduciary Duty ---

1. The breach of fiduciary duty claim is a direct action to redress an injury sustained specifically and uniquely by Plaintiff, individually. For this reason all grounds for dismissal asserted in the Motion to Dismiss as to Count III should be denied.

2. Generally, Bernstein is correct that a shareholder may not sue in his own name for injuries to a corporation unless there is a special duty between the wrongdoer and the shareholder and the shareholder has suffered an injury separate and apart from that suffered by other

shareholders. See, Braun v. Buyers Choice Mortgage Corp., 851 So. 2d 199, 203 (Fla. 4th DCA 2003). If a Plaintiff has been specifically harmed, he has a personal claim. Shareholders may bring a direct suit "in their own right to redress an injury sustained directly by them individually." Fort Pierce Corp. v. Ivey, 671 So. 2d 206, 207 (Fla. 4th DCA 1996).

3. There are two established exceptions to the rule that a shareholder cannot sue individually for injuries to a corporation:

A. Where there is a special duty, such as a contractual duty, between the wrongdoer and the shareholder; and,

B. Where the shareholder suffered an injury separate and distinct from that suffered by other shareholders. See, Harrington v. Batchelor, 781 So. 2d 1133, 1135 (Fla. 3d DCA 2001) (quoting William Meade Fletcher, Fletcher Cyclopedia of the Law of Private Corporations §5911, at 458 (2000)). The Court in Harrington cited the following from Fletcher:

> Where the wrongful acts are not only wrongs against the corporation but are also violations by the wrongdoer of a duty arising from contract or otherwise, and owing directly to the shareholders, individual shareholders can sue in their own right. Id. §5913, at 470 (footnote omitted)

4. In Fort Pierce Corp. v. Ivey, supra, the Fourth District Court of Appeal reversed the trial court, finding that the minority shareholder's action was personal, not derivative. She had showed that she personally was entitled to a thirty-three percent interest in the stock of the corporation, and the failure to issue the stock to her did not cause injury to the corporation or the stockholders. Ivey, 671 So. 2d at 207. As the Court stated:

> ... [The minority shareholder] was suing to enforce a right of action existing in her, and attempting to redress her own injury. She was the only person injured by the corporation's decision not to issue the stock. Such an action is personal and did not entitle her to fees under the statute.

5. In this case, the facts as alleged in the Amended Complaint as they relate to a cause of action for breach of fiduciary duty are sufficient to sustain an individual claim by Stansbury for damages. This Court is to look to the body of the Amended Complaint to determine whether sufficient facts have been alleged to sustain a cause of action for injuries that are personal and direct to the shareholder. See, Karten v. Woltin, 23 So.3d 839, 841(Fla. 4th DCA 2009). In his Amended Complaint, STANSBURY makes the following pertinent allegations:

> (¶15) In 2006, Simon Bernstein and Ted Bernstein formed Defendants LIC Holdings and Arbitrage for the purpose of marketing and selling certain life insurance products to high net worth individuals for their wealth management and estate planning needs.
>
> (¶16) Plaintiff agreed to become an employee of Defendants LIC Holdings, Inc. and Arbitrage and agreed to a salary of 15% of net commissions received on all products, including renewals.
>
> (¶18) Also in 2006, Simon Bernstein told Plaintiff that he was being rewarded for his efforts and would receive a 10% ownership interest in LIC Holdings, Inc.
>
> (¶19) In February of 2008 Simon Bernstein proposed to Plaintiff that, rather than get paid monthly on 15% of net commissions, Plaintiff, Ted Bernstein and Simon Bernstein would wait until year end when all computations for the entire year would be made and paid in December 2008 or January 2009. None of the three were to draw any salaries until year end 2008.
>
> (¶20) At year end 2008, Plaintiff, Defendant Simon Bernstein, and Defendant Ted Bernstein were each to be paid a minimum salary of $1 million dollars. Plaintiff's

amount would be applied against Plaintiff's 15% earned commissions. Additionally, Simon Bernstein also represented to Plaintiff, in what can be described as a shareholder agreement, that: **"Any compensation to Stansbury over and above his 15% would be paid to him in accordance with his ownership interest of 10%."** (Emphasis supplied.)

(¶¶46, 47, 48) Simon and Ted Bernstein were, at all material times, majority shareholders and officers of LIC Holdings and Arbitrage. As majority shareholders and officers, Simon and Ted Bernstein owed Plaintiff, a minority shareholder, a fiduciary duty of good faith.

(¶¶49, 51, 54) Plaintiff placed his trust and confidence in Simon and Ted Bernstein that they would deal honestly with him, both as an employee and minority shareholder, and would not withhold information about amounts due him, and the Bernsteins accepted that trust.

(¶55) Simon and Ted Bernstein breached their fiduciary duty to Plaintiff by their repeated conduct of self-dealing.

6. The facts as alleged in the Amended Complaint show that Plaintiff has asserted a) a special duty owed by the Bernsteins as majority shareholders to Stansbury as an employee and minority shareholder; and b) that Stansbury has an individual claim that is unique and personal to him as an employee and minority shareholder pursuant to his compensation agreement.

7. The breach of fiduciary duty count in this case satisfies both exceptions because Simon and Ted Bernstein owed special contractual duties to Plaintiff pursuant to his employment agreement. Plaintiff's injuries were clearly distinct from any other shareholder. Simon and Ted conspired in the scheme to deprive Plaintiff of his compensation due him. Plaintiff, as the sole shareholder to whom a specific contractual duty was owed, can sue in his own right.

8. The damages to Plaintiff are unique and individual as no other shareholder suffered the injuries that Plaintiff has suffered. Other than Simon and Ted Bernstein, Plaintiff was the only shareholder with a compensation arrangement that paid both a salary based on a percentage of net commissions, plus a 10% distribution based on Plaintiff's performance and company revenues. (Simon Bernstein, Ted Bernstein and Plaintiff were the only shareholders with any kind of compensation arrangement with LIC Holdings. See, generally, ¶¶15, 16, 18, 19 and 20 of the Amended Complaint.) Simon and Ted Bernstein, as controlling shareholders, disregarded any shareholder compensation agreements and constrictions whatsoever, especially as they related to the Plaintiff, and instead freely looted the corporation at will for their own personal benefit and as a means to deprive Plaintiff of the compensation due him.

--- Counts VII and VIII – Equitable Lien and Constructive Trust ---

9. Ted Bernstein also moves to dismiss Count VII for an Equitable Lien and Count VII, for Constructive Trust. Both allege claims against specific property of Ted Bernstein. Defendant has offered no argument or legal authority for his claimed entitlement to dismissal.

10. Finally, Ted Bernstein claims that Plaintiff lacks standing to bring any derivative claim on behalf of LIC or Arbitrage because he ceded his 10% interest in LIC and thus was not a shareholder when suit was filed. Plaintiff's claims herein are individual and personal, not derivative, so this basis for dismissal does not apply.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court deny Defendant Ted Bernstein's Motion to Dismiss and order Defendant to file an Answer within 10 days of the date of the Order, together with any other relief this Court deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc. and Arbitrage International Management, LLC,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 3rd day of June, 2013.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
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Fax: 561-734-5554
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By: _____
Peter M. Feaman
Florida Bar No.: 0260347

*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

Electronically Filed 06/03/2013 03:10:02 PM ET

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

RESPONSE OF PLAINTIFF WILLIAM E. STANSBURY TO THE MOTION TO DISMISS FILED BY DEFENDANT, THE ESTATE OF SIMON BERNSTEIN

Plaintiff WILLIAM E. STANSBURY ("Plaintiff"), by and through his undersigned counsel, files this Response to the Motion to Dismiss filed by Defendant, the Estate of Simon Bernstein ("SIMON"), as follows:

Court III – Breach of Fiduciary Duty

1. The thrust of Bernstein's argument for dismissal of Count III is that the Amended Complaint should be dismissed for failure to comply with Fla. R. Civ. P. 1.130(a). This is based on SIMON's erroneous contention that, because Plaintiff has alleged that SIMON and Defendant Ted Bernstein, were "officers and majority shareholders" of Defendants LIC Holdings ("LIC") and Arbitrage International Management ("Arbitrage") Plaintiff fails to state a cause of action because he did not attach written proof of SIMON's ownership interest in LIC or Arbitrage. This argument is frivolous.

2. Rule 1.130(a) spcifically states:

Rule 1.130. Attaching Copy of Cause of Action and Exhibits

(a) Instruments Attached. All bonds, notes, bills of exchange, contracts, accounts or documents **upon which action may be brought or defense made**,....shall be incorporated in or attached to the pleadings. (Emphasis added.)

3. A plain reading of the Rule makes clear that incorporation or attachment of a document to a pleading is required only when a particular cause of action is based on a written document or instrument. This interpretation of the Rule is supported by the Fourth District in Samuels v. King Motor Company of Fort Lauderdale, 782 So.2d 489 (Fla. 4th DCA 2001), wherein the Court stated:

> Florida Rule of Civil Procedure 1.130(a) provides that all contracts or documents "upon which action may be brought...shall be incorporated in or attached to the pleading." When a party brings an action **based upon a contract** and fails to attach a necessary exhibit under Rule 1.130(a), the opposing party may attack the failure to attach a necessary exhibit through a motion to dismiss. See Safeco Ins. Co. v. Ware, 401 So.2d 1129, 1130 (Fla. 4th DCA 1981).

4. In this case, the claim is that SIMON breached his fiduciary duty to Plaintiff causing him harm is a cause of action based upon SIMON's conduct, not a written document or instrument. Establishing the ownership interest of SIMON will be Plaintiff's burden of proof at trial. This proof can be proffered in many forms and through various types of witnesses and documents. Hence, this is not a cause of action based on a particular, discrete, identifiable document or instrument, such as a contract, will, deed or promissory note. As such, Rule 1.130(a) does not apply.

Count V – Conversion

5. SIMON alleges that Plaintiff, in his Statement of Claim filed against the Estate of Simon Bernstein in the Probate Division of this Circuit Court (the "Estate"), incorporated by reference the initial Complaint filed in this action. In the initial Complaint, conversion was not

an alleged cause of action against the Estate. Rather, in the Amended Complaint a cause of action for conversion was substituted for Civil Theft. As a result, SIMON contends the Amended Complaint's "new" allegation of conversion fails to state a cause of action because under §733.703(1), Fla. Stat. (2012), "no additional charge may be imposed by a Claimant who files a claim against the estate."

6. SIMON's reliance on §733.703(1) is wholly misplaced. Under the Florida Probate Code, all that is required in the Probate Statement of Claim is "the basis for the claim." *See*, Fla. Prob. R. 5.490(a)(1)(2012). Moreover, the Probate rules strongly suggest that the intent behind the "basis for the claim" requirement is simply to adequately notify interested persons of the claim's substance. Fla. Prob. R. 5.490(e), relating to amending claims, states "**If a claim as filed is sufficient to notify interested persons of its substance** but is otherwise defective as to form, the court may permit the claim to be amended at any time." (Emphasis added.)

7. In this case, the initial Complaint contained the same basic allegations against SIMON in the Count entitled "Civil Theft," as are subsequently alleged in the Amended Complaint (see, Count V, Conversion). Paragraph 57 of the initial Complaint alleges that by refusing to pay to Plaintiff funds due him under their agreement, but by paying said sums to themselves or to others, "Defendants (SIMON included) have been guilty of criminal theft by conversion." Paragraph 67 of the Amended Complaint alleges that a number of the Defendants, SIMON included, "or someone acting on their behalves, received and cashed in excess of $30,000 worth of commission checks otherwise payable to Plaintiff."

8. The Amended Complaint supplies more factual clarity of the offending conduct by SIMON and other Defendants compared to the initial Complaint. The substance of Plaintiff's allegations against SIMON in both pleadings as they relate to conversion are the same: that

SIMON and/or other Defendants stole from Plaintiff funds that were rightfully his and that such conduct constitutes conversion. As such, SIMON was on sufficient notice of "the basis of the claim" to warrant denial of SIMON's attempt to dismiss this Count, whether the claim is alleged as a "Civil Theft" claim as found in the initial Complaint, or is alleged as a "Conversion" claim as found in the Amended Complaint.

Count VII – Equitable Lien
Count VIII – Constructive Trust

9. SIMON's Motion to Dismiss as to Counts VII and VIII is premised on the same argument as the attempt to dismiss Count V: that is, that Plaintiff is barred from alleging a "new" cause of action. The initial Complaint sought an equitable lien and constructive trust as to "bank" or other "accounts" in which commissions were deposited. Defendant argues that because the Amended Complaint now seeks an equitable lien and constructive trust on three specifically identified parcels of real estate not previously identified in the initial Complaint, these Counts as to SIMON should be dismissed. SIMON again relies on §733.703 (1), Fla. Stat. (2012).

10. SIMON's motion to dismiss as to these counts must fail for the same reason that its Motion to dismiss the conversion count must fail. Further, SIMON has no standing to object to the equitable lien and constructive trust counts because they relate to real property in which the Estate has no ownership interest.

11. As to the property known as 7020 Lions Head Lane, Boca Raton, Florida ("the St. Andrews Property"), on May 20, 2008, Shirley Bernstein and Simon Bernstein, as grantors, transferred title to the St. Andrews Property by quit claim deed to Shirley Bernstein as Trustee of the Shirley Bernstein Trust Agreement. As alleged in the Amended Complaint, the Shirley

Bernstein Trust Agreement is the current owner of the St. Andrews Property. (The Shirley Bernstein Trust is a party Defendant in this action.)

12. As to the property known as 2753 NW 34 Street, Boca Raton, Florida ("the Boca Madeira Property"), by Warranty Deed dated June 18, 2008, title to the Boca Madeira Property was transferred to Bernstein Family Realty, LLC. As alleged in the Amended Complaint, Bernstein Family Realty, LLC is the current owner of the Boca Madeira Property. (Bernstein Family Realty, LLC is a party Defendant in this action.)

13. As to the property known as 15807 Menton Bay Court, Delray Beach, Florida ("the Saturnia Isles Property"), as of July 10, 2006, the Saturnia Isles Property was owned by Ted S. Bernstein and Deborah L. Bernstein.

14. As a result of the property information set forth in paragraphs 11, 12 and 13, the Estate of Simon Bernstein is not the titled owner of the St. Andrews, Boca Madeira or Saturnia Isles Properties and hence has no standing to contest the imposition of an equitable lien or constructive trust on any of these properties. As such, SIMON's Motion to Dismiss should be denied.

The General Prayer for Attorney Fees and Costs Should be Stricken

15. SIMON is not entitled to attorney fees and costs as requested in the prayer for relief.

A) Section 733.106, which SIMON cites as authority, is part of the Probate Code (Chapter 733, *et seq.*) and does not apply in this case. Section 733.106(1) specifically states that "In all probate proceedings costs may be awarded as in chancery actions." This is not a probate proceeding. This is a civil action in which the Estate of Simon Bernstein has been substituted as a party defendant for acts committed by decedent Simon Bernstein prior to his death. On similar grounds subsections 733.106(2), (3) and (4) also do not apply. They either directly or by

implication pertain to cases litigated in the Probate Court. As such, the statutory provisions cited are inapplicable to this civil action in the general jurisdiction division of this Circuit Court.

B) Similarly, Section 733.609 is equally inapplicable. It applies to attorney fees that may be awardable in cases wherein breach of fiduciary duty may be alleged and proven against a personal representative. This statute is wholly irrelevant in this case.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court deny Defendant the Estate of Simon Bernstein's Motion to Dismiss and order the Estate to file an Answer within 10 days of the date of the Order.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives of the Estate of Simon Bernstein* and *Bernstein Family Realty,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 3rd day of June, 2013.

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By: _____
Peter M. Feaman
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*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

Electronically Filed 06/04/2013 04:04:30 PM ET

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

ANSWER AND AFFIRMATIVE DEFENSES COUNTER-DEFENDANT WILLIAM E. STANSBURY TO THE COUNTERCLAIM OF COUNTER-PLAINTIFF ARBITRAGE INTERNATIONAL MANAGEMENT, LLC

Plaintiff/Counter-Defendant, WILLIAM E. STANSBURY ("STANSBURY"), by and through his undersigned counsel, as his Answer to the Counterclaim of Defendant/Counter-Plaintiff ARBITRAGE INTERNATIONAL MANAGEMENT, LLC ("ARBITRAGE") does hereby state as follows:

1. Admitted.

2. Admitted.

3. Admits that STANSBURY was listed as the licensed insurance agent of record on various contracts and policies of insurance with various insurance companies but denies the remainder of the paragraph.

4. Admits that STANSBURY was to deliver checks to Arbitrage from time to time but denies the remainder of the paragraph.

5. Denied.

6. Admits that certain checks have been deposited in the Trust Account of attorney Peter Feaman but denies the remainder of the paragraph.

7. Denied.

COUNT 1 – BREACH OF CONTRACT

8. Plaintiff-Counter Defendant reasserts his responses to paragraphs 1 through 7 as if fully reiterated herein.

9. Denied.

10. Admits that Stansbury delivered to Arbitrage checks made payable to him from time to time but denies the remainder of the paragraph.

11. Admits that Stansbury complied with the parties' oral agreement and delivered to Arbitrage checks he received but denies the remainder of the paragraph.

12. Admits that Stansbury has retained certain checks but denies the remainder of the paragraph.

13. Denied.

14. Denied.

COUNT II – DECLARATORY JUDGMENT

15. Plaintiff-Counter Defendant reasserts his responses to paragraphs 1 through 14 as if fully reiterated herein.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

AFFIRMATIVE DEFENSES

1. The claims of Arbitrage are barred, in whole or in part, by the applicable Statute of Limitations.

2. The claims of Arbitrage are barred, in whole or in part, by the doctrine of laches.

3. The antecedent and material breaches by Defendants of the oral contract sued upon by STANSBURY operated to discharge and excuse STANSBURY from the performance of any further contractual duty thereunder.

4. Arbitrage does not meet the requirements of Section 86.011(1) or (2), Florida Statutes (2011), and thus Arbitrage is not entitled to Declaratory relief.

5. Arbitrage is estopped from bringing this action due to its own unclean hands and the wrongful conduct of its officers and directors.

6. Arbitrage is estopped from asserting its alleged Breach of Contract action due to its own breaches.

WHEREFORE, Plaintiff/Counter-Defendant WILLIAM E. STANSBURY requests this Honorable Court to dismiss the Counterclaim, with prejudice, together with an award of reasonable costs and attorneys' fees incurred herein, and such other relief as the Court deems just and reasonable.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives of the Estate of Simon Bernstein* and *Bernstein Family Realty,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 4 day of June, 2013.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel.: 561073405552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No.: 0260347

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CASE NO: 50 2012 CA 013933 MB AA

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2013 JUN -4 PM 1:55
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

AGREED ORDER GRANTING DEFENDANTS', TED S. BERNSTEIN, LIC HOLDINGS, INC. AND ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, AN EXTENSION OF TIME TO RESPOND TO DISCOVERY ORDER

THIS MATTER came before the Court on the agreement between Plaintiff, William E. Stansbury, and Defendants, Ted S. Bernstein, LIC Holdings, Inc., and Arbitrage International Management, LLC (collectively "Defendants"), for an extension of time for Defendants to respond to the Court's Omnibus Order compelling discovery entered April 19, 2013. The parties having reached an agreement, and the Court having considered the request and being fully advised, it is hereby

Copies furnished by e-mail

William E. Stansbury v. Ted S. Bernstein; Donald Tescher and Robert Spallina, etc., et al.
Case No. 502012CA013933MBAA
Agreed Order Granting Defendants, Ted S. Bernstein, LIC Holdings, Inc., and Arbitrage International Management, LLC, an Extension of Time to Respond to Discovery Order

ORDERED and ADJUDGED that:

1. The deadline for production as set forth in this Court's Omnibus Order compelling discovery entered April 19, 2013, is hereby extended through and including May 30, 2013.

DONE AND ORDERED in West Palm Beach, Florida, this 31 day of ~~May~~ June, 2013.

GLENN KELLEY
Circuit Court Judge

Copies furnished to:

Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 West Boynton Beach Blvd., Boynton Beach, FL 33436, Email: (pfeaman@feamanlaw.com); (service@feamanlaw.com); (mkoskey@feamanlaw.com) Counsel for Plaintiff

Mark R. Manceri, Esq., Mark R. Manceri, P.A., 2929 East Commercial Blvd., Suite 702, Ft. Lauderdale, FL 33309, Email: (mrmlaw@comcast.net); (mrmlaw1@gmail.com) Counsel for Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives; Bernstein Family Realty, LLC

Alan B. Rose, Esq., Page, Mrachek, Fitzgerald, Rose, Konopka & Dow, P.A., 505 South Flagler Drive, Suite 600, West Palm Beach, FL 33401, Email: (arose@pm-law.com); (mchandler@pm-law.com) Counsel for Ted S. Bernstein, LIC Holdings, Inc., Arbitrage International Management, LLC, Shirley Bernstein Trust Agreement dated May 20, 2008

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

CASE NO: 50 2012 CA 013933 MB AA

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

FILED
2013 JUN 13 PM 12:21
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL 5

ORDER ON DEFENDANT'S, TED S. BERNSTEIN, MOTION TO DISMISS COUNTS III, VII, AND VIII

THIS MATTER came before the Court on June 10, 2013 on Defendant's Ted S. Bernstein, Motion to Dismiss Counts III, VII and VIII (the "Motion"). The Court having heard argument of counsel and being otherwise fully advised, does hereby

ORDER and ADJUDGE as follows:

1. The Motion is granted.

Copies furnished by e-mail

2. As to the claim set forth in Count III of the Complaint, Defendant owes no fiduciary duty directly to Plaintiff under Florida law, and therefore any direct claim is dismissed.

3. To the extent that Plaintiff is asserting that Defendant owed a fiduciary duty to a corporation of which Plaintiff claims to be a shareholder, this would be a derivative claim which cannot be asserted in this case. Moreover, Plaintiff has not met the statutory requirements for asserting a derivative claim.

4. Likewise, the claims asserted in Counts VII and VIII are derivative claims and are dismissed for the same reason.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 12 day of June, 2013.

GLENN KELLEY
Circuit Court Judge

Copies furnished to:

Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 West Boynton Beach Blvd., Boynton Beach, FL 33436, Email: (pfeaman@feamanlaw.com); (service@feamanlaw.com); (mkoskey@feamanlaw.com) Counsel for Plaintiff

Mark R. Manceri, Esq., Mark R. Manceri, P.A., 2929 East Commercial Blvd., Suite 702, Ft. Lauderdale, FL 33309, Email: (mrmlaw@comcast.net); (mrmlaw1@gmail.com) Counsel for Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives; Bernstein Family Realty, LLC

Alan B. Rose, Esq., Page, Mrachek, Fitzgerald, Rose, Konopka & Dow, P.A., 505 South Flagler Drive, Suite 600, West Palm Beach, FL 33401, Email: (arose@pm-law.com); (mchandler@pm-law.com) Counsel for Ted S. Bernstein, LIC Holdings, Inc., Arbitrage International Management, LLC, Shirley Bernstein Trust Agreement dated May 20, 2008

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

WILLIAM E. STANSBURY,
Plaintiff,

v.

CASE NO: **50 2012 CA 013933 MB AA**

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

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2013 JUN 13 PM 12:21
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL 5

ORDER DENYING MOTION TO DISMISS OF
DEFENDANT, THE ESTATE OF SIMON L. BERNSTEIN

THIS CAUSE came on to be heard before this Honorable Court on Monday, June 10, 2013, upon Defendant the ESTATE OF SIMON BERNSTEIN's Motion to Dismiss, Counts III, VI, VII and VIII of the Amended Complaint, and the Court having reviewed the file, heard argument of counsel and being duly advised in the premises, it is hereby

ORDERED and ADJUDGED that:

1. Defendant, the ESTATE OF SIMON L. BERNSTEIN's Motion is hereby denied.

2. Defendant, the ESTATE OF SIMON L. BERNSTEIN is given 20 days to answer Counts III, V, VII and VIII of the Amended Complaint.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida on this 12th day of June, 2013.

Honorable Glenn Kelley
Circuit Judge

Copies furnished by e-mail

Copies to:

Alan B. Rose, Esq., Page, Mrachek, Fitzgerald, Rose, Konopka & Dow, 505 S. Flagler Drive, Suite 600, West Palm Beach, FL 33401; arose@pm-law.com
Mark R. Manceri, Esq., Mark R. Manceri, P.A., 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; mrmlaw@comcast.net; mrmlaw1@gmail.com
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL; pfeaman@feamanlaw.com.

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
/

FILED
2013 JUN 17 PM 4:11
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL

ORDER SETTING HEARING

The following matter has been specially set for hearing before Judge Glenn D. Kelley in Courtroom 11A of the Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, FL 33401.

DATE: **July 15, 2013**

TIME: **9:30 a.m. (time allotted: 30 minutes)**

MATTERS: **Defendant's (Shirley Bernstein Trust) Motion to Dismiss; and**

Defendant's (Bernstein Family Realty LLC) Motion for a More Definite Statement

NOTE: THIS HEARING IS SPECIALLY SET BY COURT ORDER AND CANNOT BE CANCELLED OR RESET EXCEPT BY COURT ORDER. ALL MEMORANDA MUST BE SUBMITTED TO JUDGE'S CHAMBERS NO LATER THAN FIVE (5) DAYS PRIOR TO HEARING.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this 13 day of June, 2013.

Honorable Glenn Kelley
Circuit Judge

Copies furnished by e-mail

Copies to:
Alan Rose, Esq., Page Mrachek, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; e-mail: arose@pm-law.com;
Mark R. Manceri, Exq., Mark R. Manceri, P.A., 2929 E. Commercial Blvd., suite 702, Fort Lauderdale, FL 33308; e-mail: mrmlaw@comcast.net
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL; e-mail: pfeaman@feamanlaw.com

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355 4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

"Si usted es una persona minusválida que necesita algún acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida 33401; teléfono número (561) 355-4380, por lo menos 7 días antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente después de recibir esta notificación si el tiempo antes de la comparecencia que se ha programado es menos de 7 días; si usted tiene discapacitación del oído o de la voz, llame al 711."

"Si ou se yon moun ki enfim ki bezwen akomodasyon pou w ka patisipe nan pwosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kèk èd. Tanpri kontakte Germaine English, kòòdonatè pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan 205 North Dixie Highway, West Palm Beach, Florida 33401; telefòn li se (561) 355 4380 nan 7 jou anvan dat ou gen randevou pou parèt nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si lè ou gen pou w parèt nan tribinal la mwens ke 7 jou; si ou gen pwoblèm pou w tande oubyen pale, rele 711."

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

IN RE: STANDING ORDER ON SPECIALLY SET MOTIONS

CIVIL DIVISION "AA"

_____/

This motion has been specially set by Court Order and cannot be canceled except by further Court Order.

It is the intent of this Court to dispose of the subject matter of the specially set motion on the date and time appearing on the order. Accordingly, counsel must either: (1) argue the motion on the date and time set for the hearing; (2) submit an agreed order disposing of the motion; or (3) show good cause why the hearing should be canceled. Any request to cancel a hearing for good cause shall be made by motion and shall be set for hearing on the Court's Uniform Motion Calendar.

All memoranda and/or case authority shall be delivered to my office and to all parties no later than five business days in advance of the hearing and no sooner than ten days prior to the hearing and should designate the date and time of the hearing which they reference.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 4th day of September, 2012.

JUDGE GLENN D. KELLEY
CIRCUIT COURT JUDGE

*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

Electronically Filed 06/21/2013 05:12:21 PM ET

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

CASE NO: **50 2012 CA 013933 MB AA**

WILLIAM E. STANSBURY,
Plaintiff,

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

MOTION TO CLARIFY ORDER ON DEFENDANT'S, TED S. BERNSTEIN, MOTION TO DISMISS COUNTS III, VII AND VIII

COMES NOW Plaintiff, William E. Stansbury, by and through his undersigned counsel and moves this Court for clarification of its Order dated June 12, 2013 granting Defendant Ted S. Bernstein's Motion to Dismiss Counts III, VII and VIII, as follows:

1. On June 12, 2013 this Court entered an Order granting the Motion to Dismiss Counts III, VII and VIII of the Amended Complaint. A copy of the Order is attached hereto as Exhibit "A."

2. The Order does not state whether its dismissal is without prejudice and that Plaintiff is granted leave to amend, nor does it state that the dismissal is with prejudice.

3. The Court found in paragraph 2 of the Order that "Defendant owes no fiduciary duty directly to Plaintiff under Florida law," and in paragraph 3 that a breach of fiduciary duty claim would be derivative and cannot be asserted in this case. The Order does not state whether such findings are "without prejudice" such that Plaintiff may amend his Amended Complaint to correct any pleading deficiencies.

4. A dismissal with prejudice should not be ordered without giving the party the opportunity to amend unless it is clear that the pleading cannot be amended so as to state a cause of action. Central Florida Investments, Inc. v. Levin, 659 So. 2d 492 (Fla. 5th DCA 1995). Additionally, Rule 1.180 of the Florida Rules of Civil Procedure provides that amending of pleadings "shall be given freely when justice so requires." Further, leave to amend should not be denied unless the privilege has been abused, there is prejudice to the opposing party, or further amendment would be futile. Life General Security Insurance Company v. Horal, 667 So. 2d 967 (Fla. 4th DCA 1996).

5. In this case a determination that the dismissal is "without prejudice" with leave to amend is appropriate. There has been no abuse of the amendment privilege as there has been only one Amended Complaint filed in response to a prior Motion to Dismiss. There is no prejudice to the Defendant, Ted S. Bernstein, as the case is not at issue and Defendant has been on notice of these claims since the filing of the original Complaint.

6. The Amended Complaint **can** be amended to state a cause of action. Florida law recognizes that individual claims for breach of fiduciary duty and other torts may be brought against majority shareholders or officers of a corporation when there is a special duty alleged between the parties and the plaintiff/shareholder has suffered injury separate and distinct from that suffered by other shareholders. *See,* Biltmore Motor Corp. v. Roque, 291 So. 2d 114 (Fla. 3rd DCA 1974); Mortellite v. American Tower, L.P., 819 So.2d 928 (Fla. 2nd DCA 2002). As a matter of law, Plaintiff should be granted leave to amend to allege such special duty and/or distinct injury.

7. The Biltmore Motor Corp. and Mortellite cases also underscore that the Court's findings in paragraphs 2, 3 and, for the same reasons, 4 of its Order should be considered "without prejudice" based on the current allegations of Counts III, VII and VIII. Otherwise, the Court will have resolved critical factual and legal issues improperly through its resolution of a Motion to Dismiss. A motion to

dismiss should not be used "to determine issues of ultimate fact" and "may not act as a substitute for summary judgment." Roberts v. Children's Med. Servs., 751 So. 2d 672, 673 (Fla. 2d DCA 2000).

WHEREFORE, Plaintiff, William E. Stansbury, respectfully requests that this Court clarify its Order to provide that:

1. Its dismissal of Counts III, VII and VIII of the Amended Complaint is "without prejudice," with leave to amend within 20 days of the date of this Order;

2. The findings of the Court in paragraphs 2, 3 and 4 of the Order are similarly "without prejudice" and Plaintiff will be given one more opportunity to state a claim consistent with the principles of law set forth in Biltmore Motor Corp. v. Roque, 291 So. 2d 114 (Fla. 3rd DCA 1974), Mortellite v. American Tower, L.P., 819 So.2d 928 (Fla. 2nd DCA 2002) and other similar cases.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives of the Estate of Simon Bernstein* and *Bernstein Family Realty,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 21 day of June, 2013.

PETER M. FEAMAN, P.A.
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Tel: 561-734-5552
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By: _____
Peter M. Feaman
Florida Bar No.: 0260347

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CASE NO: 50 2012 CA 013933 MB AA

ORDER ON DEFENDANT'S, TED S. BERNSTEIN, MOTION TO DISMISS COUNTS III, VII, AND VIII

THIS MATTER came before the Court on June 10, 2013 on Defendant's Ted S. Bernstein, Motion to Dismiss Counts III, VII and VIII (the "Motion"). The Court having heard argument of counsel and being otherwise fully advised, does hereby

ORDER and ADJUDGE as follows:

1. The Motion is granted.

EXHIBIT A

6/12/13

2. As to the claim set forth in Count III of the Complaint, Defendant owes no fiduciary duty directly to Plaintiff under Florida law, and therefore any direct claim is dismissed.

3. To the extent that Plaintiff is asserting that Defendant owed a fiduciary duty to a corporation of which Plaintiff claims to be a shareholder, this would be a derivative claim which cannot be asserted in this case. Moreover, Plaintiff has not met the statutory requirements for asserting a derivative claim.

4. Likewise, the claims asserted in Counts VII and VIII are derivative claims and are dismissed for the same reason.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 12 day of June, 2013.

GLENN KELLEY
Circuit Court Judge

Copies furnished to:

Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 West Boynton Beach Blvd., Boynton Beach, FL 33436, Email: (pfeaman@feamanlaw.com); (service@feamanlaw.com); (mkoskey@feamanlaw.com) Counsel for Plaintiff

Mark R. Manceri, Esq., Mark R. Manceri, P.A., 2929 East Commercial Blvd., Suite 702, Ft. Lauderdale, FL 33309, Email: (mrmlaw@comcast.net); (mrmlaw1@gmail.com) Counsel for Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives; Bernstein Family Realty, LLC

Alan B. Rose, Esq., Page, Mrachek, Fitzgerald, Rose, Konopka & Dow, P.A., 505 South Flagler Drive, Suite 600, West Palm Beach, FL 33401, Email: (arose@pm-law.com); (mchandler@pm-law.com) Counsel for Ted S. Bernstein, LIC Holdings, Inc., Arbitrage International Management, LLC, Shirley Bernstein Trust Agreement dated May 20, 2008

Electronically Filed 06/21/2013 04:42:27 PM ET

*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CIVIL DIVISION

CASE NO: 502012CA013933 MB AA

DIVISION: KELLEY

ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM TO AMENDED COMPLAINT

COME NOW, Defendants, Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon L. Bernstein (hereinafter the "Defendants"), by and through their undersigned counsel and hereby files this their Answer, Affirmative Defenses and Counterclaim to Amended Complaint and in support thereof state, as follows:

ANSWER

1. Paragraph 1 is admitted solely for jurisdictional purposes.

2. The Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 2.

MARK R. MANCERI, P.A.• 2929 East Commercial Blvd.• Suite 702 • Fort Lauderdale, FL 33308 • (954) 491-7099

3. Paragraph 3 is Admitted.

4. Paragraph 4 is admitted solely to the extent of the record in the Estate of Simon L. Bernstein, Case No. 502012CP004391.

5. Paragraph 5 is Admitted.

6. Paragraph 6 is Admitted.

7. Paragraph 7 is Admitted.

8. Paragraph 8 is Denied.

9. Paragraph 9 is admitted solely for jurisdictional purposes.

10. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 10.

11. Paragraph 11 is Admitted.

12. Paragraph 12 is Admitted.

13. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 13.

14. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 14.

15. Paragraph 15 is Admitted.

16. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 16.

17. Defendants are presently without sufficient knowledge to either admit or deny the

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allegations in paragraph 17.

18. Paragraph 18 is admitted solely to the extent that the Plaintiff, at some point in time, became a 10% shareholder.

19. Paragraph 19 is Denied.

20. Paragraph 20 is Denied.

21. Paragraph 21 is Denied.

22. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 22.

23. Paragraph 23 is Denied.

24. Paragraph 24 is Denied.

25. Paragraph 25 is Denied.

26. Paragraph 26 is Denied.

27. Paragraph 27 is Denied.

28. Paragraph 28 is Denied.

29. Paragraph 29 is Denied.

30. Paragraph 30 is Denied.

31. Paragraph 31 is admitted solely to the extent that the Plaintiff, at some point in time, was no longer a 10% shareholder.

32. Paragraph 32 is Denied.

33. Paragraph 33 is Denied.

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34. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 34.

COUNT I

35. No response is required from the Defendants with respect to Count I.

COUNT II

36. No response is required from the Defendants with respect to Count II.

COUNT III

37. Defendants reaver and incorporate herein their responses 1-36 above.

38. Paragraph 46 is Admitted.

39. Paragraph 47 is Denied.

40. Paragraph 48 is Denied.

41. Paragraph 49 is Denied.

42. Paragraph 50 is Denied.

43. Paragraph 51 is Denied.

44. Paragraph 52 is Denied.

45. Paragraph 53 is Denied.

46. Paragraph 54 is Denied.

47. Paragraph 55 is Denied.

48. Paragraph 56 is Denied.

49. Paragraph 57 is Denied.

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50. Paragraph 58 is Denied.

51. Paragraph 59 is Denied.

COUNT IV

52. No response is required from the Defendants with respect to Count IV.

COUNT V

53. Defendants reaver and incorporate herein their responses 1-52 above.

54. Paragraph 67 is Denied.

COUNT VI

55. No response is required from the Defendants with respect to Count VI.

COUNT VII

56. Defendants reaver and incorporate herein their responses 1-55 above.

57. Paragraph 74 is Denied.

58. Paragraph 75 is Denied.

59. Paragraph 76 is Denied.

60. Paragraph 77 is Denied.

COUNT VIII

61. Defendants reaver and incorporate herein their responses 1-60 above.

COUNT IX

62. No response is required from the Defendants with respect to Count IX.

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AS TO ALL COUNTS

63. All other allegations not specifically admitted are denied.

AFFIRMATIVE DEFENSES

1. As and for the Defendants First Affirmative Defense, Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and/or laches.

2. As and for the Defendants Second Affirmative Defense, Plaintiff's claims are barred in whole or in part by the statute of frauds.

3. As and for the Defendants Third Affirmative Defense, Plaintiff's claims are barred in whole or in part because Plaintiff lacks standing to pursue derivative claims because he is no longer a shareholder in LIC and lacks standing to pursue other claims because is no longer an employee of LIC or Arbitrage.

4. As and for the Defendants Fourth Affirmative Defense, Plaintiff's claims are barred in whole or in part by because Plaintiff has misjoined causes of action held in different capacities, and therefore, the Complaint is improper and, at a minimum, certain claims must be dismissed such that Plaintiff pursues only those claims he has in one capacity.

5. As and for the Defendants Fifth Affirmative Defense, Plaintiff's claims are barred in whole or in part by the doctrine of waiver. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies and was aware of the alleged actions which form the basis of his claim, and waived any claims against Defendants.

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6. As and for the Defendants Sixth Affirmative Defense, Plaintiff's claims are barred in whole or in part by the doctrine of ratification. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and the alleged actions which form the basis of his claim, and ratified such alleged actions.

7. As and for the Defendants Seventh Affirmative Defense, Plaintiff's claims are barred in whole or in part by the doctrine of estoppel. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore is estopped to assert any claims against Defendants.

8. As and for the Defendants Eighth Affirmative Defense, Plaintiff's claims are barred in whole or in part by the doctrine of acquiescence. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore acquiesced in the conduct about which he now complains.

9. As and for the Defendants Ninth Affirmative Defense, Plaintiff's claims against Simon L. Bernstein (hereinafter the "Decedent") are barred in whole or in part by the corporate shield doctrine. All of the actions allegedly taken by the Decedent were actions taken on behalf of a legal entity (corporation or limited liability company), and not on behalf of himself individually, and therefore, any claims against the Decedent individually are barred.

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10. As and for the Defendants Tenth Affirmative Defense, Plaintiff has failed to comply with the requirements of section 607.07401 of the Florida Statutes.

11. As and for the Defendants Eleventh Affirmative Defense, Plaintiff failed to properly include the relief requested in Counts III, V, VII, VIII within his Claim filed in the Decedent's probate proceedings. As such, those Claims are now barred and the Plaintiff is estopped from pursuing same as the three (3) month statutory period for filing Claims against the Estate has expired.

12. As and for the Defendants Twelfth Affirmative Defense, Plaintiff's claims against the Decedent in Counts III, VII and VIII are barred as a result of the Court Order dated June 12, 2013. The allegations in Counts III, VII and VIII against the Decedent are the same as those alleged against Ted S. Bernstein. As such, the Plaintiff is estopped from pursuing same against the Defendants. A copy of said Order is attached hereto as Exhibit "A" and incorporated herein by reference.

13. As and for the Defendants Thirteenth Affirmative Defense, the Plaintiff has failed to state a cause of action against the Decedent for a Constructive Trust. The Plaintiff has failed to plead the four (4) required elements of a promise, reliance, confidential relationship and unjust enrichment. As such, Count VIII must be dismissed.

WHEREFORE, having answered the Complaint, Defendants demand judgment in their favor, together with an award of costs and, pursuant to any applicable contract or statute, attorneys' fees, and such other relief as the Court determines just and equitable.

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COUNTERCLAIM

Counter-Plaintiff, the Estate of Simon L. Bernstein (hereinafter the "Estate"), sues Defendant, William E. Stansbury ("Stansbury"), and states:

1. The Estate is being administered in Palm Beach County, Florida.

2. Stansbury is a resident of Palm Beach County, Florida.

3. At all material times referenced herein during the lifetime of Simon L. Bernstein, he was an officer and shareholder of Arbitrage and LIC Holdings, Inc.

4. As part of his work for Arbitrage and its affiliated company, LIC Holdings, Inc., Stansbury was listed as the licensed insurance agent of record on various contracts and policies of insurance with various insurance companies, under which those insurance companies would make payments of commissions and renewals due to Arbitrage only by way of a check payable in many cases to Stansbury individually.

5. Pursuant to the agreement of the parties, Stansbury was to deliver all such checks to Arbitrage, because all receipts for commissions, renewals or other revenue received by Stansbury for contracts or policies generated during the time of his employment were property of his employer.

6. Upon information and belief, before the time that Stansbury voluntarily terminated his employment with Arbitrage, Stansbury received and collected checks made payable to him, but which properly belonged to Arbitrage, and retained those funds for his sole and exclusive use and benefit.

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7. Further, after Stansbury voluntarily terminated his employment with Arbitrage, Stansbury continued to receive checks made payable to him, but which properly belonged to Arbitrage, and Stansbury retained the benefit of such checks for his sole and exclusive use and benefit. In addition, for some period of time after he voluntarily terminated his employment, Stansbury has been depositing certain checks into the trust account of his attorney, Peter Feaman.

8. All conditions precedent to the bringing of his action have been met, satisfied or waived.

COUNT I - BREACH OF CONTRACT

9. The Estate realleges paragraphs 1 though 8 above.

10. This is an action for breach of contract and seeks damages in excess of $15,000, exclusive of interest, costs and attorneys' fees.

11. Pursuant to the agreement between Arbitrage and Stansbury, Stansbury was required to deliver to Arbitrage all checks made payable to him for contracts or policies of insurance which relate to work done during the time of Stansbury's employment.

12. For the vast majority of the duration of Stansbury's employment, Stansbury complied with the parties' oral agreement and, as far as Arbitrage is presently aware, Stansbury did in fact deliver to Arbitrage all checks he received. However, upon information and belief, Stansbury may have withheld checks from Arbitrage at various times.

13. At some point before the voluntary termination of his employment, and for all times after the voluntary termination of his employment, Stansbury has retained for himself and

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refused to turn over to Arbitrage checks received by him, payable to him individually, but which otherwise should have been turned over to Arbitrage.

14. By his actions in retaining checks payable to him but which should have been turned over to Arbitrage, Stansbury has breached his agreement with Arbitrage.

15. As a direct and proximate result of Stansbury breach of the parties' agreement, Arbitrage and consequently the Estate have been damaged in an amount to be determined through discovery and at trial, including the amount held in the attorney trust account of Peter Feaman.

WHEREFORE, the Estate demands judgment in its favor against Stansbury for compensatory damages, together with an award of costs and, pursuant to any applicable statute or contract, an award of attorneys' fees, and such other relief as is just.

COUNT II - DECLARATORY JUDGMENT

16. The Estate realleges paragraphs 1 though 8 and 10 through 15 above.

17. This is an action for a declaratory judgment and for supplemental relief.

18. There is a genuine and immediate dispute between the parties as to the entitlement to certain Checks which are made payable to Stansbury individually, but which properly belong to Arbitrage as the commissions and renewals received for contracts and policies of insurance, and other revenues of Arbitrage which are payable directly to Stansbury individually.

19. There is a bona fide, actual, present and practical need for the declaration.

20. The declaration deals with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts regarding who is entitled to the Checks held by Stansbury

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or his counsel.

21. An immunity, power, privilege or right of Arbitrage is dependent upon the facts or the law applicable to the facts.

22. Stansbury has, or reasonably may have, an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law.

23. The antagonistic and adverse interests are all properly before the Court.

24. The relief sought is not merely the giving of legal advice or the answer to questions propounded from curiosity.

25. Based upon the foregoing, the Estate seeks a declaration that Stansbury is required to turn over to Arbitrage all checks received by him, which are payable to Stansbury individually, but which relate to contracts or policies of insurance, or other revenues generated by Arbitrage or by Stansbury while he was employed by Arbitrage.

26. Moreover, the Estate requests a declaratory judgment that it is entitled to all funds currently being held in the attorney trust account of Peter Feaman, which represent Checks received by Stansbury which are made payable to Stansbury individually, but which otherwise properly belong to Arbitrage.

27. The Estate also seeks a declaration that its rights to all such funds are superior to the rights and claims of Stansbury.

WHEREFORE, the Estate seeks a declaratory judgment as to its rights to the personal property described above, together with supplemental relief to the extent necessary, an award of

costs and, pursuant to any applicable statute or contract, an award of attorneys' fees, and such other relief the Court determines just and equitable.

GENERAL PRAYER FOR ATTORNEY'S FEES AND COSTS

Defendants, Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon L. Bernstein, hereby requests an award of attorney's fees and costs pursuant to Florida Statutes 733.106 and 733.609 and/or Florida decisional case law, and that same be taxed against the Plaintiff.

MARK R. MANCERI, P.A.
Attorney for Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives
2929 East Commercial Blvd., Suite 702
Ft. Lauderdale, FL 33308
Telephone: (954) 491-7099
E-mail: mrmlaw@comcast.net
mrmlaw1@gmail.com

By: _____
Mark R. Manceri, Esq.
Florida Bar No. 444560

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) to all parties on the following Service List, this 21st day of June, 2013.



Mark R. Manceri, Esq.

SERVICE LIST

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3615 West Boynton Beach Blvd.
Boynton Beach, Florida 33436

Alan B. Rose, Esq.
Page, Mrachek, Fitzgerald, et.al.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401

MARK R. MANCERI, P.A.● 2929 East Commercial Blvd.● Suite 702 ● Fort Lauderdale, FL 33308 ● (954) 491-7099

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CASE NO: 50 2012 CA 013933 MB AA

ORDER ON DEFENDANT'S, TED S. BERNSTEIN, MOTION TO DISMISS COUNTS III, VII, AND VIII

THIS MATTER came before the Court on June 10, 2013 on Defendant's Ted S. Bernstein, Motion to Dismiss Counts III, VII and VIII (the "Motion"). The Court having heard argument of counsel and being otherwise fully advised, does hereby

ORDER and ADJUDGE as follows:

1. The Motion is granted.

EXHIBIT "A"

2. As to the claim set forth in Count III of the Complaint, Defendant owes no fiduciary duty directly to Plaintiff under Florida law, and therefore any direct claim is dismissed.

3. To the extent that Plaintiff is asserting that Defendant owed a fiduciary duty to a corporation of which Plaintiff claims to be a shareholder, this would be a derivative claim which cannot be asserted in this case. Moreover, Plaintiff has not met the statutory requirements for asserting a derivative claim.

4. Likewise, the claims asserted in Counts VII and VIII are derivative claims and are dismissed for the same reason.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 12 day of June, 2013.

GLENN KELLEY
Circuit Court Judge

Copies furnished to:

Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 West Boynton Beach Blvd., Boynton Beach, FL 33436, Email: (pfeaman@feamanlaw.com); (service@feamanlaw.com); (mkoskey@feamanlaw.com) Counsel for Plaintiff

Mark R. Manceri, Esq., Mark R. Manceri, P.A., 2929 East Commercial Blvd., Suite 702, Ft. Lauderdale, FL 33309, Email: (mrmlaw@comcast.net); (mrmlaw1@gmail.com) Counsel for Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives; Bernstein Family Realty, LLC

Alan B. Rose, Esq., Page, Mrachek, Fitzgerald, Rose, Konopka & Dow, P.A., 505 South Flagler Drive, Suite 600, West Palm Beach, FL 33401, Email: (arose@pm-law.com); (mchandler@pm-law.com) Counsel for Ted S. Bernstein, LIC Holdings, Inc., Arbitrage International Management, LLC, Shirley Bernstein Trust Agreement dated May 20, 2008

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

CASE NO: 50 2012 CA 013933 MB AA

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

FILED
2013 JUL 15 PM 1:58
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

AGREED ORDER ON DEFENDANT'S, BERNSTEIN FAMILY REALTY, MOTION FOR MORE DEFINITE STATEMENT

THIS MATTER came before the Court upon the Motion for More Definite Statement (the "Motion") filed by Bernstein Family Realty, LLC, and the agreement of the parties. The Court having heard argument of counsel and being otherwise fully advised, does hereby

ORDER and ADJUDGE as follows:

1. The Court hereby defers ruling on the Motion, which is directed to the Amended Complaint, until such time as the Court rules on Plaintiff's already-filed Motion to Clarify and the Plaintiffs' request for leave to file a Second Amended Complaint, which have not yet been set for hearing or heard by the Court.

Copies furnished by e-service

2. The hearing set for July 15, 2013, at 9:30 a.m., is hereby canceled.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 11 day of July, 2013.

PETER BLANC
Circuit Court Judge

Copies furnished to:

Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 West Boynton Beach Blvd., Boynton Beach, FL 33436, Email: (pfeaman@feamanlaw.com); (service@feamanlaw.com); (mkoskey@feamanlaw.com) Counsel for Plaintiff

Mark R. Manceri, Esq., Mark R. Manceri, P.A., 2929 East Commercial Blvd., Suite 702, Ft. Lauderdale, FL 33309, Email: (mrmlaw@comcast.net); (mrmlaw1@gmail.com) Counsel for Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives; Bernstein Family Realty, LLC

Alan B. Rose, Esq., Page, Mrachek, Fitzgerald, Rose, Konopka & Dow, P.A., 505 South Flagler Drive, Suite 600, West Palm Beach, FL 33401, Email: (arose@pm-law.com); (mchandler@pm-law.com) Counsel for Ted S. Bernstein, LIC Holdings, Inc., Arbitrage International Management, LLC, Shirley Bernstein Trust Agreement dated May 20, 2008

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

CASE NO: 50 2012 CA 013933 MB AA

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

FILED
2013 JUL 15 PM 1:58
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL 5

AGREED ORDER DEFENDANT'S, SHIRLEY BERNSTEIN TRUST, MOTION TO DISMISS

THIS MATTER came before the Court upon the Motion to Dismiss (the "Motion") filed by Shirley Bernstein Trust Agreement dated May 20, 2008, and the agreement of the parties. The Court having heard argument of counsel and being otherwise fully advised, does hereby

ORDER and ADJUDGE as follows:

1. The Motion is granted in part. The service of process attempted by Plaintiff was ineffective because Plaintiff failed to serve process on the Successor Trustee. Therefore, the service is quashed and Plaintiff shall have 60 days to effect proper service.

2. The Court defers ruling on the other grounds set forth in the Motion pending proper service.

Copies furnished by e-service

3. The hearing set for July 15, 2013, at 9:30 a.m., is hereby canceled.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 11 day of July, 2013.

PETER BLANC
Circuit Court Judge

Copies furnished to:

Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 West Boynton Beach Blvd., Boynton Beach, FL 33436, Email: (pfeaman@feamanlaw.com); (service@feamanlaw.com); (mkoskey@feamanlaw.com) Counsel for Plaintiff

Mark R. Manceri, Esq., Mark R. Manceri, P.A., 2929 East Commercial Blvd., Suite 702, Ft. Lauderdale, FL 33309, Email: (mrmlaw@comcast.net); (mrmlaw1@gmail.com) Counsel for Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives; Bernstein Family Realty, LLC

Alan B. Rose, Esq., Page, Mrachek, Fitzgerald, Rose, Konopka & Dow, P.A., 505 South Flagler Drive, Suite 600, West Palm Beach, FL 33401, Email: (arose@pm-law.com); (mchandler@pm-law.com) Counsel for Ted S. Bernstein, LIC Holdings, Inc., Arbitrage International Management, LLC, Shirley Bernstein Trust Agreement dated May 20, 2008

*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

Electronically Filed 07/25/2013 01:21:17 PM ET

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

ANSWER AND AFFIRMATIVE DEFENSES OF COUNTER-DEFENDANT WILLIAM E. STANSBURY TO THE COUNTERCLAIM OF THE ESTATE OF SIMON BERNSTEIN

Plaintiff/Counter-Defendant, WILLIAM E. STANSBURY ("STANSBURY"), by and through his undersigned counsel, answers the Counterclaim of Defendant/Counter-Plaintiff ESTATE OF SIMON BERNSTEIN ("the Estate") as follows:

1. Admitted.

2. Admitted.

3. Admitted

4. Admits that STANSBURY was listed as the licensed insurance agent of record on various contracts and policies of insurance with various insurance companies but denies the remainder of the paragraph.

5. Admits that STANSBURY was to deliver checks to Arbitrage from time to time pursuant to an agreement of the parties which agreement was breached by Defendants, but denies the remainder of the paragraph.

6. Denied.

7. Admits that certain checks have been deposited in the Trust Account of Peter M. Feaman, P.A., but denies the remainder of the paragraph.

8. Denied.

COUNT 1 – BREACH OF CONTRACT

9. Plaintiff-Counter Defendant reasserts his responses to paragraphs 1 through 8 as if fully reiterated herein.

10. Denied.

11. Admits that Stansbury at times in the past delivered to Arbitrage checks made payable to him but denies the remainder of the paragraph.

12. Admits that Stansbury complied with the parties' oral agreement and delivered to Arbitrage checks he received but denies the remainder of the paragraph.

13. Admits that Stansbury has retained certain checks but denies the remainder of the paragraph.

14. Denied.

15. Denied.

COUNT II – DECLARATORY JUDGMENT

16. Plaintiff-Counter Defendant reasserts his responses to paragraphs 1 through 15 as if fully reiterated herein.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

AFFIRMATIVE DEFENSES

1. The claims of the Estate are barred, in whole or in part, by the applicable Statute of Limitations.

2. The claims of the Estate are barred, in whole or in part, by the doctrine of laches.

3. The antecedent and material breaches by Defendants, including SIMON BERNSTEIN, of the oral contract sued upon by STANSBURY operated to discharge and excuse STANSBURY from the performance of any further contractual duty thereunder.

4. The Estate does not meet the requirements of Section 86.011(1) or (2), Florida Statutes (2011), and thus the Estate is not entitled to Declaratory relief.

5. The Estate is not the Real Party in Interest, and has no standing as the successor in interest to SIMON BERNSTEIN, individually, to pursue Declaratory relief in this case.

6. The Estate is not the Real Party in Interest, and has no standing as the successor in interest to SIMON BERNSTEIN, individually, to pursue a breach of contract action in this case.

7. The Estate is estopped from bringing this action due to the unclean hands and the wrongful conduct of SIMON BERNSTEIN, individually and as an officer and director of LIC Holding, Inc. and Arbitrage International Management, LLC.

8. The Estate is estopped from asserting an alleged Breach of Contract action due to the breaches and tortious conduct of SIMON BERNSTEIN.

WHEREFORE, Plaintiff/Counter-Defendant WILLIAM E. STANSBURY requests this Honorable Court to dismiss the Counterclaim, with prejudice, together with an award of reasonable costs and attorneys' fees incurred herein, and such other relief as the Court deems just and reasonable.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives of the Estate of Simon Bernstein* and *Bernstein Family Realty,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 25 day of July, 2013.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel.: 561073405552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No.: 0260347

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CIVIL DIVISION

CASE NO: 502012CA013933 MB AA

DIVISION: BLANC "AA"

FILED
2013 JUL 29 PM 3:47
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL 5

ORDER SETTING SPECIAL SET HEARING

The following matter has been specially set for hearing before Judge Peter D. Blanc in Courtroom 11-A of the Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401:

DATE:	September 30, 2013
TIME:	11:00 a.m. (30 minutes)
MATTER:	Plaintiff's Objections to First Set of Interrogatories to William E. Stansbury and Motion for Extension of Time

THIS MOTION IS SPECIALLY SET AND CANNOT BE CANCELED OR RESET EXCEPT BY COURT ORDER.

It is the intent of this Court to dispose of the subject matter of the specially set motion on

the date and time appearing above. Accordingly, counsel must either: (1) be present personally or by telephone conference call at the hearing (telephone appearance must be approved in advance); or (2) submit an agreed order disposing of the motion.

All memoranda, not to exceed ten (10) double spaced pages, with case authority shall be delivered directly to my office no later than seven (7) days in advance of the hearing and should designate the date and time of the hearing which they reference. Arguments shall be limited to a maximum of fifteen (15) minutes per side or less as the Court deems appropriate.

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida, this 29 day of July, 2013.

HONORABLE PETER D. BLANC
CIRCUIT JUDGE

Copies furnished to:
Mark R. Manceri, Esq., Mark R. Manceri, P.A., 2929 E. Commercial Blvd, Suite 702, Fort Lauderdale, Florida 33308; (mrmlaw@comcast.net)
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, Florida 33436; (pfeaman@feamanlaw.com)
Alan B. Rose, Esq., Page, Mrachek, Fitzgerald, et.al., 505 S. Flagler Drive, Suite 600, West Palm Beach, Florida 33401; (arose@pm-law.com)

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

"Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, since tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida 33401 telefono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o immediatamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711."

"Si ou se yon moun ki enfim ki bezwen akomodasyon pou w ka patisipe nan pwosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan 205 North Dixie Highway, West Palm Beach, Florida 33401; telefon li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan trbinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tande oubyen pale, rele 711."

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

CIRCUIT CIVIL DIVISION "AA"
CASE NO. 502012CA013933MB

WILLIAM E. STANSBURY,
Plaintiff,
vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendant.
_____/

FILED
2013 AUG -1 PM 12:35
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL 5

ORDER CLARIFYING ORDER ON DEFENDANT, TED S. BERNSTEIN'S, MOTION TO DISMIS COUNTS III, VII AND VIII

THIS MATTER came before the Court upon the Motion to Clarify Order on Defendant, TED S. BERNSTEIN'S, Motion to Dismiss Counts III, VII and VIII, filed by Plaintiff. The Court has reviewed the motion and the Court's prior Order of June 12, 2013. After review, it is

ORDERED AND ADJUDGED as follows:

1. Plaintiff's Motion to Clarify Order is granted.

2. The June 12, 2013, Order on Defendant, Ted S. Bernstein's, Motion to Dismiss Counts III, VII and VIII is clarified to the following extent:

A. The Order to Dismiss is without prejudice.

B. The Court found that as to the claim set forth in Count III of the Complaint, "Defendant owes no fiduciary duty directly to Plaintiff under Florida law, and

therefore any direct claim is dismissed." However, in an effort to state a valid cause of action, Plaintiff may amend its claim to include alternative or additional allegations which, if appropriate, may again be challenged via Motion to Dismiss.

C. The Court also found in its Order that a derivative claim by a shareholder cannot be asserted on the grounds stated and that Plaintiff has not met the statutory requirements for asserting a derivative claim. However, Plaintiff may amend its claim to include alternative or additional allegations which, if appropriate, may again be challenged via Motion to Dismiss.

D. The Court's Order makes it clear that its ruling applies to Counts VII and VIII as well.

3. Plaintiff shall have thirty (30) days from the date of this Order within which to amend.

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida, on this 1 day of ~~July~~ August, 2013.

PETER D. BLANC, Circuit Judge

Copies furnished:
PETER M. FEAMAN, ESQ., 3615 West Boynton Beach Boulevard, Boynton Beach, FL 33436 pfeaman@feamanlaw.com; service@feamanlaw.com; mkoskey@feamanlaw.com; (Counsel for Plaintiff)

MARK R. MANCERI, ESQ., 2929 East Commercial Boulevard, Suite 702, Ft. Lauderdale, FL 33309 mrmlaw@comcast.net; mrmlaw1@gmail.com; (Counsel for Donald R. Tescher and Robert Spallina, as co-personal representatives; Bernstein Family Realty, LLC)

ALAN B. ROSE, ESQ., Page, Mrachek, Fitzgerald, Rose, Konopka & Dow, P.A., 505 South Flagler Drive, Suite 600, West Palm Beach, FL 33401 arose@pm-law.com; mchandler@pm-law.com; (Counsel for Ted S. Bernstein, LIC Holdings, Inc., Arbitrage International Mgmt, LLC, Shirley Bernstein Trust Agreement dated May 20, 2008)

Copies furnished by e-service

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*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

OBJECTIONS BY PLAINTIFF TO DEFENDANTS' TED BERNSTEIN, LIC HOLDINGS, INC. AND ARBITRAGE INTERNATIONAL MANAGEMENT, LLC'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND MOTION FOR EXTENSION OF TIME

COMES NOW Plaintiff, William E. Stansbury, by and through his undersigned counsel, and does hereby file his objections to Defendants' Ted Bernstein, LIC Holdings, Inc. and International Management, LLC First Request for Production of Documents and Motion for Extension of Time, as follows:

1. General objection: Plaintiff objects to all requests that seek documents created during or relevant to time periods prior to January 1, 2007. Responsive documents created during or relevant to the time period after January 1, 2007 will be produced if not otherwise subject to objection on additional or different grounds.

2. Request No. 18: Plaintiff objects on the basis that this request is vague, overly broad and over inclusive.

3. Request No. 22: Plaintiff objects on the basis that the request is vague, overly broad and requests "information," not documents.

4. Request No. 24: Plaintiff objects on the basis that the requested documents are protected by the attorney-client and/or work product privilege.

5. Request No. 25: Plaintiff objects on the basis that the requested documents are protected by the attorney-client and/or work product privilege.

6. Request No. 26: Plaintiff objects on the basis that the requested documents are protected by the attorney-client and/or work product privilege.

7. Request No. 27: Plaintiff objects on the basis that the requested documents are protected by the attorney-client and/or work product privilege.

8. Request No. 39: Plaintiff objects on the basis that the request is vague, overly broad and over inclusive. Further, the request is not limited to Plaintiff's employment with Defendants and this constitutes an invasion of privacy.

9. Request No. 40: Plaintiff objects on the basis that the request is vague, overly broad and over inclusive. Further, the request is not limited to Plaintiff's employment with Defendants and this constitutes an invasion of privacy.

10. Request No. 41: Plaintiff objects on the basis that the request is vague, overly broad and over inclusive. Further, the request is not limited to Plaintiff's employment with Defendants and this constitutes an invasion of privacy.

--- Motion for Extension of Time ---

As to those Requests for Production that are not objected to, Plaintiff requests an additional 30 days within which to respond to the remaining Requests. Due to a personal situation, Plaintiff is unable to search his records in order to respond to Defendants' Request for Production. It is anticipated the responses can be forthcoming if an additional 30 day extension is granted.

WHEREFORE, Plaintiff requests this Honorable Court to sustain the objections as set forth herein and to grant Plaintiff an additional 30 days within which to respond to the remaining Requests for Production of Documents.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc. and Arbitrage International Management, LLC,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 1st day of August, 2013.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Telephone: (561) 734-5552
Facsimile: (561) 734-5554
pfeaman@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No. 0260347

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*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK ***

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CIVIL DIVISION

CASE NO: 502012CA013933 MB AA

DIVISION: BLANC

REPLY TO AFFIRMATIVE DEFENSES

COMES NOW, Defendants, Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon L. Bernstein, by and through it's undersigned attorney, and hereby files this their Reply to Affirmative Defenses to the Defendants Counterclaim, pursuant to Florida Rule of Civil Procedure 1.100, and in support thereof state, as follows:

1. The Affirmative Defenses filed by Plaintiff, William E. Stansbury, are hereby denied for the purpose of avoiding same.

MARK R. MANCERI, P.A.• 2929 East Commercial Blvd.• Suite 702 • Fort Lauderdale, FL 33308 • (954) 491-7099

MARK R. MANCERI, P.A.
Attorney for Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives
2929 East Commercial Blvd., Suite 702
Ft. Lauderdale, FL 33308
Telephone: (954) 491-7099
E-mail: mrmlaw@comcast.net
mrmlaw1@gmail.com

By: _____
Mark R. Manceri, Esq.
Florida Bar No. 444560

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) to all parties on the following Service List, this 5th day of August, 2013.

_____
Mark R. Manceri, Esq.

SERVICE LIST

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3615 West Boynton Beach Blvd.
Boynton Beach, Florida 33436

Alan B. Rose, Esq.
Page, Mrachek, Fitzgerald, et.al.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401

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

WILLIAM E. STANSBURY,
Plaintiff,

v.

CASE NO: **50 2012 CA 013933 MB AA**

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

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PALM BEACH COUNTY
CIRCUIT CIVIL 5

AGREED ORDER ON PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO RESPOND TO DEFENDANTS' FIRST REQUEST FOR PRODUCTION

THIS CAUSE came before the Court upon Plaintiff's Motion for Extension of Time to Respond to Defendants Ted Bernstein, LIC Holdings and Arbitrage International Management's First Request for Production of Documents and upon agreement of the parties, and the Court being duly advised in the premises, it is hereby

ORDERED and ADJUDGED that

1. Plaintiff's Motion is granted.

2. Plaintiff shall produce responsive documents on or before September 3, 2013.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this 23 day of August, 2013.

Honorable Peter Blanc
Circuit Judge

Copies to:

Alan Rose, Esq., Page Mrachek, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; e-mail: arose@pm-law.com;
Mark R. Manceri, Esq., Mark R. Manceri, P.A., 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; e-mail: mrmlaw@comcast.net
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL; pfeaman@feamanlaw.com

*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: 50 2012 CA 013933 MB AA

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

SECOND AMENDED COMPLAINT

WILLIAM E. STANSBURY, by and through undersigned counsel, sues the Defendants and states:

1. This is an action for money damages in excess of $15,000, and for equitable relief.

2. Plaintiff (hereinafter referred to as "STANSBURY") is *sui juris*, and a resident of Palm Beach County, Florida.

3. Defendant TED S. BERNSTEIN ("TED BERNSTEIN"), is *sui juris*, and a resident of Palm Beach County, Florida.

4. SIMON L. BERNSTEIN ("SIMON BERNSTEIN") died on or about September 13, 2012, after the filing of the initial Complaint in this action. At the time of his death, SIMON BERNSTEIN was *sui juris*, and was a resident of Palm Beach County, Florida. Defendants

Donald R. Tescher and Robert L. Spallina are serving as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN (the "ESTATE")which ESTATE is presently open and pending in the Palm Beach County Circuit Court, *In re: Estate of Simon L. Bernstein*, Case No. 502012CP004391XXXXSB (the "Estate Proceeding"). In accordance with Section 733.705, Florida Statutes, STANSBURY hereby brings this independent action against the ESTATE with respect to his Statement of Claim that was filed and objected to in the Estate Proceeding.

5. Defendant, LIC HOLDINGS, INC. ("LIC Holdings") is a Florida corporation with its principal place of business in Palm Beach County, Florida.

6. Defendant, ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, formerly known as ARBITRAGE INTERNATIONAL HOLDINGS, LLC, ("ARBITRAGE") is a Florida limited liability company with its principal place of business in Palm Beach County, Florida.

7. Defendant, BERNSTEIN FAMILY REALTY, LLC is a Florida limited liability company doing business in Palm Beach County.

8. Defendant, the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008 ("SHIRLEY'S TRUST"), owns real property in Palm Beach County, Florida. Based upon information and belief, Donald R. Tescher and Robert L. Spallina are serving as co-trustees of SHIRLEY'S TRUST. This Court has personal jurisdiction over the trustees and the beneficiaries of SHIRLEY'S TRUST under Section 736.0202, Florida Statutes, as the principal place of administration of SHIRLEY'S TRUST is in Palm Beach County, Florida. This court has subject matter jurisdiction over this action under Section 736.0203, Florida Statutes. Venue is proper in Palm Beach County, Florida, under Section 736.0204, Florida Statutes, as the principal place of administration of SHIRLEY'S TRUST is in Palm Beach County, Florida and one or more of the beneficiaries of SHIRLEY'S TRUST reside in Palm Beach County, Florida.

9. The acts and incidents giving rise to the causes of action alleged herein arose in Palm Beach County, Florida.

General Allegations

10. STANSBURY has worked in the insurance industry for virtually all of his adult life. After 30 years, he had become well-known and highly regarded by major insurance companies, their principals and others throughout the insurance industry, at all levels thereof, as well as by professionals, including attorneys, CPA's, financial advisors, wealth managers and others who were involved in serving, or otherwise dealing with insurers, insurance brokers and life insurance products.

11. SIMON BERNSTEIN dealt at sophisticated levels of the insurance industry and specialized in developing and marketing insurance concepts suitable for persons of high net worth to incorporate into their wealth management and estate planning.

12. TED BERNSTEIN, the son of SIMON BERNSTEIN, was also actively involved in selling life insurance products in conjunction with attorneys, CPAs and other professionals, to be incorporated into high net worth individuals' financial and estate planning.

13. TED BERNSTEIN, acting on his behalf and on behalf of, and in concert with, SIMON BERNSTEIN, approached STANSBURY in 2003, urging STANSBURY to spearhead the marketing of a unique insurance concept, newly developed by a prominent law firm, which was designed for use in the financial and estate planning of high net worth individuals.

14. TED BERNSTEIN told STANSBURY that he knew of STANSBURY's expertise and reputation in the insurance and related industries and that STANSBURY was skilled at and accustomed to speaking and marketing insurance products to groups of professionals. He realized that STANSBURY, because of his knowledge, reputation and abilities, would be well suited to market this concept nationwide through prominent and experienced professionals.

15. In 2006, SIMON BERNSTEIN and TED BERNSTEIN (collectively, "BERNSTEIN" or the "BERNSTEINS") formed, as sole shareholders, Defendants LIC Holdings and ARBITRAGE for the purpose of marketing and selling certain life insurance products to high net worth individuals for their wealth management and estate planning needs.

16. STANSBURY agreed to become an employee of LIC Holdings, Inc. and ARBITRAGE and agreed to a salary of 15% of net retained commissions received on all products sold, including renewals. STANSBURY at this time was responsible for, among other duties, calculating, on a monthly basis, the commissions due him in connection with new business generated in the current year and renewals on business generated in previous years.

17. STANSBURY worked with diligence and skill, traveling throughout the United States, generating ever-increasing sales and generating very large commissions. By 2006, nationwide sales were resulting in substantial commissions on new policies and renewal commissions.

18. Also in 2006, SIMON BERNSTEIN, acting on his behalf and on behalf of, and in concert with, TED BERNSTEIN, told STANSBURY that STANSBURY was being rewarded for his efforts and the explosive growth of the business, such that he would receive a 10% ownership interest in LIC Holdings, Inc. SIMON BERNSTEIN and TED BERNSTEIN, collectively, were majority shareholders while STANSBURY was a minority shareholder in LIC Holdings, Inc.

19. STANSBURY has sued both LIC Holdings and ARBITRAGE because the BERNSTEINS represented that his employment relationship was with LIC Holdings, the company in which he owned a 10% interest, but STANSBURY'S W-2 statements were issued by ARBITRAGE as his employer.

20. In February of 2008, SIMON BERNSTEIN, acting on his behalf and on behalf of, and in concert with TED BERNSTEIN, approached STANSBURY and told him his time would

be better spent building the business rather than performing monthly calculations of income. The plan proposed was that, rather than STANSBURY performing computations on a monthly basis as to how much should be paid to him based upon 15% of the net retained commissions derived from both new policies sold and renewals from previous years, the BERNSTEINS and STANSBURY all would forego monthly payouts and defer compensation until the end of 2008, when year-end computations could be made. It was represented that in December, year-end computations would be made and salaries would be paid in December 2008 or January of 2009. It was specifically represented to STANSBURY that:

a) neither SIMON BERNSTEIN, TED BERNSTEIN nor STANSBURY would take any compensation during fiscal year 2008 but rather they all would wait until the year-end accounting was performed in December of 2008 or January, 2009;

b) SIMON BERNSTEIN, TED BERNSTEIN, and STANSBURY would each be paid a minimum salary of $1,000,000 at year end, and STANSBURY'S salary was to be applied against his earned commissions of 15%. Any compensation due STANSBURY over and above the $1,000,000 would be paid as a distribution on his stock ownership interest in LIC Holdings.

21. In January of 2008, STANSBURY was paid $420,018 for commissions earned on some 2007 sales. However, STANSBURY was not, and has never been, paid the commissions due him on sales in 2008 and thereafter, and he was not and has never been paid the renewal commissions due him on sales made in previous years that were paid to LIC Holdings or ARBITRAGE in 2008 and thereafter, other than a nominal payment of $30,000 made in 2010.

22. When STANSBURY was not paid as agreed in late 2008/2009 and thereafter, SIMON BERNSTEIN and TED BERNSTEIN, on behalf of and in concert with each other, stated to STANSBURY that salary and ownership distributions due and owing to SIMON BERNSTEIN, TED BERNSTEIN and STANSBURY would be deferred to a future time. This

deferral of payment was represented to be important because, as a result of the virtual collapse of the capital lending markets in 2008, it was necessary to retain the funds in the corporate bank accounts to demonstrate to potential lenders the financial stability of the companies.

23. The false statements set forth in paragraphs 18 through 21, above, were made by SIMON BERNSTEIN and TED BERNSTEIN, in concert with each other, with knowledge of their falsity and with the intention of never to fulfilling such promises.

24. Despite the representations to STANSBURY set forth above to the contrary, SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders of LIC Holdings and ARBITRAGE, authorized LIC Holdings and/or ARBITRAGE to pay themselves $3,756,229.00 and $5,225,825.00, respectively, in 2008. Contrary to the representations made as set forth in paragraph 20, STANSBURY received no compensation for first year commissions and renewal commissions due him in 2008.

25. The net retained commissions by LIC Holdings and ARBITRAGE, not including renewals, for 2008 were approximately $13,442,549.00. As such, STANSBURY was entitled to, at the very minimum, 15% of $13,442,549.00, or $2,016,382.35.

26. Beginning late in 2007 or early in 2008, and continuing through at least 2012, LIC Holdings and/or ARBITRAGE became the alter ego of SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders, in that they disregarded corporate structure and wrongfully diverted, converted and depleted corporate assets of LIC Holdings and ARBITRAGE for their own personal benefit and the benefit of Bernstein family trusts and other entities as more specifically set forth below. Those trusts have since invested some of these wrongfully diverted and converted corporate assets in real estate, also as more particularly set forth below. The wrongful action of SIMON BERNSTEIN and TED BERNSTEIN in diverting and converting corporate assets rendered LIC Holdings, and possibly ARBITRAGE, insolvent.

27. Throughout 2009, SIMON BERNSTEIN and TED BERNSTEIN continued to make false statements to STANSBURY to hide the fact that LIC Holdings and/or ARBITRAGE was their alter ego, in that they converted corporate property and corporate assets of LIC and/or ARBITRAGE for their own personal benefit in 2008, 2009 and thereafter, all to the exclusion and financial detriment of STANSBURY, all the while fraudulently representing to STANSBURY that no money was being paid as salary or distributions to SIMON BERNSTEIN, TED BERNSTEIN or STANSBURY because it was necessary to hold the funds in the corporate bank accounts to show to potential lenders the financial stability of the company.

28. STANSBURY relied upon these continuing misrepresentations of Defendants to his detriment. Because STANSBURY was told that potential funding sources for the business needed to see that capital of the company was available, he took no action when he did not receive any compensation for 2009 and was paid only $30,000 in 2010.

29. In order to continue their scheme to defraud, SIMON BERNSTEIN and TED BERNSTEIN failed and refused to account for renewal commissions and failed to supply any financial information to STANSBURY concerning LIC Holdings or ARBITRAGE.

30. In furtherance of their scheme to deprive STANSBURY of salary he had earned and shareholder distributions to which he was entitled, SIMON BERNSTEIN and TED BERNSTEIN intercepted mail addressed to STANSBURY, removing commission checks representing commissions due to STANSBURY, deposited the funds into their own accounts and otherwise converted the funds. SIMON BERNSTEIN and TED BERNSTEIN also opened STANSBURY's mail containing checks payable to him which were unrelated to them and the businesses.

31. In December, 2011 STANSBURY had been battling a painful and debilitating disease that could only be managed through the administration of potentially harmful

prescription medications. On December 22, 2011, the Defendants BERNSTEIN, with knowledge of STANSBURY's health issues and his debilitated condition, decided to take advantage of and deceive STANSBURY further. STANSBURY had for years been given K-1 statements reflecting his 10% ownership of LIC Holdings. At that time, TED BERNSTEIN told STANSBURY that the company accountant had discovered a potential significant taxable event which could cause STANSBURY, as one of the owners of LIC Holdings to pay taxes on phantom income. TED BERNSTEIN promised that if STANSBURY would sign a paper ceding his 10% interest in LIC Holdings, he would not have to pay the tax if in fact the tax was due. TED BERNSTEIN promised he would hold the paper, promising it would not become operative until STANSBURY and the Defendants BERNSTEIN discussed the situation further in the first quarter of 2012.

32. Because of the misrepresentations, willful concealments of material facts, duplicity and deceit practiced by Defendants upon STANSBURY, STANSBURY reasonably believed that Defendants had complied, or intended to comply with their obligations to STANSBURY under the contract between them. STANSBURY, therefore, was prevented from knowing for a period of years that the causes of action asserted herein existed.

33. By the second quarter of 2012, STANSBURY developed the belief that the BERNSTEINS' representations over the years were wholly false and he sought legal counsel.

34. STANSBURY has retained the law firm of Peter M. Feaman, P.A. and has agreed to pay it a reasonable fee for its services rendered herein.

COUNT I - ACCOUNTING
(Against LIC Holdings and ARBITRAGE, for Accounting)

35. STANSBURY hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

36. The relationship between STANSBURY and the Defendants, particularly as affected by Defendants' acts described in preceding paragraphs 19 through 27 created a situation where Defendants had sole access to receipts generated by STANSBURY's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to STANSBURY under his arrangement with Defendants.

37. The period of time during which STANSBURY has been deprived of monies due him spans approximately four and a half years. The various sources of revenue to Defendants of monies from which the amounts due STANSBURY may be calculated, the manner in which STANSBURY was to be paid, and the amount due STANSBURY all involve extensive and complicated accounts, and STANSBURY's remedy at law cannot be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff STANSBURY prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, LIC Holdings and ARBITRAGE, and for such orders of Court as will require such Defendants to provide STANSBURY with all records and copies of documents from January 1, 2006 to the present, in order to reveal his right to, and the amount of all sums: (a) received as commissions to which STANSBURY was entitled to a share; (b) due to STANSBURY, whether paid or not; (c) paid to STANSBURY, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the BERNSTEIN Defendants out of monies received as commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid , to be paid, or not to be paid to STANSBURY, together with an award of court costs and such other and further relief as the Court may deem just and proper.

COUNT II - BREACH OF ORAL CONTRACT
(Against LIC Holdings, Inc., ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN)

38. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 37, inclusive.

39. The arrangement between STANSBURY and Defendants, as described in paragraphs 13 through 28 above, constituted a contract between them.

40. An express term of that contract involved the commitment of LIC Holdings and ARBITRAGE to calculate and pay to STANSBURY all sums due to him under the contract, whether as commissions, salary, distributions, expenses or any other reason.

41. The Defendants initially performed the duties required of them under said contract.

42. However, Defendants breached their contract with STANSBURY by withholding from STANSBURY monies due him under the contract for renewal commissions earned in 2007 and commissions and renewal commissions earned in 2008 and thereafter.

43. The withholding of such monies constitutes a material breach of the contract between STANSBURY and LIC Holdings and ARBITRAGE.

44. STANSBURY has sued both LIC Holdings and ARBITRAGE because the BERNSTEINS represented that his employment relationship was with LIC Holdings, the company in which he owned a 10% interest, but STANSBURY'S W-2 statements were issued by ARBITRAGE as his employer.

45. SIMON BERNSTEIN and TED BERNSTEIN are personally liable, jointly and severally, for the material breach of the oral employment contract with STANSBURY as LIC Holdings and/or ARBITRAGE were the alter ego of SIMON BERNSTEIN and TED

BERNSTEIN in that the BERNSTEINS depleted corporate assets for their personal benefit by causing the corporation or corporations to make exorbitant and inappropriate distributions to themselves, family members, and BERNSTEIN family trusts and other entities, at the expense of corporate creditors such as STANSBURY, to wit:

a) SIMON BERNSTEIN and TED BERNSTEIN caused LIC Holdings and/or ARBITRAGE to pay to them at least $3,756,229.00 and $5,225,825.00, respectively, in fiscal 2008 during which time STANSBURY, other than the amount referenced in paragraph 21, was paid nothing;

b) According to Palm Beach County public records, in December of 2007 TED BERNSTEIN purchased a property at 880 Berkeley Street, Boca Raton, Florida 33487, for $4,400,000;

c) According to Palm Beach County public records, on December 28, 2008, TED BERNSTEIN paid off the mortgage in the amount of $486,400.00 on a property he owned at 15807 Menton Bay Court, Saturnia Isles, Delray Beach, Florida 33446;

d) According to Palm Beach County public records, SIMON BERNSTEIN paid off the mortgage on property he and his wife owned, and subsequently transferred by quitclaim deed on May 20, 2008 to the trustee of SHIRLEY'S TRUST, at 7020 Lions Head Lane, Boca Raton, Florida, 33496. The amount of the mortgage pay-off is unknown, but in 2013 the property was listed for sale at $2,399,000;

e) According to Palm Beach County public records, on June 18, 2008, BERNSTEIN FAMILY REALTY, LLC acquired a property located at 2753 N.W. 34 Street, Boca Madera Unit 2, Boca Raton, Florida 33432 (the "Boca Madera Property). On July 8, 2008, SIMON BERNSTEIN loaned $365,000 to BERNSTEIN FAMILY REALTY, LLC. The specific

purpose of the loan is unknown, but SIMON BERNSTEIN received a mortgage on the Boca Madera Property to secure the loan;

f) According to Palm Beach County public records, on May 20, 2008 SIMON BERNSTEIN and his wife transferred by quitclaim deed to the trustee of SHIRLEY'S TRUST a 4,220 square foot oceanfront condominium unit in a complex known as "The Aragon" in Boca Raton, located at 2494 South Ocean Boulevard, Boca Raton, Florida. The mortgage on that property was paid off on September 27, 2010.

g) The legal descriptions for each of the above referenced properties are attached hereto as Exhibit "B."

46. There is due to STANSBURY from such Defendants all amounts due under said contract, together with prejudgment and post-judgment interest on said amounts.

WHEREFORE, Plaintiff prays for judgment against SIMON BERNSTEIN and TED BERNSTEIN declaring that Defendants, LIC Holdings, Inc. and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, are or were the alter ego of SIMON BERNSTEIN and TED BERNSTEIN such that the corporate veil of LIC Holdings and/or ARBITRAGE should be pierced; for judgment against Defendants, LIC Holdings, Inc., ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, in excess of $1,500,000.00 for the amounts due to Plaintiff under the terms of their contract, together with prejudgment and post-judgment interest; for his court costs herein expended and for such other relief as the Court may deem just and proper.

COUNT III - FRAUD IN THE INDUCEMENT- EMPLOYMENT AGREEMENT (Against SIMON BERNSTEIN and TED BERNSTEIN)

47. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 46, inclusive.

48. At all material times hereto, SIMON BERNSTEIN and TED BERNSTEIN were officers and majority shareholders of LIC Holdings and ARBITRAGE.

49. The statements set forth in paragraphs 18 through 24, above, made by SIMON BERNSTEIN and TED BERNSTEIN, on behalf of and in concert with each other, and as officers and majority shareholders of LIC Holdings and ARBITRAGE, were false statements of material fact that SIMON BERNSTEIN and TED BERNSTEIN knew to be false at the time they were made, as SIMON BERNSTEIN and TED BERNSTEIN never intended to authorize LIC Holdings or ARBITRAGE to pay to STANSBURY the amounts due him as evidenced by the fact that the accountant for LIC Holdings and ARBITRAGE prepared financial worksheets for 2008 showing that the BERNSTEINS would receive compensation, but STANSBURY would not, for fiscal 2008, in direct contravention to their statements and promises to STANSBURY.

50. SIMON BERNSTEIN and TED BERNSTEIN intended for STANSBURY to rely on such statements that he would be ultimately be paid for his productivity in order to induce him into continuing his productive and revenue-generating sales activity as an employee of LIC Holding and/or ARBITRAGE and fraudulently created for STANSBURY the false expectation that STANSBURY would be paid as agreed.

51. STANSBURY in fact relied to his detriment on these false statements and was induced thereby to remain in his employment relationship with LIC Holdings and ARBITRAGE as he continued to sell, with the expectation of payment, products and generate revenue for LIC Holdings and/or ARBITRAGE until 2012, and was further induced not to pursue from LIC Holdings and/ARBITRAGE his right to payment of all amounts due him until after SIMON BERNSTEIN and TED BERNSTEIN had diverted and converted corporate assets for their personal benefit, rendering LIC Holdings, and possibly ARBITRAGE, insolvent.

52. STANSBURY was injured thereby as he was not and has not been compensated for his revenue-generating sales and other performance, and did not seek alternative employment, as a proximate result of his detrimental reliance on these false statements.

WHEREFORE, Plaintiff prays for judgment against Defendants SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, for damages in excess of $1,500,000.00 together with prejudgment and post-judgment interest; for the imposition of an equitable lien and constructive trust on the Bernstein real estate described in paragraph 45 and Exhibit "B" as more fully set forth in Counts VII and VIII of this Second Amended Complaint; for his court costs herein expended; and for such other relief as the Court may deem just and proper. STANSBURY reserves the right to move to amend to request punitive damages in accordance with Florida Law.

COUNT IV - FRAUD IN THE INDUCEMENT - CEDING OF LIC HOLDINGS OWNERSHIP INTEREST (Against Ted Bernstein and LIC Holdings, Inc.)

53. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 52, inclusive.

54. In the fourth quarter of 2011, TED BERNSTEIN embarked upon a plan to defraud from STANSBURY his 10% ownership interest in LIC Holdings, Inc. As set forth in paragraph 31 above, Defendant TED BERNSTEIN fraudulently induced STANSBURY to prepare and sign a document giving up his 10% interest in and to LIC Holdings, Inc.

55. The ceding of his shares in LIC Holdings, Inc. was procured by fraud and STANSBURY relied upon the representations made by BERNSTEIN with regard to signing the document apparently ceding his stock.

56. It was reasonable for STANSBURY to rely on the representations made by BERNSTEIN because at that time STANSBURY was unaware of the breaches of fiduciary duty and breaches of the oral contract that had taken place.

57. As a result of STANSBURY's reliance, STANSBURY has been damaged by the loss of 10% of the shares of LIC Holdings and the rights and remedies to a shareholder related thereto.

WHEREFORE, Plaintiff prays for a judgment for damages against Defendants BERNSTEIN and LIC Holdings, Inc. for the damages caused by the fraudulent conduct of BERNSTEIN as described herein, together with reasonable costs, pre-judgment interest and any other relief this Court deems just and proper.

COUNT V - CIVIL CONSPIRACY
(Against Simon Bernstein and Ted Bernstein)

58. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, and Counts III and IV, paragraphs 47 through 57, inclusive.

59. SIMON BERNSTEIN and TED BERNSTEIN, individually and as officers and majority shareholders of LIC Holdings and ARBITRAGE, knowingly, willfully, intentionally, and maliciously conspired, agreed, combined and confederated with each other to make fraudulent, false and misleading statements to STANSBURY intended to induce STANSBURY to continue his employment relationship with LIC Holdings and/or ARBITRAGE during 2008 and thereafter, without ever intending to authorize payment to STANSBURY for the amounts he was due, a relationship that generated substantial revenue for LIC Holdings and/or ARBITRAGE and, ultimately, SIMON BERNSTEIN and TED BERNSTEIN.

60. SIMON BERNSTEIN and TED BERNSTEIN, individually and as officers and majority shareholders of LIC Holdings and ARBITRAGE, knowingly, willfully, intentionally, and maliciously conspired, agreed, combined and confederated with each other to make fraudulent, false and misleading statements to STANSBURY intended to induce STANSBURY to delay pursuing his right to payment for all amounts due him until such time after SIMON BERNSTEIN and TED BERNSTEIN had converted and diverted corporate assets rendering LIC Holdings, and possibly ARBITRAGE, insolvent and uncollectible.

61. SIMON BERNSTEIN and TED BERNSTEIN, individually and as officers and majority shareholders of LIC Holdings and ARBITRAGE, knowingly, willfully, intentionally, and maliciously conspired, agreed, combined and confederated with each other to fraudulently induce STANSBURY, through false and misleading statements, to surrender and cede, without fair value payment, his 10% interest in LIC Holdings.

62. The numerous fraudulent, false and misleading statements made by SIMON BERNSTEIN and TED BERNSTEIN were all overt acts in furtherance of the conspiracy.

63. STANSBURY was injured thereby in that, as a proximate result of the conspiratorial conduct of SIMON BERNSTEIN and TED BERNSTEIN, he continued in his employment with LIC Holdings and/or ARBITRAGE, without payment of the compensation due him, he delayed pursuit of his right to collect the amounts due him, and ceded his 10% interest in LIC Holdings.

WHEREFORE, Plaintiff prays for judgment against Defendants, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, for damages in excess of $1,500,000.00 together with prejudgment and post-judgment interest; for the imposition of an equitable lien and constructive trust on the Bernstein real estate described in paragraph 45 and Exhibit "B" as more fully set forth in Counts VII and VIII of this Second Amended Complaint;

for his court costs herein expended; and for such other relief as the Court may deem just and proper. STANSBURY reserves the right to move to amend to request punitive damages in accordance with Florida Law.

COUNT V - CIVIL THEFT
(Against ARBITRAGE INTERNATIONAL MARKETING, LLC)

64. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 63, inclusive.

65. This is an action for Civil Theft under Chapter 772, Florida Statutes, more specifically §772.11, Fla.Stat.

66. In February, 2012 and March, 2012, Defendant ARBITRAGE intercepted two separate checks made payable to William STANSBURY intended as payment to STANSBURY for matters arising wholly outside his business transactions with the BERNSTEINS, LIC Holdings and ARBITRAGE.

67. Notwithstanding that the checks made payable to William STANSBURY was for sums due STANSBURY by a third party not in connection with the aforesaid business transactions, ARBITRAGE and/or someone acting on its behalf, caused the negotiation of STANSBURY's checks, wrongfully endorsing the checks and retaining the sums that should have been payable to STANSBURY.

68. As a result of the foregoing, Defendant ARBITRAGE has been guilty of criminal theft by conversion with the criminal intent to steal his money and deprive STANSBURY of his possession and use thereof.

69. Written demand for payment of all amounts due STANSBURY has been made to Defendants, more than 30 days preceding the filing of this Complaint, to no avail. A copy of the demand letter is attached hereto as Exhibit "A."

WHEREFORE, Plaintiff prays for judgment against Defendant, ARBITRAGE for three times the full amount of the checks made payable to STANSBURY, together with pre-judgment interest and post-judgment interest, attorneys' fees, court costs and any other relief this Court deems just and proper.

COUNT VII - CONVERSION

70. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 63, inclusive.

71. Further, during 2012, Defendants TED BERNSTEIN, SIMON BERNSTEIN, LIC Holdings, Inc., ARBITRAGE, or someone acting on their behalves, received and cashed in excess of $30,000.00 worth of commission checks otherwise payable to Plaintiff.

WHEREFORE, Plaintiff prays for judgment for damages against Defendant, ABRITRAGE, SIMON BERNSTEIN, LIC Holdings, Inc. and TED BERNSTEIN, together with pre-judgment interest and post-judgment interest, court costs and any other relief this Court deems just and proper.

COUNT VIII - UNJUST ENRICHMENT
(LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN)

72. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, paragraphs 1 through 65, above.

73. STANSBURY conferred a benefit on LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN by continuing his employment relationship with LIC Holdings and/or ARBITRAGE as a direct and proximate result of the fraudulent representations of SIMON BERNSTEIN and TED BERNSTEIN, as more fully set forth in Count III herein.

74. STANSBURY's continued employment resulted in the generation of substantial revenue for LIC Holdings and/or ARBITRAGE, which was then diverted and converted by the BERNSTEINS for their own personal use to the financial detriment of STANSBURY.

75. LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders of LIC Holdings and ARBITRAGE, had knowledge of the benefit of STANSBURY's continued employment with LIC Holdings and/or ARBITRAGE as they fraudulently induced STANSBURY to continue his productive employment activity while never intending to pay him the compensation he was due.

76. LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN accepted the revenues generated by STANSBURY in his capacity as employee.

77. There exists no adequate remedy at law as the conduct of the BERNSTEINS in diverting and converting the corporate assets of LIC Holdings and/or ARBITRAGE has resulted in the insolvency of LIC Holdings and possibly ARBITRAGE.

78. The circumstances are such that it would be inequitable for LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN to retain the benefits of the STANSBURY's productive revenue-generating labor without paying fair value for it.

WHEREFORE, Plaintiff prays for judgment against Defendants, LIC Holdings, Inc., ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, in an amount in excess of $1,500,000.00 which the evidence shows Plaintiff is entitled for the fair value of the services Plaintiff provided to LIC Holdings and ARBITRAGE , together with prejudgment and post-judgment interest; for his court costs herein expended and for such other relief as the Court may deem just and proper.

COUNT IX - EQUITABLE LIEN
(As to SIMON BERNSTEIN, TED BERNSTEIN, BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT)

79. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, the allegations set forth in paragraphs 1 through 34, paragraph 45 and Counts III and VII, above.

80. STANSBURY has alleged essential facts in his General Allegations and Count III that show that SIMON BERNSTEIN and TED BERNSTEIN committed fraud by fraudulently inducing STANSBURY to continue in an employment relationship that proved to be highly lucrative for SIMON BERNSTEIN and TED BERNSTEIN.

81. STANSBURY has alleged essential facts in his General Allegations and Count VII that show that SIMON BERNSTEIN and TED BERNSTEIN were unjustly enriched by STANSBURY's uncompensated continued employment with LIC Holdings and/or ARBITRAGE.

82. The conduct of the BERNSTEINS in depleting the corporate assets of LIC Holdings and ARBITRAGE for their personal benefit by causing the corporation or corporations to make exorbitant and inappropriate distributions to themselves, family members, and BERNSTEIN FAMILY REALT, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT, at the expense of corporate creditors such as STANSBURY, rendered LIC Holdings and possibly ARBITRAGE insolvent. Therefore STANSBURY has no adequate remedy at law.

83. BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUSTA AGREEMENT were the transferees of some of the corporate assets of LIC Holdings and/or

ARBITRAGE wrongfully diverted and converted by the BERNSTEIN and thus are proper parties to this action and this Count.

84. An equitable lien on the real estate described in paragraph 45 herein and Exhibit "B" attached hereto is justified as an equitable remedy for the wrongful conduct of the BERNSTEINS.

WHEREFORE, Plaintiff prays for the Court to declare and establish an equitable lien in favor of Plaintiff in an amount equal to the funds wrongfully diverted, on the property described in paragraph 45 and Exhibit "B" attached hereto, and on all other assets of the Defendants named in this Count IX, or third parties as yet unknown, which assets have been purchased wholly or in part, improved or benefitted by the diverted funds due Plaintiff, together with his costs herein expended, and such other and further relief as this Court may deem just and proper.

COUNT X - CONSTRUCTIVE TRUST (As to SIMON BERNSTEIN, TED BERNSTEIN, BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT)

85. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 79 through 84 above.

WHEREFORE, Plaintiff prays for the Court to declare and establish a constructive trust in favor of Plaintiff on the property described in paragraph 45 and Exhibit "B" attached hereto in an amount equal to the funds wrongfully diverted and on all assets of Defendants or third parties as yet unknown, which assets have been purchased wholly or partly, improved or mortgaged by the diversion of said funds due Plaintiff. Plaintiff further prays for an award of court costs and such other and further relief as the Court may deem just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc. and Arbitrage International Management, LLC,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 3rd day of September, 2013.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Telephone: (561) 734-5552
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By: _____
Peter M. Feaman
Florida Bar No. 0260347

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pfeaman@feamanlaw.com

June 20, 2012

Via Certified Mail, Return Receipt Requested

PERSONAL and CONFIDENTIAL
Mr. Ted Bernstein, President
LIC Holdings, Inc.
950 Peninsula Corp Circle
Suite 3010
Boca Raton, FL 33487

Re: William (Bill) Stansbury

Dear Mr. Bernstein:

The undersigned represents William (Bill) Stansbury and we are writing this letter on his behalf. Mr. Stansbury received your proposed letter agreement reflecting LIC Holdings' proposal to indemnify its shareholders concerning policies sold under the Cambridge Financing Program. As a result of your proposal, Mr. Stansbury has reviewed with me in detail his dealings with you and your companies over the past 4 to 5 years.

After reviewing the facts with Mr. Stansbury, some of which will be summarized below, I was shocked that he had not consulted legal counsel until now. Be that as it may, and based upon the facts presented to us, we believe you have engaged in fraud, civil theft, breaches of fiduciary duties, and breach of contract, just to name a few. The purpose of this letter is to a). respond to your indemnity proposal and b). request that you pass this letter on to your counsel immediately in the off-chance that these very serious matters can be resolved prior to the filing of legal action. The issues can be summarized as follows:

1. The first issue concerns you and your company's failure to pay salary compensation to Mr. Stansbury. Mr. Stansbury has been making inquiries concerning this for the past 5 months, but to no avail. Mr. Stansbury's claim for unpaid salary arises from three categories:

EXHIBIT A

a. Failure to pay salary based on net retained commissions.

i. Based upon reports prepared by your company for the period of 2007 through 2011, LIC Holdings, Inc. and/or Arbitrage International Holdings, n/k/a Arbitrage International Management, LLC, received $35,384,246.00 in net retained commissions. According to Mr. Stansbury's salary arrangement, he is entitled to 15% of those net retained commissions, which amounts to $5,307,636.90. During this time period, Mr. Stansbury's salary compensation was $2,844,910.00. The shortfall in salary owed to Mr. Stansbury is $2,462,726.90.

ii. There is salary compensation owed to Mr. Stansbury as a result of bridge loans in 2008. You received a $2,000,000.00 settlement in 2010 resulting from the resolution of a lawsuit involving Global Secured Capital. Mr. Stansbury is entitled to 15% of those funds, which is $300,000.00.

iii. In addition, you received $507,891.00 in commissions in connection with the Biviano matter. Mr. Stansbury is entitled to 15% of those funds, which is $76,183.65.

iv. In April of 2012, you received three commissions totaling approximately $200,000.00 in the Levine, Wiss and Berley matters. Mr. Stansbury has been requesting payment of this for weeks, again to no avail. Mr. Stansbury is due salary compensation for these items in the amount of $30,000.00.

Therefore, Mr. Stansbury's total claim for salary arising out of net retained commissions is approximately $2,868,910.55.

The liability for payment of this salary is not limited to LIC Holdings, Inc. or Arbitrage International Management, LLC. This liability also flows to you individually as a result of your breaches of your fiduciary duty owed to Mr. Stansbury and utter failure to abide by corporate governance standards, which conduct is more particularly described below.

b. Mr. Stansbury is also due unpaid salary based on 15% of all renewal commissions since 2008. Mr. Stansbury's salary claim for renewal commissions cannot as yet be determined with specificity due to the fact that you and your office have been opening mail directed to Mr. Stansbury and negotiating checks made payable to him by falsifying his endorsement and depositing those checks into accounts which only you control. This conduct constitutes civil theft and breach of fiduciary duty. We believe this claim amounts to hundreds of thousands of dollars.

c. Salary compensation for 2008. Mr. Stansbury has recently learned that you and Mr. Simon Bernstein received $8,982,124.00 in salary in 2008. By contrast, Mr. Stansbury received $420,018.00, paid to him in January 2008, based on policies sold in 2007. He received zero (no salary compensation) for his 2008 production. It is obvious that you and Simon treated your corporations as personal ATM machines, while completely ignoring your fiduciary

responsibilities to your employee and minority shareholder, Mr. Stansbury. It further appears that after the exorbitant salaries were paid to you, you then loaned the money back to the corporation at an interest rate significantly above market rates in order to meet the cash flow needs of the various entities, again, clearly disregarding your corporate governance responsibilities.

2. Indemnification issues.

Mr. Stansbury has been served with three lawsuits from Phoenix Insurance Company and one from Mr. Wright seeking indemnification as a result of agent misconduct which was in no way attributable to the conduct of Mr. Stansbury. Although all of these matters have been settled, because he was the qualifying agent of record for other policies, he could be the subject of future litigation for refunds of commissions paid. All of these commissions were paid over to you or your companies.

The Indemnification Agreement which you sent to Mr. Stansbury is completely insufficient. You have a duty as a matter of law to indemnify Mr. Stansbury. Your offer of future indemnity is contingent upon "all" commissions that have been received by LIC's present or past shareholders be turned over to LIC. This is nothing short of extortion. Further, your second paragraph states that LIC is "presently insolvent" and has a "negative net worth." You then conclude with the sentence that with the indemnification agreement in place, LIC "may" have sufficient funds to meet its current obligations. Therefore, a simple indemnification from LIC Holdings to Mr. Stansbury is insufficient. Any such indemnification would have to be personally guaranteed by you and Mr. Simon Bernstein.

3. Unauthorized interception of U.S. Mail.

I have been given the understanding that your office has been opening mail directed to Mr. Stansbury personally. This is a federal offense and also constitutes a breach of the fiduciary duty you owe to Mr. Stansbury as an employee and minority shareholder.

There has been no accounting to Mr. Stansbury for any of the checks which may have been sent to him personally on which his signature has been forged, the checks cashed and placed out of the reach of Mr. Stansbury. In 2012, Mr. Stansbury has been receiving checks from Phoenix Life Insurance Company and TransAmerica Life Insurance Company. Mr. Stansbury has been holding these checks. They have now been remitted to the undersigned as attorney for Mr. Stansbury. This office is holding these funds in a separate interest-bearing trust account pending the resolution of this matter.

With regard to all of the other insurance companies for whom Mr. Stansbury is listed as the qualifying agent, he has now informed those companies that all future renewal commissions paid to him personally be sent to Mr. Stansbury at his home address. These funds will then be remitted to the undersigned counsel of record for Mr. Stansbury. We will place these funds in a separate interest-bearing trust account as well. Any attempts by you to contact these insurance

companies will be considered a tortious interference of his business relationship and such activity will be added as a claim in any future legal proceedings.

4. Shareholder status.

Mr. Stansbury has been a 10% shareholder of LIC Holdings, Inc., pursuant to the terms of a Shareholders Agreement. On behalf of Mr. Stansbury, demand is hereby made, pursuant to Florida Statute 607.1602, for inspection of the corporate records including the following:

I. Minutes of the Board of Directors meetings from January 1, 2008 to the present.

II. Minutes of Shareholders' meetings from January 1, 2008 to the present.

III. Records of any actions taken by the Shareholders and/or the Board of Directors without a meeting, from January 1, 2008 to the present.

IV. Accounting and financial records of LIC Holdings, Inc., Arbitrage International Management, LLC, formerly known as Arbitrage International Holdings, LLC, and all other subsidiary or affiliated companies under your control, including, without limitation, income tax returns, general ledgers, balance sheets, profit and loss statements, stock books, bank statements, loan agreements or guarantees, and any other financial books and records from January 1, 2008 to the present.

Mr. Stansbury is seeking to inspect these records in good faith and for the purpose of determining if misappropriation of corporate assets for improper purposes has previously taken or is presently taking place.

I have been made aware of a letter dated December 22, 2011 in which Mr. Stansbury purportedly "ceded" his shares of stock in LIC Holdings, Inc. back to the company. This letter was obtained under false pretenses and is not recognized by Mr. Stansbury as validly conveying his ownership interest in LIC Holdings, Inc.

Please have your legal counsel contact us within ten (10) days. Should we fail to receive a response within that time, Mr. Stansbury will take legal action to protect his rights and interests.

Very truly yours,

PETER M. FEAMAN, P.A.

By: Peter M. Feaman

Peter M. Feaman

PMF/mk
cc: William Stansbury
CC Riggs (e-mail)

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Ted Bernstein, Pres.
LIC Holdings, Inc.
950 Peninsula Corp. Cir.
Suite 3010
Boca Raton, FL 33487

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ Agent
☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7011 0110 0000 6015 5239

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

Electronically Filed 09/24/2013 11:52:58 AM ET

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CIVIL DIVISION

CASE NO: 502012CA013933 MB AA

DIVISION: BLANC

ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM TO SECOND AMENDED COMPLAINT

COME NOW, Defendants, Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon L. Bernstein (hereinafter the "Defendants"), by and through their undersigned counsel and hereby files this their Answer, Affirmative Defenses and Counterclaim to Second Amended Complaint and in support thereof state, as follows:

ANSWER

1. Paragraph 1 is admitted solely for jurisdictional purposes.

2. The Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 2.

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3. Paragraph 3 is Admitted.

4. Paragraph 4 is admitted solely to the extent of the record in the Estate of Simon L. Bernstein, Case No. 502012CP004391.

5. Paragraph 5 is Admitted.

6. Paragraph 6 is Admitted.

7. Paragraph 7 is Admitted.

8. Paragraph 8 is Denied.

9. Paragraph 9 is admitted solely for jurisdictional purposes.

10. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 10.

11. Paragraph 11 is Admitted.

12. Paragraph 12 is Admitted.

13. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 13.

14. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 14.

15. Paragraph 15 is Admitted.

16. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 16.

17. Defendants are presently without sufficient knowledge to either admit or deny the

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allegations in paragraph 17.

18. Paragraph 18 is admitted solely to the extent that the Plaintiff, at some point in time, became a 10% shareholder.

19. Paragraph 19 is Denied.

20. Paragraph 20 is Denied.

21. Paragraph 21 is Denied.

22. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 22.

23. Paragraph 23 is Denied.

24. Paragraph 24 is Denied.

25. Paragraph 25 is Denied.

26. Paragraph 26 is Denied.

27. Paragraph 27 is Denied.

28. Paragraph 28 is Denied.

29. Paragraph 29 is Denied.

30. Paragraph 30 is Denied.

31. Paragraph 31 is admitted solely to the extent that the Plaintiff, at some point in time, was no longer a 10% shareholder.

32. Paragraph 32 is Denied.

33. Paragraph 33 is Denied.

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34. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 34.

COUNT I

35. No response is required from the Defendants with respect to paragraph 35.

36. No response is required from the Defendants with respect to paragraph 36.

37. No response is required from the Defendants with respect to paragraph 37.

COUNT II

38. Defendants reaver and incorporated herein their responses 1-37 above.

39. Paragraph 39 is Denied.

40. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 40.

41. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 41.

42. Paragraph 42 is Denied.

43. Paragraph 43 is Denied.

44. Paragraph 44 is Denied.

45. Paragraph 45 is Denied.

46. Paragraph 46 is Denied.

COUNT III

47. Defendants reaver and incorporate herein their responses 1-46 above.

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48. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 48.

49. Paragraph 49 is Denied.

50. Paragraph 50 is Denied.

51. Paragraph 51 is Denied.

52. Paragraph 52 is Denied.

COUNT IV

53. No response is required from the Defendants with respect to paragraph 53.

54. No response is required from the Defendants with respect to paragraph 54.

55. No response is required from the Defendants with respect to paragraph 55.

56. No response is required from the Defendants with respect to paragraph 56.

57. No response is required from the Defendants with respect to paragraph 57.

COUNT V

58. Defendants reaver and incorporate herein their responses 1-57 above.

59. Paragraph 59 is Denied.

60. Paragraph 60 is Denied.

61. Paragraph 61 is Denied.

62. Paragraph 62 is Denied.

63. Paragraph 63 is Denied.

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COUNT VI (STATED AS V IN THE SECOND AMENDED COMPLAINT)

64. No response is required from the Defendants with respect to paragraph 64.

65. No response is required from the Defendants with respect to paragraph 65.

66. No response is required from the Defendants with respect to paragraph 66.

67. No response is required from the Defendants with respect to paragraph 67.

68. No response is required from the Defendants with respect to paragraph 68.

69. No response is required from the Defendants with respect to paragraph 69.

COUNT VII

70. Defendants reaver and incorporate herein their responses 1-69 above.

71. Paragraph 71 is Denied.

COUNT VIII

72. Defendants reaver and incorporate herein their responses 1-71 above.

73. Paragraph 73 is Denied.

74. Paragraph 74 is Denied.

75. Paragraph 75 is Denied.

76. Paragraph 76 is Denied.

77. Paragraph 77 is Denied.

78. Paragraph 78 is Denied.

COUNT IX

79. Defendants reaver and incorporate herein their responses 1-78 above.

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80. Paragraph 80 is Denied.

81. Paragraph 81 is Denied.

82. Paragraph 82 is Denied.

83. Paragraph 83 is Denied.

84. Paragraph 84 is Denied.

COUNT X

85. Defendants reaver and incorporate herein their responses 1-84 above.

AS TO ALL COUNTS

86. All other allegations not specifically admitted are denied.

AFFIRMATIVE DEFENSES

1. As and for the Defendants First Affirmative Defense, Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and/or laches.

2. As and for the Defendants Second Affirmative Defense, Plaintiff's claims are barred in whole or in part by the statute of frauds.

3. As and for the Defendants Third Affirmative Defense, Plaintiff's claims are barred in whole or in part because Plaintiff lacks standing to pursue derivative claims because he is no longer a shareholder in LIC and lacks standing to pursue other claims because is no longer an employee of LIC or Arbitrage.

4. As and for the Defendants Fourth Affirmative Defense, Plaintiff's claims are barred in whole or in part by because Plaintiff has misjoined causes of action held in different capacities,

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and therefore, the Complaint is improper and, at a minimum, certain claims must be dismissed such that Plaintiff pursues only those claims he has in one capacity.

5. As and for the Defendants Fifth Affirmative Defense, Plaintiff's claims are barred in whole or in part by the doctrine of waiver. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies and was aware of the alleged actions which form the basis of his claim, and waived any claims against Defendants.

6. As and for the Defendants Sixth Affirmative Defense, Plaintiff's claims are barred in whole or in part by the doctrine of ratification. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and the alleged actions which form the basis of his claim, and ratified such alleged actions.

7. As and for the Defendants Seventh Affirmative Defense, Plaintiff's claims are barred in whole or in part by the doctrine of estoppel. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore is estopped to assert any claims against Defendants.

8. As and for the Defendants Eighth Affirmative Defense, Plaintiff's claims are barred in whole or in part by the doctrine of acquiescence. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the

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companies, and was aware of the alleged actions which form the basis of his claim, and therefore acquiesced in the conduct about which he now complains.

9. As and for the Defendants Ninth Affirmative Defense, Plaintiff's claims against Simon L. Bernstein (hereinafter the "Decedent") are barred in whole or in part by the corporate shield doctrine. All of the actions allegedly taken by the Decedent were actions taken on behalf of a legal entity (corporation or limited liability company), and not on behalf of himself individually, and therefore, any claims against the Decedent individually are barred.

10. As and for the Defendants Tenth Affirmative Defense, Plaintiff has failed to comply with the requirements of section 607.07401 of the Florida Statutes.

11. As and for the Defendants Eleventh Affirmative Defense, Plaintiff failed to properly include all or a portion of the relief requested in the Second Amended Complaint within his Claim filed in the Decedent's probate proceedings. As such, those Claims are now barred and the Plaintiff is estopped from pursuing same as the three (3) month statutory period for filing Claims against the Estate has expired.

12. As and for the Defendants Twelfth Affirmative Defense, the Plaintiff has failed to state a cause of action against the Decedent for a Constructive Trust. The Plaintiff has failed to plead the four (4) required elements of a promise, reliance, confidential relationship and unjust enrichment. As such, Count X must be dismissed.

WHEREFORE, having answered the Complaint, Defendants demand judgment in their favor, together with an award of costs and, pursuant to any applicable contract or statute,

attorneys' fees, and such other relief as the Court determines just and equitable.

COUNTERCLAIM

Counter-Plaintiff, the Estate of Simon L. Bernstein (hereinafter the "Estate"), sues Defendant, William E. Stansbury ("Stansbury"), and states:

1. The Estate is being administered in Palm Beach County, Florida.

2. Stansbury is a resident of Palm Beach County, Florida.

3. At all material times referenced herein during the lifetime of Simon L. Bernstein, he was an officer and shareholder of Arbitrage and LIC Holdings, Inc.

4. As part of his work for Arbitrage and its affiliated company, LIC Holdings, Inc., Stansbury was listed as the licensed insurance agent of record on various contracts and policies of insurance with various insurance companies, under which those insurance companies would make payments of commissions and renewals due to Arbitrage only by way of a check payable in many cases to Stansbury individually.

5. Pursuant to the agreement of the parties, Stansbury was to deliver all such checks to Arbitrage, because all receipts for commissions, renewals or other revenue received by Stansbury for contracts or policies generated during the time of his employment were property of his employer.

6. Upon information and belief, before the time that Stansbury voluntarily terminated his employment with Arbitrage, Stansbury received and collected checks made payable to him, but which properly belonged to Arbitrage, and retained those funds for his sole and exclusive use

and benefit.

7. Further, after Stansbury voluntarily terminated his employment with Arbitrage, Stansbury continued to receive checks made payable to him, but which properly belonged to Arbitrage, and Stansbury retained the benefit of such checks for his sole and exclusive use and benefit. In addition, for some period of time after he voluntarily terminated his employment, Stansbury has been depositing certain checks into the trust account of his attorney, Peter Feaman.

8. All conditions precedent to the bringing of his action have been met, satisfied or waived.

COUNT I - BREACH OF CONTRACT

9. The Estate realleges paragraphs 1 though 8 above.

10. This is an action for breach of contract and seeks damages in excess of $15,000, exclusive of interest, costs and attorneys' fees.

11. Pursuant to the agreement between Arbitrage and Stansbury, Stansbury was required to deliver to Arbitrage all checks made payable to him for contracts or policies of insurance which relate to work done during the time of Stansbury's employment.

12. For the vast majority of the duration of Stansbury's employment, Stansbury complied with the parties' oral agreement and, as far as Arbitrage is presently aware, Stansbury did in fact deliver to Arbitrage all checks he received. However, upon information and belief, Stansbury may have withheld checks from Arbitrage at various times.

13. At some point before the voluntary termination of his employment, and for all

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times after the voluntary termination of his employment, Stansbury has retained for himself and refused to turn over to Arbitrage checks received by him, payable to him individually, but which otherwise should have been turned over to Arbitrage.

14. By his actions in retaining checks payable to him but which should have been turned over to Arbitrage, Stansbury has breached his agreement with Arbitrage.

15. As a direct and proximate result of Stansbury breach of the parties' agreement, Arbitrage and consequently the Estate have been damaged in an amount to be determined through discovery and at trial, including the amount held in the attorney trust account of Peter Feaman.

WHEREFORE, the Estate demands judgment in its favor against Stansbury for compensatory damages, together with an award of costs and, pursuant to any applicable statute or contract, an award of attorneys' fees, and such other relief as is just.

COUNT II - DECLARATORY JUDGMENT

16. The Estate realleges paragraphs 1 though 8 and 10 through 15 above.

17. This is an action for a declaratory judgment and for supplemental relief.

18. There is a genuine and immediate dispute between the parties as to the entitlement to certain Checks which are made payable to Stansbury individually, but which properly belong to Arbitrage as the commissions and renewals received for contracts and policies of insurance, and other revenues of Arbitrage which are payable directly to Stansbury individually.

19. There is a bona fide, actual, present and practical need for the declaration.

20. The declaration deals with a present, ascertained or ascertainable state of facts or

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present controversy as to a state of facts regarding who is entitled to the Checks held by Stansbury or his counsel.

21. An immunity, power, privilege or right of Arbitrage is dependent upon the facts or the law applicable to the facts.

22. Stansbury has, or reasonably may have, an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law.

23. The antagonistic and adverse interests are all properly before the Court.

24. The relief sought is not merely the giving of legal advice or the answer to questions propounded from curiosity.

25. Based upon the foregoing, the Estate seeks a declaration that Stansbury is required to turn over to Arbitrage all checks received by him, which are payable to Stansbury individually, but which relate to contracts or policies of insurance, or other revenues generated by Arbitrage or by Stansbury while he was employed by Arbitrage.

26. Moreover, the Estate requests a declaratory judgment that it is entitled to all funds currently being held in the attorney trust account of Peter Feaman, which represent Checks received by Stansbury which are made payable to Stansbury individually, but which otherwise properly belong to Arbitrage.

27. The Estate also seeks a declaration that its rights to all such funds are superior to the rights and claims of Stansbury.

WHEREFORE, the Estate seeks a declaratory judgment as to its rights to the personal

property described above, together with supplemental relief to the extent necessary, an award of costs and, pursuant to any applicable statute or contract, an award of attorneys' fees, and such other relief the Court determines just and equitable.

MARK R. MANCERI, P.A.
Attorney for Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives
2929 East Commercial Blvd., Suite 702
Ft. Lauderdale, FL 33308
Telephone: (954) 491-7099
E-mail: mrmlaw@comcast.net
mrmlaw1@gmail.com

By: _____
Mark R. Manceri, Esq.
Florida Bar No. 444560

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) to all parties on the following Service List, this 24th day of September, 2013.

_____
Mark R. Manceri, Esq.

SERVICE LIST

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3615 West Boynton Beach Blvd.
Boynton Beach, Florida 33436

Alan B. Rose, Esq.
Page, Mrachek, Fitzgerald, et.al.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401

Electronically Filed 09/27/2013 12:03:10 PM ET

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CASE NO: 50 2012 CA 013933 MB AA

DEFENDANT'S, SHIRLEY BERNSTEIN TRUST, ANSWER AND AFFIRMATIVE DEFENSES TO SECOND AMENDED COMPLAINT

Defendant, Shirley Bernstein Trust Agreement dated May 20, 2008 ("Defendant"), files its answer and affirmative defenses to the Second Amended Complaint, and states:

ANSWER

1. Admitted for jurisdictional purposes only and otherwise denied.

2. Without knowledge.

3. Admitted.

4. Admit the first and second sentence, and otherwise without knowledge.

5. Without knowledge.

6. Without knowledge.

7. Without knowledge.

8. Admitted that Ted Bernstein is the successor trustee of Defendant, and otherwise denied.

9. Admitted for jurisdictional purposes only and otherwise denied.

10. Without knowledge.

11. Without knowledge.

12. Without knowledge.

13. Without knowledge.

14. Without knowledge.

15. Without knowledge.

16. Without knowledge.

17. Without knowledge.

18. Without knowledge.

19. Without knowledge.

20. Without knowledge.

21. Without knowledge.

22. Without knowledge.

23. Without knowledge.

24. Without knowledge.

25. Without knowledge.

26. Without knowledge.

27. Without knowledge.

28. Without knowledge.

29. Without knowledge.

30. Without knowledge.

31. Without knowledge.

32. Without knowledge.

33. Without knowledge.

34. Without knowledge.

COUNT I

35. This count is not directed toward Defendant, and therefore, no response is necessary. To the extent that any response is deemed necessary, Defendant denies all allegations of each paragraph.

36. See response to 35 above.

37. See response to 35 above.

COUNT II

38. See response to 35 above.

39. See response to 35 above.

40. See response to 35 above.

41. See response to 35 above.

42. See response to 35 above.

43. See response to 35 above.

44. See response to 35 above.

45. See response to 35 above.

46. See response to 35 above.

COUNT III

47. See response to 35 above.

48. See response to 35 above.

49. See response to 35 above.

50. See response to 35 above.

51. See response to 35 above.

52. See response to 35 above.

COUNT IV

53. See response to 35 above

54. See response to 35 above.

55. See response to 35 above.

56. See response to 35 above.

57. See response to 35 above.

COUNT V

58. See response to 35 above.

59. See response to 35 above.

60. See response to 35 above.

61. See response to 35 above.

62. See response to 35 above.

63. See response to 35 above.

COUNT V (SIC)

64. See response to 35 above.

65. See response to 35 above.

66. See response to 35 above.

67. See response to 35 above.

68. See response to 35 above.

69. See response to 35 above.

COUNT VII

70. See response to 35 above.

71. See response to 35 above.

COUNT VIII

72. See response to 35 above.

73. See response to 35 above.

74. See response to 35 above.

75. See response to 35 above.

76. See response to 35 above.

77. See response to 35 above.

78. See response to 35 above.

COUNT IX

79. Defendant restates responses 1 to 34, 45 and Counts III and IV above, and any other paragraph which is properly incorporated into this Count.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

COUNT X

85. Defendant restates responses 79 through 84 above.

AFFIRMATIVE DEFENSES

86. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

87. Plaintiff's claims are barred in whole or in part by the statute of frauds.

88. Plaintiff's claims are barred in whole or in part because Plaintiff lacks standing to pursue derivative claims because he is no longer a shareholder in LIC and lacks standing to pursue other claims because is no longer an employee of LIC or Arbitrage.

89. Plaintiff's claims are barred because there is a good faith basis to refuse any request by Stansbury, including because he no longer is a shareholder in LIC and his request is not made in good faith and for a proper purpose, and otherwise denied.

90. Plaintiff's claims are barred in whole or in part by because Plaintiff has misjoined causes of action held in different capacities, and therefore, the Complaint is improper and, at a minimum, certain claims must be dismissed such that Plaintiff pursues only those claims he has in one capacity.

91. Plaintiff's claims are barred in whole or in part by the doctrine of waiver. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions

and dealings within the companies and was aware of the alleged actions which form the basis of his claim, and waived any claims against Defendants.

92. Plaintiff's claims are barred in whole or in part by the doctrine of ratification. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and the alleged actions which form the basis of his claim, and ratified such alleged actions.

93. Plaintiff's claims are barred in whole or in part by the doctrine of estoppel. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore is estopped to assert any claims against Defendants.

94. Plaintiff's claims are barred in whole or in part by the doctrine of acquiescence. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore acquiesced in the conduct about which he now complains.

95. Plaintiff's claims against Ted Bernstein are barred in whole or in part by the corporate shield doctrine. All of the actions allegedly taken by Bernstein were actions taken on behalf of a legal entity (corporation or limited liability company), and not on behalf of himself individually, and therefore, any claims against Bernstein individually are barred.

96. Plaintiff has failed to comply with the requirements of section 607.07401 of the Florida Statutes.

97. Plaintiff's claims are barred in whole or in part by the doctrine of laches, in that Plaintiff unreasonably delayed bringing these claims for numerous years, while continuing to work

and continuing to receive compensation, benefits and distributions; and Defendants were prejudiced by such delay, including by their actions in continuing such employment and such benefits, and in other ways.

WHEREFORE, having answered the Complaint, Defendants demand judgment in their favor, together with an award of costs and, pursuant to any applicable contract or statute, attorneys' fees, and such other relief as it just.

WHEREFORE, having fully answered the Second Amended Complaint, Defendant demands judgment in its favor, together with an award of costs and, pursuant to any applicable statute or contract, an award of attorneys' fees, and such other relief as is just.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to the Service List set forth below by: ■ E-mail Electronic Transmission; ☐ Facsimile; ☐ U.S. Mail; ☐ Overnight Delivery; ☐ Hand-delivery, this 27th day of September, 2013.

MRACHEK, FITZGERALD, ROSE,
KONOPKA & DOW, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
Telephone: (561) 655-2250
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Email: phely@mrachek-law.com; mchandler@mrachek-law.com
Counsel for Ted S. Bernstein, as Successor Trustee to the Shirley Bernstein Trust Agreement dated May 20, 2008

By: /s/ Alan B. Rose
Alan B. Rose (Florida Bar No. 961825)
N. Patrick Hely (Florida Bar No. 0091466

SERVICE LIST

Peter M. Feaman, Esquire
Peter M. Feaman, P.A.
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Counsel for Donald R. Tescher and Robert L.
Spallina, as Co-Personal Representatives

Electronically Filed 09/27/2013 12:13:15 PM ET

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CASE NO: 50 2012 CA 013933 MB AA

DEFENDANTS', TED S. BERNSTEIN, LIC HOLDINGS, INC., AND ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, ANSWER AND AFFIRMATIVE DEFENSES TO SECOND AMENDED COMPLAINT, AND COUNTERCLAIM

Defendants, Ted S. Bernstein ("Bernstein"), LIC Holdings, Inc. ("LIC"), and Arbitrage International Management, LLC ("Arbitrage") (collectively "Defendants"), file their answer, affirmative defenses, and counterclaim.

ANSWER

1. Admitted for jurisdictional purposes only and otherwise denied.

2. Without knowledge.

3. Admitted.

4. Admit the first and second sentence, and otherwise without knowledge.

5. Admitted.

6. Admitted.

7. Admitted.

8. Denied.

9. Admitted for jurisdictional purposes only and otherwise denied.

10. Without knowledge.

11. Admitted.

12. Admitted.

13. Admitted that Stansbury's role in the company involved the sale and marketing of certain insurance products, and otherwise denied.

14. Denied.

15. Admitted.

16. Admitted that Stansbury, for some time, worked as an employee of LIC or Arbitrage, and that, for some time period, Stansbury's compensation was based upon receiving 15% of the net retained commissions as that terms was understood by the parties, and otherwise denied.

17. Admitted that Stansbury, for some time, worked as an employee of LIC or Arbitrage, and that, for some time period, Stansbury's compensation was based upon receiving 15% of the net retained commissions as that terms was understood by the parties, and otherwise denied.

18. Admitted that Stansbury was given 10% of the stock of LIC, and otherwise denied.

19. Denied.

20. Denied.

21. Denied.

22. Admitted that Stansbury agreed to be paid no commission for sales or revenues after January 1, 2008; without knowledge of the specific amounts received by Stansbury in 2008; and otherwise denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Admitted that Stansbury returned, surrendered or ceded his 10% stock interest back to LIC, and otherwise denied.

32. Denied.

33. Denied.

34. Without knowledge.

COUNT I

35. Defendants restate responses 1 to 34 above and any other paragraph which is properly incorporated into this Count.

36. Denied.

37. Denied.

COUNT II

38. Defendants restate responses 1 to 34 above and any other paragraph which is properly incorporated into this Count.

39. Denied.

40. Admitted that Stansbury was paid in accordance with the parties' agreement, and otherwise denied.

41. Admitted that Stansbury was paid in accordance with the parties' agreement, and otherwise denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

COUNT III

47. Defendants restate responses 1 to 34 above and any other paragraph which is properly incorporated into this Count.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

COUNT IV

53. Defendants restate responses 1 to 34 above and any other paragraph which is properly incorporated into this Count.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

COUNT V

58. Defendants restate responses 1 to 34 above and any other paragraph which is properly incorporated into this Count.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

COUNT V (SIC)

64. Defendants restate responses 1 to 34 above and any other paragraph which is properly incorporated into this Count.

65. Denied.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

COUNT VII

70. Defendants restate responses 1 to 34 above and any other paragraph which is properly incorporated into this Count.

71. Denied.

COUNT VIII

72. Defendants restate responses 1 to 34 above and any other paragraph which is properly incorporated into this Count.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

COUNT IX

79. Defendants restate responses 1 to 34 above and any other paragraph which is properly incorporated into this Count.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

COUNT X

85. Defendants restate responses 79 through 84 above, and any other paragraph which is properly incorporated into this Count.

AFFIRMATIVE DEFENSES

86. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

87. Plaintiff's claims are barred in whole or in part by the statute of frauds.

88. Plaintiff's claims are barred in whole or in part because Plaintiff lacks standing to pursue derivative claims because he is no longer a shareholder in LIC and lacks standing to pursue other claims because is no longer an employee of LIC or Arbitrage.

89. Plaintiff's claims are barred because there is a good faith basis to refuse any request by Stansbury, including because he no longer is a shareholder in LIC and his request is not made in good faith and for a proper purpose, and otherwise denied.

90. Plaintiff's claims are barred in whole or in part by because Plaintiff has misjoined causes of action held in different capacities, and therefore, the Complaint is improper and, at a minimum, certain claims must be dismissed such that Plaintiff pursues only those claims he has in one capacity.

91. Plaintiff's claims are barred in whole or in part by the doctrine of waiver. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies and was aware of the alleged actions which form the basis of his claim, and waived any claims against Defendants.

92. Plaintiff's claims are barred in whole or in part by the doctrine of ratification. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial

transactions and dealings within the companies, and the alleged actions which form the basis of his claim, and ratified such alleged actions.

93. Plaintiff's claims are barred in whole or in part by the doctrine of estoppel. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore is estopped to assert any claims against Defendants.

94. Plaintiff's claims are barred in whole or in part by the doctrine of acquiescence. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore acquiesced in the conduct about which he now complains.

95. Plaintiff's claims against Ted Bernstein are barred in whole or in part by the corporate shield doctrine. All of the actions allegedly taken by Bernstein were actions taken on behalf of a legal entity (corporation or limited liability company), and not on behalf of himself individually, and therefore, any claims against Bernstein individually are barred.

96. Plaintiff has failed to comply with the requirements of section 607.07401 of the Florida Statutes.

97. Plaintiff's claims are barred in whole or in part by the doctrine of laches, in that Plaintiff unreasonably delayed bringing these claims for numerous years, while continuing to work and continuing to receive compensation, benefits and distributions; and Defendants were prejudiced by such delay, including by their actions in continuing such employment and such benefits, and in other ways.

WHEREFORE, having answered the Complaint, Defendants demand judgment in their favor, together with an award of costs and, pursuant to any applicable contract or statute, attorneys' fees, and such other relief as it just.

COUNTERCLAIM

Counter-Plaintiff, Arbitrage International Management, LLC ("Arbitrage"), sues Defendant, William E. Stansbury ("Stansbury"), and states:

1. Arbitrage is a Florida limited liability company with its principal place of business in Palm Beach County, Florida.

2. Stansbury is a resident of Palm Beach County, Florida.

3. As part of his work for Arbitrage and its affiliated company, LIC Holdings, Inc., Stansbury was listed as the licensed insurance agent of record on various contracts and policies of insurance with various insurance companies, under which those insurance companies would make payments of commissions and renewals due to Arbitrage only by way of a check payable to one of the individuals, including in many cases Stansbury individually.

4. Pursuant to the agreement of the parties, Stansbury was to deliver all such checks to Arbitrage, because all receipts for commissions, renewals or other revenue received by Stansbury for contracts or policies generated during the time of his employment were property of his employer.

5. Upon information and belief, before the time that Stansbury voluntarily terminated his employment with Arbitrage, Stansbury received and collected checks made payable to him, but which properly belonged to Arbitrage, and retained those funds for his sole and exclusive use and benefit.

6. Further, after Stansbury voluntarily terminated his employment with Arbitrage, Stansbury continued to receive checks made payable to him, but which properly belonged to Arbitrage, and Stansbury retained the benefit of such checks for his sole and exclusive use and benefit. In addition, for some period of time after he voluntarily terminated his employment, Stansbury has been depositing certain checks into the trust account of his attorney, Peter Feaman.

7. All conditions precedent to the bringing of his action have occurred, been satisfied, or waived.

COUNT I - BREACH OF CONTRACT

8. Arbitrage realleges paragraphs 1 though 7 above.

9. This is an action for breach of contract and seeks damages in excess of $15,000, exclusive of interest, costs and attorneys' fees.

10. Pursuant to the agreement between Arbitrage and Stansbury, Stansbury was required to deliver to Arbitrage all checks made payable to him for contracts or policies of insurance which relate to work done during the time of Stansbury's employment.

11. For the vast majority of the duration of Stansbury's employment, Stansbury complied with the parties' oral agreement and, as far as Arbitrage is presently aware, Stansbury did in fact deliver to Arbitrage all checks he received. However, upon information and belief, Stansbury may have withheld checks from Arbitrage at various times.

12. At some point before the voluntary termination of his employment, and for all times after the voluntary termination of his employment, Stansbury has retained for himself and refused to turn over to Arbitrage checks received by him, payable to him individually, but which otherwise should have been turned over to Arbitrage.

13. By his actions in retaining checks payable to him but which should have been turned over to Arbitrage, Stansbury has breached his agreement with Arbitrage.

14. As a direct and proximate result of Stansbury breach of the parties' agreement, Arbitrage has been damaged in an amount to be determined through discovery and at trial, including the amount held in the trust account of Peter Feaman.

WHEREFORE, Arbitrage demands judgment in its favor against Stansbury for compensatory damages, together with an award of costs and, pursuant to any applicable statute or contract, an award of attorneys' fees, and such other relief as is just.

COUNT II - DECLARATORY JUDGMENT

15. Arbitrage realleges paragraphs 1 though 7 and 10 through 13 above.

16. This is an action for a declaratory judgment and for supplemental relief.

17. There is a genuine and immediate dispute between the parties as to the entitlement to certain checks which are made payable to Stansbury individually, but which properly belong to Arbitrage as the commissions and renewals received for contracts and policies of insurance, and other revenues of Arbitrage which are payable directly to Stansbury individually.

18. There is a bona fide, actual, present and practical need for the declaration.

19. The declaration deals with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts regarding who is entitled to the checks held by Stansbury or his counsel.

20. An immunity, power, privilege or right of Arbitrage is dependent upon the facts or the law applicable to the facts.

21. Stansbury has, or reasonably may have, an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law.

22. The antagonistic and adverse interests are all properly before the Court.

23. The relief sought is not merely the giving of legal advice or the answer to questions propounded from curiosity.

24. Based upon the foregoing, Arbitrage seeks a declaration that Stansbury is required to turn over to Arbitrage all checks received by him, which are payable to Stansbury individually, but which relate to contracts or policies of insurance, or other revenues generated by Arbitrage or by Stansbury while he was employed by Arbitrage.

25. Moreover, Arbitrage requests a declaratory judgment that it is entitled to all funds currently being held in the trust account of Peter Feaman, which represent checks received by Stansbury which are made payable to Stansbury individually, but which otherwise properly belong to Arbitrage.

26. Arbitrage also seeks a declaration that its rights to all such funds are superior to the rights and claims of Stansbury.

WHEREFORE, Arbitrage seeks a declaratory judgment as to its rights to the personal property described above, together with supplemental relief to the extent necessary, an award of costs and, pursuant to any applicable statute or contract, an award of attorneys' fees, and such other relief as is just.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to the Service List set forth below by: ■ E-mail Electronic Transmission; ☐ Facsimile; ☐ U.S. Mail; ☐ Overnight Delivery; ☐ Hand-delivery, this 27th day of September, 2013.

MRACHEK, FITZGERALD, ROSE,
KONOPKA & DOW, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
Telephone: (561) 655-2250
Facsimile: (561) 655-5537
Email: arose@mrachek-law.com; mchandler@mrachek-law.com
Email: phely@mrachek-law.com; mchandler@mrachek-law.com
Counsel for Ted S. Bernstein; LIC Holdings, Inc.; and Arbitrage International Management, LLC

By: /s/ Alan B. Rose
Alan B. Rose (Florida Bar No. 961825)
N. Patrick Hely (Florida Bar No. 0091466

SERVICE LIST

Peter M. Feaman, Esquire
Peter M. Feaman, P.A.
3615 West Boynton Beach Blvd.
Boynton Beach, FL 33436
(561) 734-5552 - Telephone
(561) 734-5554 - Facsimile
Email: (pfeaman@feamanlaw.com); (service@feamanlaw.com); (mkoskey@feamanlaw.com)
Counsel for Plaintiff

Mark R. Manceri, Esq.
Mark R. Manceri, P.A.
2929 East Commercial Blvd., Suite 702
Ft. Lauderdale, FL 33309
(954) 491-7099
Email: (mrmlaw@comcast.net); (mrmlaw1@gmail.com)
Counsel for Donald R. Tescher and Robert L.
Spallina, as Co-Personal Representatives

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

WILLIAM E. STANSBURY,
Plaintiff,

v.

CASE NO: **50 2012 CA 013933 MB AA**

TED S. BERNSTEIN; SIMON BERNSTEIN; LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC.
Defendants.
_____/

2013 SEP 30 PM 4:16
PALM BEACH COUNTY
CLERK
CIRCUIT CIVIL
FILED

ORDER ON PLAINTIFF'S OBJECTIONS TO FIRST SET OF INTERROGATORIES TO WILLIAM E. STANSBURY AND MOTION FOR EXTENSION OF TIME

THIS CAUSE came on to be heard before this Honorable Court upon Plaintiff's Objections to First Set of Interrogatories to William E. Stansbury and Motion for Extension of Time, and the Court having reviewed the file, being duly advised in the premises, it is hereby

ORDERED and ADJUDGED:

1. Plaintiff's Objections to First Set of Interrogatories to William E. Stansbury and Motion for Extension of Time is hereby granted in part and Denied in part without prejudice.

2. Overruled as to #3; overruled in part as to #4, Plaintiff shall respond as to LIC Holdings and Arbitrage sustained as to #s 5, 7, 9, 10 and 11. Overruled as to #s 8, 11.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida on this 30 day of Sept, 2013.

Honorable Peter Blanc
Circuit Judge

Copies to:
Alan B. Rose, Esq., Page, Mrachek, Fitzgerald, Rose, Konopka & Dow, 505 S. Flagler Drive, Suite 600, West Palm Beach, FL 33401; arose@pm-law.com
Mark R. Manceri, Esq., Mark R. Manceri, P.A., 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; mrmlaw@comcast.net; mrmlaw1@gmail.com
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL; service@feamanlaw.com.

Plaintiff shall respond to #1, 2, 6, 3, 4 and 8 within 15 days.

Copies furnished by e-service

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

CIVIL DIVISION "AA"

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

FILED
2013 NOV -1 PM 1:51
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL

ORDER SETTING SPECIAL SET HEARING

The following matter has been specially set for hearing before Judge Peter D. Blanc in Courtroom 11-A of the Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401:

DATE: **Tuesday, November 12, 2013**

TIME: **10:00 a.m. (time allotted: 30 minutes)**

MATTER: **Objection of Defendants, Ted Bernstein, LIC Holdings, Inc. and Arbitrage, LLC to Notice of Production from Non-Party CBIZ MHM, LLC**

and

Objection of Defendants Donald Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon L. Bernstein to Notice of Production from Non-Party CBIZ MHM, LLC

THIS MOTION IS SPECIALLY SET AND CANNOT BE CANCELED OR RESET EXCEPT BY COURT ORDER.

It is the intent of this Court to dispose of the subject matter of the specially set motion on the date and time appearing above. Accordingly, counsel must either: (1) be present personally or by telephone conference call at the hearing (telephone appearance must be approved in advance); or (2) submit an agreed order disposing of the motion.

All memoranda, not to exceed ten (10) double spaced pages, with case authority shall be delivered directly to my office no later than seven (7) days in advance of the hearing and should designate the date and time of the hearing which they reference. Arguments shall be limited to a maximum of fifteen (15) minutes per side or less as the Court deems appropriate.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, on this 1 day of November, 2013.

PETER D. BLANC, Circuit Judge

Copies Furnished:

***Alan Rose, Esq.**, Page Mrachek, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; e-mail: arose@pm-law.com;*
***Mark R. Manceri, Esq.**, Mark R. Manceri, P.A., 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; e-mail: mrmlaw@comcast.net;*
***Peter M. Feaman, Esq.**, Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436; e-mail: pfeaman@feamanlaw.com;*

Copies furnished by e-service

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

"Si usted es una persona minusválida que necesita algún acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida 33401; teléfono número (561) 355-4380, por lo menos 7 días antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente después de recibir esta notificación si el tiempo antes de la comparecencia que se ha programado es menos de 7 días; si usted tiene discapacitación del oído o de la voz, llame al 711."

"Si ou se yon moun ki enfim ki bezwen akomodasyon pou w ka patisipe nan pwosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kèk èd. Tanpri kontakte Germaine English, kòòdonatè pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan 205 North Dixie Highway, West Palm Beach, Florida 33401; telefòn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou parèt nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si lè ou gen pou w parèt nan tribinal la mwens ke 7 jou; si ou gen pwoblèm pou w tande oubyen pale, rele 711."

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

Electronically Filed 11/04/2013 02:45:35 PM ET

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

PLAINTIFF'S MOTION FOR EXTENSION OF TIME

COMES NOW Plaintiff, WILLIAM E. STANSBURY, by and through his undersigned counsel and moves for an extension of time to respond to Defendants', Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon L. Bernstein, Second Set of Interrogatories and requests an additional 20 days in which to respond to the Interrogatories, and as grounds states as follows:

1. On October 3, 2013, Defendants filed and directed a Notice of Serving Second Set of Interrogatories to William E. Stansbury.

2. On October 31, 2013, Plaintiff sent an email request to Attorney Mark Manceri for a 20-day extension of time to answer/respond to Defendants' Second Set of Interrogatories. As of this date, Attorney Manceri has not responded.

3. Plaintiff requires additional time to respond to the Second Set of Interrogatories and therefore files this Motion for Extension of Time up to and including November 25, 2013.

4. This matter is not set for trial and no prejudice will result to Defendants by the granting of this Motion.

WHEREFORE, Plaintiff, WILLIAM E. STANSBURY, requests this Honorable Court for an extension of time to respond to Defendants' Second Set of Interrogatories up through and including November 25, 2013.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives of the Estate of Simon Bernstein* and *Bernstein Family Realty,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 4th day of November, 2013.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No.: 0260347

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

FILED
2013 NOV 15 PM 3:58
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL

ORDER ON OBJECTIONS OF DEFENDANTS, TED BERNSTEIN, LIC HOLDINGS, INC, ARBITRAGE, LLC, DONALD TESCHER AND ROBERT SPALLINA AS CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF SIMON L. BERNSTEIN TO NOTICE OF PRODUCTION FROM NON-PARTY CBIZ MHM, LLC

THIS CAUSE came on to be heard before this Honorable Court on Tuesday, November 12, 2013, upon Objections of Defendants, Ted Bernstein, LIC Holdings, Inc., Arbitrage, LLC, Donald Tescher and Robert Spalina, as co-Personal Representatives of the Estate of Simon L. Bernstein to Notice of Production from Non-Party CBIZ MHM, LLC, and the Court having reviewed the file, heard argument of counsel and being otherwise duly advised in the premises, it is hereby

ORDERED and ADJUDGED:

1. The objections are overruled to the extent that the subpoena may be issued and third party, CBIZ MHM, LLC will respond. The documents not objected to on the basis of privilege will be produced within 30 days from the date of this Order.

2. In the event that an objection is made on the basis of privilege, the objection should specify the privilege raised and a privilege log should be prepared on those items upon which a privilege is claimed, in accordance with *TIG Insurance v. Johnson*, 799 So.2d 339 (Fla. 4th DCA, 2001).

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida on this 15 day of November, 2013.

HONORABLE PETER BLANC
Circuit Judge

Copies to:

Alan Rose, Esq., Page Mrachek, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; e-mail: arose@pm-law.com;
Mark R. Manceri, Esq., Mark R. Manceri, P.A., 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; e-mail: mrmlaw@comcast.net
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL; e-mail: pfeaman@feamanlaw.com

Copies furnished by e-service

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

Electronically Filed 11/26/2013 12:07:46 PM ET

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

MOTION TO AMEND SECOND AMENDED COMPLAINT
BY INTERLINEATION

COMES NOW Plaintiff, WILLIAM E. STANSBURY, by and through his undersigned counsel and moves this Court to amend by interlineation the Second Amended Complaint as follows:

1. Paragraph 38 is amended to read: "Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive."

2. Paragraph 47 is amended to read: "Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive."

3. Paragraph 53 is amended to read: "Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive."

4. Count 'V' on page 17 is designated as Count 'VI.'

5. Paragraph 64 is amended to read: "Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive."

6. Paragraph 70 is amended to read: "Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, paragraphs 1 through 34, inclusive.

7. Paragraph 72 is amended to read: "Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive, and the allegations of Count III."

8. Paragraph 86 is added as follows: "Plaintiff reiterates his demand for trial by jury on all issues so triable."

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives of the Estate of Simon Bernstein* and *Bernstein Family Realty,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 26th day of November, 2013.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No.: 0260347

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

WILLIAM E. STANSBURY,
Plaintiff,

v.

CASE NO: **50 2012 CA 013933 MB AA**

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

FILED
2013 DEC -2 PM 3:55
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL

AGREED ORDER ON PLAINTIFF'S MOTION TO AMEND SECOND AMENDED COMPLAINT BY INTERLINEATION

THIS CAUSE came before the Court upon Plaintiff's Motion to Amend Second Amended Complaint by Interlineation and upon agreement of the parties, and the Court being duly advised in the premises, it is hereby

ORDERED and ADJUDGED that

1. Plaintiff's Motion is granted.

2. The Second Amended Complaint is deemed amended by interlineation and the answers on file will be treated as answering the amendment without necessity of further filing.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this 2 day of December, 2013.

Honorable Peter Blanc
Circuit Judge

Copies to:

Alan Rose, Esq., Page Mrachek, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; e-mail: arose@pm-law.com;
Mark R. Manceri, Esq., Mark R. Manceri, P.A., 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; e-mail: mrmlaw@comcast.net
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL; pfeaman@feamanlaw.com

Copies furnished by e-service

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

Electronically Filed 12/20/2013 04:14:15 PM ET

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

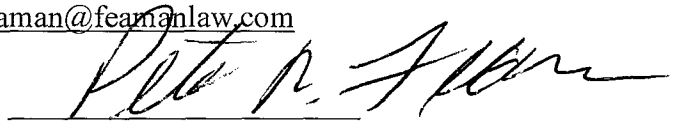
NOTICE OF FILING SECOND AMENDED COMPLAINT BY INTERLINEATION

COMES NOW Plaintiff, WILLIAM E. STANSBURY, by and through his undersigned attorneys and, pursuant to this Court's "Agreed Order on Plaintiff's Motion to Amend Second Amended Complaint by Interlineation," dated December 12, 2013, files his Second Amended Complaint by Interlineation, which is attached hereto as Exhibit "1."

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives of the Estate of Simon Bernstein* and *Bernstein Family Realty,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 20th day of December, 2013.

PETER M. FEAMAN, P.A.
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pfeaman@feamanlaw.com

By: 

Peter M. Feaman
Florida Bar No.: 0260347

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: 50 2012 CA 013933 MB AA

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

SECOND AMENDED COMPLAINT BY INTERLINEATION

WILLIAM E. STANSBURY, by and through undersigned counsel, sues the Defendants and states:

1. This is an action for money damages in excess of $15,000, and for equitable relief.

2. Plaintiff (hereinafter referred to as "STANSBURY") is *sui juris*, and a resident of Palm Beach County, Florida.

3. Defendant TED S. BERNSTEIN ("TED BERNSTEIN"), is *sui juris*, and a resident of Palm Beach County, Florida.

4. SIMON L. BERNSTEIN ("SIMON BERNSTEIN") died on or about September 13, 2012, after the filing of the initial Complaint in this action. At the time of his death, SIMON BERNSTEIN was *sui juris*, and was a resident of Palm Beach County, Florida. Defendants

EXHIBIT 1

Donald R. Tescher and Robert L. Spallina are serving as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN (the "ESTATE")which ESTATE is presently open and pending in the Palm Beach County Circuit Court, *In re: Estate of Simon L. Bernstein*, Case No. 502012CP004391XXXXSB (the "Estate Proceeding"). In accordance with Section 733.705, Florida Statutes, STANSBURY hereby brings this independent action against the ESTATE with respect to his Statement of Claim that was filed and objected to in the Estate Proceeding.

5. Defendant, LIC HOLDINGS, INC. ("LIC Holdings") is a Florida corporation with its principal place of business in Palm Beach County, Florida.

6. Defendant, ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, formerly known as ARBITRAGE INTERNATIONAL HOLDINGS, LLC, ("ARBITRAGE") is a Florida limited liability company with its principal place of business in Palm Beach County, Florida.

7. Defendant, BERNSTEIN FAMILY REALTY, LLC is a Florida limited liability company doing business in Palm Beach County.

8. Defendant, the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008 ("SHIRLEY'S TRUST"), owns real property in Palm Beach County, Florida. Based upon information and belief, Donald R. Tescher and Robert L. Spallina are serving as co-trustees of SHIRLEY'S TRUST. This Court has personal jurisdiction over the trustees and the beneficiaries of SHIRLEY'S TRUST under Section 736.0202, Florida Statutes, as the principal place of administration of SHIRLEY'S TRUST is in Palm Beach County, Florida. This court has subject matter jurisdiction over this action under Section 736.0203, Florida Statutes. Venue is proper in Palm Beach County, Florida, under Section 736.0204, Florida Statutes, as the principal place of administration of SHIRLEY'S TRUST is in Palm Beach County, Florida and one or more of the beneficiaries of SHIRLEY'S TRUST reside in Palm Beach County, Florida.

9. The acts and incidents giving rise to the causes of action alleged herein arose in Palm Beach County, Florida.

General Allegations

10. STANSBURY has worked in the insurance industry for virtually all of his adult life. After 30 years, he had become well-known and highly regarded by major insurance companies, their principals and others throughout the insurance industry, at all levels thereof, as well as by professionals, including attorneys, CPA's, financial advisors, wealth managers and others who were involved in serving, or otherwise dealing with insurers, insurance brokers and life insurance products.

11. SIMON BERNSTEIN dealt at sophisticated levels of the insurance industry and specialized in developing and marketing insurance concepts suitable for persons of high net worth to incorporate into their wealth management and estate planning.

12. TED BERNSTEIN, the son of SIMON BERNSTEIN, was also actively involved in selling life insurance products in conjunction with attorneys, CPAs and other professionals, to be incorporated into high net worth individuals' financial and estate planning.

13. TED BERNSTEIN, acting on his behalf and on behalf of, and in concert with, SIMON BERNSTEIN, approached STANSBURY in 2003, urging STANSBURY to spearhead the marketing of a unique insurance concept, newly developed by a prominent law firm, which was designed for use in the financial and estate planning of high net worth individuals.

14. TED BERNSTEIN told STANSBURY that he knew of STANSBURY's expertise and reputation in the insurance and related industries and that STANSBURY was skilled at and accustomed to speaking and marketing insurance products to groups of professionals. He realized that STANSBURY, because of his knowledge, reputation and abilities, would be well suited to market this concept nationwide through prominent and experienced professionals.

15. In 2006, SIMON BERNSTEIN and TED BERNSTEIN (collectively, "BERNSTEIN" or the "BERNSTEINS") formed, as sole shareholders, Defendants LIC Holdings and ARBITRAGE for the purpose of marketing and selling certain life insurance products to high net worth individuals for their wealth management and estate planning needs.

16. STANSBURY agreed to become an employee of LIC Holdings, Inc. and ARBITRAGE and agreed to a salary of 15% of net retained commissions received on all products sold, including renewals. STANSBURY at this time was responsible for, among other duties, calculating, on a monthly basis, the commissions due him in connection with new business generated in the current year and renewals on business generated in previous years.

17. STANSBURY worked with diligence and skill, traveling throughout the United States, generating ever-increasing sales and generating very large commissions. By 2006, nationwide sales were resulting in substantial commissions on new policies and renewal commissions.

18. Also in 2006, SIMON BERNSTEIN, acting on his behalf and on behalf of, and in concert with, TED BERNSTEIN, told STANSBURY that STANSBURY was being rewarded for his efforts and the explosive growth of the business, such that he would receive a 10% ownership interest in LIC Holdings, Inc. SIMON BERNSTEIN and TED BERNSTEIN, collectively, were majority shareholders while STANSBURY was a minority shareholder in LIC Holdings, Inc.

19. STANSBURY has sued both LIC Holdings and ARBITRAGE because the BERNSTEINS represented that his employment relationship was with LIC Holdings, the company in which he owned a 10% interest, but STANSBURY'S W-2 statements were issued by ARBITRAGE as his employer.

20. In February of 2008, SIMON BERNSTEIN, acting on his behalf and on behalf of, and in concert with TED BERNSTEIN, approached STANSBURY and told him his time would

be better spent building the business rather than performing monthly calculations of income. The plan proposed was that, rather than STANSBURY performing computations on a monthly basis as to how much should be paid to him based upon 15% of the net retained commissions derived from both new policies sold and renewals from previous years, the BERNSTEINS and STANSBURY all would forego monthly payouts and defer compensation until the end of 2008, when year-end computations could be made. It was represented that in December, year-end computations would be made and salaries would be paid in December 2008 or January of 2009. It was specifically represented to STANSBURY that:

a) neither SIMON BERNSTEIN, TED BERNSTEIN nor STANSBURY would take any compensation during fiscal year 2008 but rather they all would wait until the year-end accounting was performed in December of 2008 or January, 2009;

b) SIMON BERNSTEIN, TED BERNSTEIN, and STANSBURY would each be paid a minimum salary of $1,000,000 at year end, and STANSBURY'S salary was to be applied against his earned commissions of 15%. Any compensation due STANSBURY over and above the $1,000,000 would be paid as a distribution on his stock ownership interest in LIC Holdings.

21. In January of 2008, STANSBURY was paid $420,018 for commissions earned on some 2007 sales. However, STANSBURY was not, and has never been, paid the commissions due him on sales in 2008 and thereafter, and he was not and has never been paid the renewal commissions due him on sales made in previous years that were paid to LIC Holdings or ARBITRAGE in 2008 and thereafter, other than a nominal payment of $30,000 made in 2010.

22. When STANSBURY was not paid as agreed in late 2008/2009 and thereafter, SIMON BERNSTEIN and TED BERNSTEIN, on behalf of and in concert with each other, stated to STANSBURY that salary and ownership distributions due and owing to SIMON BERNSTEIN, TED BERNSTEIN and STANSBURY would be deferred to a future time. This

deferral of payment was represented to be important because, as a result of the virtual collapse of the capital lending markets in 2008, it was necessary to retain the funds in the corporate bank accounts to demonstrate to potential lenders the financial stability of the companies.

23. The false statements set forth in paragraphs 18 through 21, above, were made by SIMON BERNSTEIN and TED BERNSTEIN, in concert with each other, with knowledge of their falsity and with the intention of never to fulfilling such promises.

24. Despite the representations to STANSBURY set forth above to the contrary, SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders of LIC Holdings and ARBITRAGE, authorized LIC Holdings and/or ARBITRAGE to pay themselves $3,756,229.00 and $5,225,825.00, respectively, in 2008. Contrary to the representations made as set forth in paragraph 20, STANSBURY received no compensation for first year commissions and renewal commissions due him in 2008.

25. The net retained commissions by LIC Holdings and ARBITRAGE, not including renewals, for 2008 were approximately $13,442,549.00. As such, STANSBURY was entitled to, at the very minimum, 15% of $13,442,549.00, or $2,016,382.35.

26. Beginning late in 2007 or early in 2008, and continuing through at least 2012, LIC Holdings and/or ARBITRAGE became the alter ego of SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders, in that they disregarded corporate structure and wrongfully diverted, converted and depleted corporate assets of LIC Holdings and ARBITRAGE for their own personal benefit and the benefit of Bernstein family trusts and other entities as more specifically set forth below. Those trusts have since invested some of these wrongfully diverted and converted corporate assets in real estate, also as more particularly set forth below. The wrongful action of SIMON BERNSTEIN and TED BERNSTEIN in diverting and converting corporate assets rendered LIC Holdings, and possibly ARBITRAGE, insolvent.

27. Throughout 2009, SIMON BERNSTEIN and TED BERNSTEIN continued to make false statements to STANSBURY to hide the fact that LIC Holdings and/or ARBITRAGE was their alter ego, in that they converted corporate property and corporate assets of LIC and/or ARBITRAGE for their own personal benefit in 2008, 2009 and thereafter, all to the exclusion and financial detriment of STANSBURY, all the while fraudulently representing to STANSBURY that no money was being paid as salary or distributions to SIMON BERNSTEIN, TED BERNSTEIN or STANSBURY because it was necessary to hold the funds in the corporate bank accounts to show to potential lenders the financial stability of the company.

28. STANSBURY relied upon these continuing misrepresentations of Defendants to his detriment. Because STANSBURY was told that potential funding sources for the business needed to see that capital of the company was available, he took no action when he did not receive any compensation for 2009 and was paid only $30,000 in 2010.

29. In order to continue their scheme to defraud, SIMON BERNSTEIN and TED BERNSTEIN failed and refused to account for renewal commissions and failed to supply any financial information to STANSBURY concerning LIC Holdings or ARBITRAGE.

30. In furtherance of their scheme to deprive STANSBURY of salary he had earned and shareholder distributions to which he was entitled, SIMON BERNSTEIN and TED BERNSTEIN intercepted mail addressed to STANSBURY, removing commission checks representing commissions due to STANSBURY, deposited the funds into their own accounts and otherwise converted the funds. SIMON BERNSTEIN and TED BERNSTEIN also opened STANSBURY's mail containing checks payable to him which were unrelated to them and the businesses.

31. In December, 2011 STANSBURY had been battling a painful and debilitating disease that could only be managed through the administration of potentially harmful

prescription medications. On December 22, 2011, the Defendants BERNSTEIN, with knowledge of STANSBURY's health issues and his debilitated condition, decided to take advantage of and deceive STANSBURY further. STANSBURY had for years been given K-1 statements reflecting his 10% ownership of LIC Holdings. At that time, TED BERNSTEIN told STANSBURY that the company accountant had discovered a potential significant taxable event which could cause STANSBURY, as one of the owners of LIC Holdings to pay taxes on phantom income. TED BERNSTEIN promised that if STANSBURY would sign a paper ceding his 10% interest in LIC Holdings, he would not have to pay the tax if in fact the tax was due. TED BERNSTEIN promised he would hold the paper, promising it would not become operative until STANSBURY and the Defendants BERNSTEIN discussed the situation further in the first quarter of 2012.

32. Because of the misrepresentations, willful concealments of material facts, duplicity and deceit practiced by Defendants upon STANSBURY, STANSBURY reasonably believed that Defendants had complied, or intended to comply with their obligations to STANSBURY under the contract between them. STANSBURY, therefore, was prevented from knowing for a period of years that the causes of action asserted herein existed.

33. By the second quarter of 2012, STANSBURY developed the belief that the BERNSTEINS' representations over the years were wholly false and he sought legal counsel.

34. STANSBURY has retained the law firm of Peter M. Feaman, P.A. and has agreed to pay it a reasonable fee for its services rendered herein.

COUNT I - ACCOUNTING
(Against LIC Holdings and ARBITRAGE, for Accounting)

35. STANSBURY hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

36. The relationship between STANSBURY and the Defendants, particularly as affected by Defendants' acts described in preceding paragraphs 19 through 27 created a situation where Defendants had sole access to receipts generated by STANSBURY's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to STANSBURY under his arrangement with Defendants.

37. The period of time during which STANSBURY has been deprived of monies due him spans approximately four and a half years. The various sources of revenue to Defendants of monies from which the amounts due STANSBURY may be calculated, the manner in which STANSBURY was to be paid, and the amount due STANSBURY all involve extensive and complicated accounts, and STANSBURY's remedy at law cannot be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff STANSBURY prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, LIC Holdings and ARBITRAGE, and for such orders of Court as will require such Defendants to provide STANSBURY with all records and copies of documents from January 1, 2006 to the present, in order to reveal his right to, and the amount of all sums: (a) received as commissions to which STANSBURY was entitled to a share; (b) due to STANSBURY, whether paid or not; (c) paid to STANSBURY, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the BERNSTEIN Defendants out of monies received as commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid , to be paid, or not to be paid to STANSBURY, together with an award of court costs and such other and further relief as the Court may deem just and proper.

COUNT II - BREACH OF ORAL CONTRACT
(Against LIC Holdings, Inc., ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN)

38. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

39. The arrangement between STANSBURY and Defendants, as described in paragraphs 13 through 28 above, constituted a contract between them.

40. An express term of that contract involved the commitment of LIC Holdings and ARBITRAGE to calculate and pay to STANSBURY all sums due to him under the contract, whether as commissions, salary, distributions, expenses or any other reason.

41. The Defendants initially performed the duties required of them under said contract.

42. However, Defendants breached their contract with STANSBURY by withholding from STANSBURY monies due him under the contract for renewal commissions earned in 2007 and commissions and renewal commissions earned in 2008 and thereafter.

43. The withholding of such monies constitutes a material breach of the contract between STANSBURY and LIC Holdings and ARBITRAGE.

44. STANSBURY has sued both LIC Holdings and ARBITRAGE because the BERNSTEINS represented that his employment relationship was with LIC Holdings, the company in which he owned a 10% interest, but STANSBURY'S W-2 statements were issued by ARBITRAGE as his employer.

45. SIMON BERNSTEIN and TED BERNSTEIN are personally liable, jointly and severally, for the material breach of the oral employment contract with STANSBURY as LIC Holdings and/or ARBITRAGE were the alter ego of SIMON BERNSTEIN and TED

BERNSTEIN in that the BERNSTEINS depleted corporate assets for their personal benefit by causing the corporation or corporations to make exorbitant and inappropriate distributions to themselves, family members, and BERNSTEIN family trusts and other entities, at the expense of corporate creditors such as STANSBURY, to wit:

a) SIMON BERNSTEIN and TED BERNSTEIN caused LIC Holdings and/or ARBITRAGE to pay to them at least $3,756,229.00 and $5,225,825.00, respectively, in fiscal 2008 during which time STANSBURY, other than the amount referenced in paragraph 21, was paid nothing;

b) According to Palm Beach County public records, in December of 2007 TED BERNSTEIN purchased a property at 880 Berkeley Street, Boca Raton, Florida 33487, for $4,400,000;

c) According to Palm Beach County public records, on December 28, 2008, TED BERNSTEIN paid off the mortgage in the amount of $486,400.00 on a property he owned at 15807 Menton Bay Court, Saturnia Isles, Delray Beach, Florida 33446;

d) According to Palm Beach County public records, SIMON BERNSTEIN paid off the mortgage on property he and his wife owned, and subsequently transferred by quitclaim deed on May 20, 2008 to the trustee of SHIRLEY'S TRUST, at 7020 Lions Head Lane, Boca Raton, Florida, 33496. The amount of the mortgage pay-off is unknown, but in 2013 the property was listed for sale at $2,399,000;

e) According to Palm Beach County public records, on June 18, 2008, BERNSTEIN FAMILY REALTY, LLC acquired a property located at 2753 N.W. 34 Street, Boca Madera Unit 2, Boca Raton, Florida 33432 (the "Boca Madera Property). On July 8, 2008, SIMON BERNSTEIN loaned $365,000 to BERNSTEIN FAMILY REALTY, LLC. The specific

purpose of the loan is unknown, but SIMON BERNSTEIN received a mortgage on the Boca Madera Property to secure the loan;

f) According to Palm Beach County public records, on May 20, 2008 SIMON BERNSTEIN and his wife transferred by quitclaim deed to the trustee of SHIRLEY'S TRUST a 4,220 square foot oceanfront condominium unit in a complex known as "The Aragon" in Boca Raton, located at 2494 South Ocean Boulevard, Boca Raton, Florida. The mortgage on that property was paid off on September 27, 2010.

g) The legal descriptions for each of the above referenced properties are attached hereto as Exhibit "B."

46. There is due to STANSBURY from such Defendants all amounts due under said contract, together with prejudgment and post-judgment interest on said amounts.

WHEREFORE, Plaintiff prays for judgment against SIMON BERNSTEIN and TED BERNSTEIN declaring that Defendants, LIC Holdings, Inc. and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, are or were the alter ego of SIMON BERNSTEIN and TED BERNSTEIN such that the corporate veil of LIC Holdings and/or ARBITRAGE should be pierced; for judgment against Defendants, LIC Holdings, Inc., ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, in excess of $1,500,000.00 for the amounts due to Plaintiff under the terms of their contract, together with prejudgment and post-judgment interest; for his court costs herein expended and for such other relief as the Court may deem just and proper.

COUNT III - FRAUD IN THE INDUCEMENT- EMPLOYMENT AGREEMENT (Against SIMON BERNSTEIN and TED BERNSTEIN)

47. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

48. At all material times hereto, SIMON BERNSTEIN and TED BERNSTEIN were officers and majority shareholders of LIC Holdings and ARBITRAGE.

49. The statements set forth in paragraphs 18 through 24, above, made by SIMON BERNSTEIN and TED BERNSTEIN, on behalf of and in concert with each other, and as officers and majority shareholders of LIC Holdings and ARBITRAGE, were false statements of material fact that SIMON BERNSTEIN and TED BERNSTEIN knew to be false at the time they were made, as SIMON BERNSTEIN and TED BERNSTEIN never intended to authorize LIC Holdings or ARBITRAGE to pay to STANSBURY the amounts due him as evidenced by the fact that the accountant for LIC Holdings and ARBITRAGE prepared financial worksheets for 2008 showing that the BERNSTEINS would receive compensation, but STANSBURY would not, for fiscal 2008, in direct contravention to their statements and promises to STANSBURY.

50. SIMON BERNSTEIN and TED BERNSTEIN intended for STANSBURY to rely on such statements that he would be ultimately be paid for his productivity in order to induce him into continuing his productive and revenue-generating sales activity as an employee of LIC Holding and/or ARBITRAGE and fraudulently created for STANSBURY the false expectation that STANSBURY would be paid as agreed.

51. STANSBURY in fact relied to his detriment on these false statements and was induced thereby to remain in his employment relationship with LIC Holdings and ARBITRAGE as he continued to sell, with the expectation of payment, products and generate revenue for LIC Holdings and/or ARBITRAGE until 2012, and was further induced not to pursue from LIC Holdings and/ARBITRAGE his right to payment of all amounts due him until after SIMON BERNSTEIN and TED BERNSTEIN had diverted and converted corporate assets for their personal benefit, rendering LIC Holdings, and possibly ARBITRAGE, insolvent.

52. STANSBURY was injured thereby as he was not and has not been compensated for his revenue-generating sales and other performance, and did not seek alternative employment, as a proximate result of his detrimental reliance on these false statements.

WHEREFORE, Plaintiff prays for judgment against Defendants SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, for damages in excess of $1,500,000.00 together with prejudgment and post-judgment interest; for the imposition of an equitable lien and constructive trust on the Bernstein real estate described in paragraph 45 and Exhibit "B" as more fully set forth in Counts VII and VIII of this Second Amended Complaint; for his court costs herein expended; and for such other relief as the Court may deem just and proper. STANSBURY reserves the right to move to amend to request punitive damages in accordance with Florida Law.

COUNT IV - FRAUD IN THE INDUCEMENT - CEDING OF LIC HOLDINGS OWNERSHIP INTEREST (Against Ted Bernstein and LIC Holdings, Inc.)

53. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

54. In the fourth quarter of 2011, TED BERNSTEIN embarked upon a plan to defraud from STANSBURY his 10% ownership interest in LIC Holdings, Inc. As set forth in paragraph 31 above, Defendant TED BERNSTEIN fraudulently induced STANSBURY to prepare and sign a document giving up his 10% interest in and to LIC Holdings, Inc.

55. The ceding of his shares in LIC Holdings, Inc. was procured by fraud and STANSBURY relied upon the representations made by BERNSTEIN with regard to signing the document apparently ceding his stock.

56. It was reasonable for STANSBURY to rely on the representations made by BERNSTEIN because at that time STANSBURY was unaware of the breaches of fiduciary duty and breaches of the oral contract that had taken place.

57. As a result of STANSBURY's reliance, STANSBURY has been damaged by the loss of 10% of the shares of LIC Holdings and the rights and remedies to a shareholder related thereto.

WHEREFORE, Plaintiff prays for a judgment for damages against Defendants BERNSTEIN and LIC Holdings, Inc. for the damages caused by the fraudulent conduct of BERNSTEIN as described herein, together with reasonable costs, pre-judgment interest and any other relief this Court deems just and proper.

COUNT V - CIVIL CONSPIRACY
(Against Simon Bernstein and Ted Bernstein)

58. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, and Counts III and IV, paragraphs 47 through 57, inclusive.

59. SIMON BERNSTEIN and TED BERNSTEIN, individually and as officers and majority shareholders of LIC Holdings and ARBITRAGE, knowingly, willfully, intentionally, and maliciously conspired, agreed, combined and confederated with each other to make fraudulent, false and misleading statements to STANSBURY intended to induce STANSBURY to continue his employment relationship with LIC Holdings and/or ARBITRAGE during 2008 and thereafter, without ever intending to authorize payment to STANSBURY for the amounts he was due, a relationship that generated substantial revenue for LIC Holdings and/or ARBITRAGE and, ultimately, SIMON BERNSTEIN and TED BERNSTEIN.

60. SIMON BERNSTEIN and TED BERNSTEIN, individually and as officers and majority shareholders of LIC Holdings and ARBITRAGE, knowingly, willfully, intentionally, and maliciously conspired, agreed, combined and confederated with each other to make fraudulent, false and misleading statements to STANSBURY intended to induce STANSBURY to delay pursuing his right to payment for all amounts due him until such time after SIMON BERNSTEIN and TED BERNSTEIN had converted and diverted corporate assets rendering LIC Holdings, and possibly ARBITRAGE, insolvent and uncollectible.

61. SIMON BERNSTEIN and TED BERNSTEIN, individually and as officers and majority shareholders of LIC Holdings and ARBITRAGE, knowingly, willfully, intentionally, and maliciously conspired, agreed, combined and confederated with each other to fraudulently induce STANSBURY, through false and misleading statements, to surrender and cede, without fair value payment, his 10% interest in LIC Holdings.

62. The numerous fraudulent, false and misleading statements made by SIMON BERNSTEIN and TED BERNSTEIN were all overt acts in furtherance of the conspiracy.

63. STANSBURY was injured thereby in that, as a proximate result of the conspiratorial conduct of SIMON BERNSTEIN and TED BERNSTEIN, he continued in his employment with LIC Holdings and/or ARBITRAGE, without payment of the compensation due him, he delayed pursuit of his right to collect the amounts due him, and ceded his 10% interest in LIC Holdings.

WHEREFORE, Plaintiff prays for judgment against Defendants, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, for damages in excess of $1,500,000.00 together with prejudgment and post-judgment interest; for the imposition of an equitable lien and constructive trust on the Bernstein real estate described in paragraph 45 and Exhibit "B" as more fully set forth in Counts VII and VIII of this Second Amended Complaint;

for his court costs herein expended; and for such other relief as the Court may deem just and proper. STANSBURY reserves the right to move to amend to request punitive damages in accordance with Florida Law.

COUNT VI - CIVIL THEFT
(AGAINST ARBITRAGE INTERNATIONAL MARKETING, LLC)

64. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

65. This is an action for Civil Theft under Chapter 772, Florida Statutes, more specifically §772.11, Fla.Stat.

66. In February, 2012 and March, 2012, Defendant ARBITRAGE intercepted two separate checks made payable to William STANSBURY intended as payment to STANSBURY for matters arising wholly outside his business transactions with the BERNSTEINS, LIC Holdings and ARBITRAGE.

67. Notwithstanding that the checks made payable to William STANSBURY was for sums due STANSBURY by a third party not in connection with the aforesaid business transactions, ARBITRAGE and/or someone acting on its behalf, caused the negotiation of STANSBURY's checks, wrongfully endorsing the checks and retaining the sums that should have been payable to STANSBURY.

68. As a result of the foregoing, Defendant ARBITRAGE has been guilty of criminal theft by conversion with the criminal intent to steal his money and deprive STANSBURY of his possession and use thereof.

69. Written demand for payment of all amounts due STANSBURY has been made to Defendants, more than 30 days preceding the filing of this Complaint, to no avail. A copy of the demand letter is attached hereto as Exhibit "A."

WHEREFORE, Plaintiff prays for judgment against Defendant, ARBITRAGE for three times the full amount of the checks made payable to STANSBURY, together with pre-judgment interest and post-judgment interest, attorneys' fees, court costs and any other relief this Court deems just and proper.

COUNT VII - CONVERSION

70. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

71. Further, during 2012, Defendants TED BERNSTEIN, SIMON BERNSTEIN, LIC Holdings, Inc., ARBITRAGE, or someone acting on their behalves, received and cashed in excess of $30,000.00 worth of commission checks otherwise payable to Plaintiff.

WHEREFORE, Plaintiff prays for judgment for damages against Defendant, ABRITRAGE, SIMON BERNSTEIN, LIC Holdings, Inc. and TED BERNSTEIN, together with pre-judgment interest and post-judgment interest, court costs and any other relief this Court deems just and proper.

COUNT VIII - UNJUST ENRICHMENT
(LIC HOLDINGS, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN)

72. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, paragraphs 1 through 34, inclusive, and the allegations of Count III.

73. STANSBURY conferred a benefit on LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN by continuing his employment relationship with LIC Holdings and/or ARBITRAGE as a direct and proximate result of the fraudulent representations of SIMON BERNSTEIN and TED BERNSTEIN, as more fully set forth in Count III herein.

74. STANSBURY's continued employment resulted in the generation of substantial revenue for LIC Holdings and/or ARBITRAGE, which was then diverted and converted by the BERNSTEINS for their own personal use to the financial detriment of STANSBURY.

75. LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders of LIC Holdings and ARBITRAGE, had knowledge of the benefit of STANSBURY's continued employment with LIC Holdings and/or ARBITRAGE as they fraudulently induced STANSBURY to continue his productive employment activity while never intending to pay him the compensation he was due.

76. LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN accepted the revenues generated by STANSBURY in his capacity as employee.

77. There exists no adequate remedy at law as the conduct of the BERNSTEINS in diverting and converting the corporate assets of LIC Holdings and/or ARBITRAGE has resulted in the insolvency of LIC Holdings and possibly ARBITRAGE.

78. The circumstances are such that it would be inequitable for LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN to retain the benefits of the STANSBURY's productive revenue-generating labor without paying fair value for it.

WHEREFORE, Plaintiff prays for judgment against Defendants, LIC Holdings, Inc., ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, in an amount in excess of $1,500,000.00 which the evidence shows Plaintiff is entitled for the fair value of the services Plaintiff provided to LIC Holdings and ARBITRAGE , together with prejudgment and post-judgment interest; for his court costs herein expended and for such other relief as the Court may deem just and proper.

COUNT IX - EQUITABLE LIEN (AS TO SIMON BERNSTEIN, TED BERNSTEIN, BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT)

79. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, the allegations set forth in paragraphs 1 through 34, paragraph 45 and Counts III and VII, above.

80. STANSBURY has alleged essential facts in his General Allegations and Count III that show that SIMON BERNSTEIN and TED BERNSTEIN committed fraud by fraudulently inducing STANSBURY to continue in an employment relationship that proved to be highly lucrative for SIMON BERNSTEIN and TED BERNSTEIN.

81. STANSBURY has alleged essential facts in his General Allegations and Count VII that show that SIMON BERNSTEIN and TED BERNSTEIN were unjustly enriched by STANSBURY's uncompensated continued employment with LIC Holdings and/or ARBITRAGE.

82. The conduct of the BERNSTEINS in depleting the corporate assets of LIC Holdings and ARBITRAGE for their personal benefit by causing the corporation or corporations to make exorbitant and inappropriate distributions to themselves, family members, and BERNSTEIN FAMILY REALT, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT, at the expense of corporate creditors such as STANSBURY, rendered LIC Holdings and possibly ARBITRAGE insolvent. Therefore STANSBURY has no adequate remedy at law.

83. BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUSTA AGREEMENT were the transferees of some of the corporate assets of LIC Holdings and/or ARBITRAGE wrongfully diverted and converted by the BERNSTEIN and thus are proper parties to this action and this Count.

84. An equitable lien on the real estate described in paragraph 45 herein and Exhibit "B" attached hereto is justified as an equitable remedy for the wrongful conduct of the BERNSTEINS.

WHEREFORE, Plaintiff prays for the Court to declare and establish an equitable lien in favor of Plaintiff in an amount equal to the funds wrongfully diverted, on the property described in paragraph 45 and Exhibit "B" attached hereto, and on all other assets of the Defendants named in this Count IX, or third parties as yet unknown, which assets have been purchased wholly or in part, improved or benefitted by the diverted funds due Plaintiff, together with his costs herein expended, and such other and further relief as this Court may deem just and proper.

COUNT X - CONSTRUCTIVE TRUST (AS TO SIMON BERNSTEIN, TED BERNSTEIN, BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT)

85. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 79 through 84 above.

WHEREFORE, Plaintiff prays for the Court to declare and establish a constructive trust in favor of Plaintiff on the property described in paragraph 45 and Exhibit "B" attached hereto in an amount equal to the funds wrongfully diverted and on all assets of Defendants or third parties as yet unknown, which assets have been purchased wholly or partly, improved or mortgaged by the diversion of said funds due Plaintiff. Plaintiff further prays for an award of court costs and such other and further relief as the Court may deem just and proper.

JURY DEMAND

86. Plaintiff reiterates his demand for trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc. and Arbitrage International Management, LLC,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 20 day of November, 2013.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Telephone: (561) 734-5552
Facsimile: (561) 734-5554
pfeaman@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No. 0260347

The Law Offices
of
PETER M. FEAMAN, P.A.
Strategic Counselor. Proven Advocate.™

Main Office:
3615 Boynton Beach Blvd.
Boynton Beach, FL 33436



Branch Office:
7900 Glades Road
Boca Raton, FL 33434

Peter M. Feaman, Esq.
Nancy E. Guffey, Esq.
Of Counsel

Telephone: (561) 734-5552
Facsimile: (561) 734-5554
pfeaman@feamanlaw.com

June 20, 2012

Via Certified Mail, Return Receipt Requested

PERSONAL and CONFIDENTIAL
Mr. Ted Bernstein, President
LIC Holdings, Inc.
950 Peninsula Corp Circle
Suite 3010
Boca Raton, FL 33487

Re: William (Bill) Stansbury

Dear Mr. Bernstein:

The undersigned represents William (Bill) Stansbury and we are writing this letter on his behalf. Mr. Stansbury received your proposed letter agreement reflecting LIC Holdings' proposal to indemnify its shareholders concerning policies sold under the Cambridge Financing Program. As a result of your proposal, Mr. Stansbury has reviewed with me in detail his dealings with you and your companies over the past 4 to 5 years.

After reviewing the facts with Mr. Stansbury, some of which will be summarized below, I was shocked that he had not consulted legal counsel until now. Be that as it may, and based upon the facts presented to us, we believe you have engaged in fraud, civil theft, breaches of fiduciary duties, and breach of contract, just to name a few. The purpose of this letter is to a). respond to your indemnity proposal and b). request that you pass this letter on to your counsel immediately in the off-chance that these very serious matters can be resolved prior to the filing of legal action. The issues can be summarized as follows:

1. The first issue concerns you and your company's failure to pay salary compensation to Mr. Stansbury. Mr. Stansbury has been making inquiries concerning this for the past 5 months, but to no avail. Mr. Stansbury's claim for unpaid salary arises from three categories:

EXHIBIT A

a. Failure to pay salary based on net retained commissions.

i. Based upon reports prepared by your company for the period of 2007 through 2011, LIC Holdings, Inc. and/or Arbitrage International Holdings, n/k/a Arbitrage International Management, LLC, received $35,384,246.00 in net retained commissions. According to Mr. Stansbury's salary arrangement, he is entitled to 15% of those net retained commissions, which amounts to $5,307,636.90. During this time period, Mr. Stansbury's salary compensation was $2,844,910.00. The shortfall in salary owed to Mr. Stansbury is $2,462,726.90.

ii. There is salary compensation owed to Mr. Stansbury as a result of bridge loans in 2008. You received a $2,000,000.00 settlement in 2010 resulting from the resolution of a lawsuit involving Global Secured Capital. Mr. Stansbury is entitled to 15% of those funds, which is $300,000.00.

iii. In addition, you received $507,891.00 in commissions in connection with the Biviano matter. Mr. Stansbury is entitled to 15% of those funds, which is $76,183.65.

iv. In April of 2012, you received three commissions totaling approximately $200,000.00 in the Levine, Wiss and Berley matters. Mr. Stansbury has been requesting payment of this for weeks, again to no avail. Mr. Stansbury is due salary compensation for these items in the amount of $30,000.00.

Therefore, Mr. Stansbury's total claim for salary arising out of net retained commissions is approximately $2,868,910.55.

The liability for payment of this salary is not limited to LIC Holdings, Inc. or Arbitrage International Management, LLC. This liability also flows to you individually as a result of your breaches of your fiduciary duty owed to Mr. Stansbury and utter failure to abide by corporate governance standards, which conduct is more particularly described below.

b. Mr. Stansbury is also due unpaid salary based on 15% of all renewal commissions since 2008. Mr. Stansbury's salary claim for renewal commissions cannot as yet be determined with specificity due to the fact that you and your office have been opening mail directed to Mr. Stansbury and negotiating checks made payable to him by falsifying his endorsement and depositing those checks into accounts which only you control. This conduct constitutes civil theft and breach of fiduciary duty. We believe this claim amounts to hundreds of thousands of dollars.

c. Salary compensation for 2008. Mr. Stansbury has recently learned that you and Mr. Simon Bernstein received $8,982,124.00 in salary in 2008. By contrast, Mr. Stansbury received $420,018.00, paid to him in January 2008, based on policies sold in 2007. He received zero (no salary compensation) for his 2008 production. It is obvious that you and Simon treated your corporations as personal ATM machines, while completely ignoring your fiduciary

responsibilities to your employee and minority shareholder, Mr. Stansbury. It further appears that after the exorbitant salaries were paid to you, you then loaned the money back to the corporation at an interest rate significantly above market rates in order to meet the cash flow needs of the various entities, again, clearly disregarding your corporate governance responsibilities.

2. Indemnification issues.

Mr. Stansbury has been served with three lawsuits from Phoenix Insurance Company and one from Mr. Wright seeking indemnification as a result of agent misconduct which was in no way attributable to the conduct of Mr. Stansbury. Although all of these matters have been settled, because he was the qualifying agent of record for other policies, he could be the subject of future litigation for refunds of commissions paid. All of these commissions were paid over to you or your companies.

The Indemnification Agreement which you sent to Mr. Stansbury is completely insufficient. You have a duty as a matter of law to indemnify Mr. Stansbury. Your offer of future indemnity is contingent upon "all" commissions that have been received by LIC's present or past shareholders be turned over to LIC. This is nothing short of extortion. Further, your second paragraph states that LIC is "presently insolvent" and has a "negative net worth." You then conclude with the sentence that with the indemnification agreement in place, LIC "may" have sufficient funds to meet its current obligations. Therefore, a simple indemnification from LIC Holdings to Mr. Stansbury is insufficient. Any such indemnification would have to be personally guaranteed by you and Mr. Simon Bernstein.

3. Unauthorized interception of U.S. Mail.

I have been given the understanding that your office has been opening mail directed to Mr. Stansbury personally. This is a federal offense and also constitutes a breach of the fiduciary duty you owe to Mr. Stansbury as an employee and minority shareholder.

There has been no accounting to Mr. Stansbury for any of the checks which may have been sent to him personally on which his signature has been forged, the checks cashed and placed out of the reach of Mr. Stansbury. In 2012, Mr. Stansbury has been receiving checks from Phoenix Life Insurance Company and TransAmerica Life Insurance Company. Mr. Stansbury has been holding these checks. They have now been remitted to the undersigned as attorney for Mr. Stansbury. This office is holding these funds in a separate interest-bearing trust account pending the resolution of this matter.

With regard to all of the other insurance companies for whom Mr. Stansbury is listed as the qualifying agent, he has now informed those companies that all future renewal commissions paid to him personally be sent to Mr. Stansbury at his home address. These funds will then be remitted to the undersigned counsel of record for Mr. Stansbury. We will place these funds in a separate interest-bearing trust account as well. Any attempts by you to contact these insurance

companies will be considered a tortious interference of his business relationship and such activity will be added as a claim in any future legal proceedings.

4. Shareholder status.

Mr. Stansbury has been a 10% shareholder of LIC Holdings, Inc., pursuant to the terms of a Shareholders Agreement. On behalf of Mr. Stansbury, demand is hereby made, pursuant to Florida Statute 607.1602, for inspection of the corporate records including the following:

I. Minutes of the Board of Directors meetings from January 1, 2008 to the present.

II. Minutes of Shareholders' meetings from January 1, 2008 to the present.

III. Records of any actions taken by the Shareholders and/or the Board of Directors without a meeting, from January 1, 2008 to the present.

IV. Accounting and financial records of LIC Holdings, Inc., Arbitrage International Management, LLC, formerly known as Arbitrage International Holdings, LLC, and all other subsidiary or affiliated companies under your control, including, without limitation, income tax returns, general ledgers, balance sheets, profit and loss statements, stock books, bank statements, loan agreements or guarantees, and any other financial books and records from January 1, 2008 to the present.

Mr. Stansbury is seeking to inspect these records in good faith and for the purpose of determining if misappropriation of corporate assets for improper purposes has previously taken or is presently taking place.

I have been made aware of a letter dated December 22, 2011 in which Mr. Stansbury purportedly "ceded" his shares of stock in LIC Holdings, Inc. back to the company. This letter was obtained under false pretenses and is not recognized by Mr. Stansbury as validly conveying his ownership interest in LIC Holdings, Inc.

Please have your legal counsel contact us within ten (10) days. Should we fail to receive a response within that time, Mr. Stansbury will take legal action to protect his rights and interests.

Very truly yours,

PETER M. FEAMAN, P.A.

By: Peter M. Feaman

Peter M. Feaman

PMF/mk
cc: William Stansbury
CC Riggs (e-mail)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Ted Bernstein, Pres.
LIC Holdings, Inc.
950 Peninsula Corp. Cir.
Suite 3010
Boca Raton, FL 33487

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label) 7011 0110 0000 6015 5239

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

LEGAL DESCRIPTIONS

880 Berkeley, Boca Raton, FL : A portion of Lots 40 and 41, Block 1, BEL MARRA, as recorded in Plat Book 25, Page 30, of the Public Records of Palm Beach County, Florida.

15807 Menton Bay Court, Delray Beach, FL: Lot 139, SATURNIA ISLES – PLAT ONE, according to the plat thereof, as recorded in Plat Book 91, at Page 108 of the Public Records of Palm Beach County, Florida.

7020 Lions Head Lane, Boca Raton, FL: Lot 781, ST. ANDREWS COUNTRY CLUB, PLAT NO. 14, according to the Plat thereof, as recorded in Plat Book 57, Pages 132-135, inclusive, of the Public Records of Palm Beach County, Florida.

2753 NW 34th St., Boca Raton, FL: Lot 68, Block G, BOCA MADERA Unit 2, according to the Plat thereof, recorded in Plat Book 32, Pages 59 and 60, of the Public Records of Palm Beach County, Florida

2494 So. Ocean Blvd., Boca Raton, FL: Condominium Parcel Number C5 o the Center Building of ARAGON CONDOMINIUM according to the Declaration of Condominium thereof recorded in Official Records Book 8921, Page 1267 of the Public Records of Palm Beach County, Florida.

EXHIBIT "B"

Filing # 9051696 Electronically Filed 01/10/2014 05:12:14 PM

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.

_____/

CIVIL DIVISION

CASE NO: 502012CA013933 MB AA

DIVISION: BLANC

MOTION TO WITHDRAW AS COUNSEL OF RECORD

COME NOW, Mark R. Manceri, Esq., and Mark R. Manceri, P.A., pursuant to Rule 2.505 of the Florida Rules of Judicial Administration and hereby file this their Motion to Withdraw as Counsel of Record and in support thereof state, as follows:

1. MARK R. MANCERI, P.A. was retained by Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon Bernstein; and Bernstein Family Realty LLC (hereinafter the "Clients") to represent them in these proceedings.

2. MARK R. MANCERI, ESQ. of MARK R. MANCERI, P.A. was the attorney responsible for rendering the legal services to the Clients.

3. Professional consideration(s) has arisen which prevent(s) the continued

MARK R. MANCERI, P.A.● 2929 East Commercial Blvd.● Suite 702 ● Fort Lauderdale, FL 33308 ● (954) 491-7099

representation of the Clients.

4. The mailing and e-mail addresses and the telephone numbers of the Clients are as follows:

Donald R. Tescher, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: dtescher@tescherspallina.com; telephone number (561) 997-7008.

Robert L. Spallina, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: rspallina@tescherspallina.com; telephone number (561) 997-7008.

Bernstein Family Realty, LLC, c/o Janet Craig, CTFA, Senior Vice President & Compliance Office, Oppenheimer Trust Company, 18 Columbia Turnpike, Florham Park, NJ 07932, e-mail: Janet.Craig@opco.com; telephone number (973) 245-4635..

WHEREFORE, MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ., hereby request that this Honorable Court enter an Order consistent with the relief requested herein allowing MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ. to withdraw and any other relief this Honorable Court deems just, equitable and proper.

MARK R. MANCERI, P.A.
Attorney for Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives and Bernstein Family Realty, LLC
2929 East Commercial Blvd., Suite 702
Ft. Lauderdale, FL 33308
Telephone: (954) 491-7099
E-mail: mrmlaw@comcast.net
mrmlaw1@gmail.com

By: _____
Mark R. Manceri, Esq.
Florida Bar No. 444560

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) to all parties on the following Service List, this 10th day of January, 2014.

Mark R. Manceri, Esq.

SERVICE LIST

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3615 West Boynton Beach Blvd.
Boynton Beach, Florida 33436

Alan B. Rose, Esq.
Page, Mrachek, Fitzgerald, et.al.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401

Donald R. Tescher, Co-Personal Representative
4855 Technology Way, Suite 720
Boca Raton, Florida 33431

Robert L. Spallina, Co-Personal Representative
4855 Technology Way, Suite 720
Boca Raton, Florida 33431

Bernstein Family Realty, LLC
c/o Janet Craig, CTFA
Senior Vice President & Compliance Office
Oppenheimer Trust Company
18 Columbia Turnpike
Florham Park, NJ 07932

Filing # 9072838 Electronically Filed 01/13/2014 11:20:50 AM

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CIVIL DIVISION

CASE NO: 502012CA013933 MB AA

DIVISION: BLANC

MOTION TO WITHDRAW AS COUNSEL OF RECORD

COME NOW, Mark R. Manceri, Esq., and Mark R. Manceri, P.A., pursuant to Rule 2.505 of the Florida Rules of Judicial Administration and hereby file this their Motion to Withdraw as Counsel of Record and in support thereof state, as follows:

1. MARK R. MANCERI, P.A. was retained by Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon Bernstein; and Bernstein Family Realty LLC (hereinafter the "Clients") to represent them in these proceedings.

2. MARK R. MANCERI, ESQ. of MARK R. MANCERI, P.A. was the attorney responsible for rendering the legal services to the Clients.

3. Professional consideration(s) has arisen which prevent(s) the continued

MARK R. MANCERI, P.A.• 2929 East Commercial Blvd.• Suite 702 • Fort Lauderdale, FL 33308 • (954) 491-7099

representation of the Clients.

4. The mailing and e-mail addresses and the telephone numbers of the Clients are as follows:

Donald R. Tescher, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: dtescher@tescherspallina.com; telephone number (561) 997-7008.

Robert L. Spallina, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: rspallina@tescherspallina.com; telephone number (561) 997-7008.

Bernstein Family Realty, LLC, c/o Janet Craig, CTFA, Senior Vice President & Compliance Office, Oppenheimer Trust Company, 18 Columbia Turnpike, Florham Park, NJ 07932, e-mail: Janet.Craig@opco.com; telephone number (973) 245-4635..

WHEREFORE, MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ., hereby request that this Honorable Court enter an Order consistent with the relief requested herein allowing MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ. to withdraw and any other relief this Honorable Court deems just, equitable and proper.

MARK R. MANCERI, P.A.
Attorney for Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives and Bernstein Family Realty, LLC
2929 East Commercial Blvd., Suite 702
Ft. Lauderdale, FL 33308
Telephone: (954) 491-7099
E-mail: mrmlaw@comcast.net
mrmlaw1@gmail.com

By: _____
Mark R. Manceri, Esq.
Florida Bar No. 444560

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) to all parties on the following Service List, this 13th day of January, 2014.

Mark R. Manceri, Esq.

SERVICE LIST

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3615 West Boynton Beach Blvd.
Boynton Beach, Florida 33436

Alan B. Rose, Esq.
Page, Mrachek, Fitzgerald, et.al.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401

Donald R. Tescher, Co-Personal Representative
4855 Technology Way, Suite 720
Boca Raton, Florida 33431

Robert L. Spallina, Co-Personal Representative
4855 Technology Way, Suite 720
Boca Raton, Florida 33431

Bernstein Family Realty, LLC
c/o Janet Craig, CTFA
Senior Vice President & Compliance Office
Oppenheimer Trust Company
18 Columbia Turnpike
Florham Park, NJ 07932

Filing # 9414158 Electronically Filed 01/22/2014 12:12:25 PM

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

WILLIAM E. STANSBURY,

Plaintiff.

vs.

TED S. BERNSTEIN, individually and as TRUSTEE of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; DONALD R. TESCHER and ROBERT L. SPALLINA as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SIMON L. BERNSTEIN TRUST dated July 25, 2012; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC

Respondents.
_____/

CIVIL DIVISION

CASE NO. 502012CA013933 MB AA

DIVISION: BLANC

CONSENT AND JOINDER TO MOTION TO WITHDRAW AS COUNSEL OF RECORD

I, ROBERT L. SPALLINA, ESQ., as a co-personal representative of the Estate of Simon L. BERNSTEIN, and as counsel for the co-personal representative, Donald R. Tescher, of the Estate of Simon L. BERNSTEIN, hereby consent to and join in the Motion to Withdraw as Counsel of Record filed by Mark R. Manceri, Esq. and Mark. R. Manceri, P.A., on January 10, 2014, which motion has been set for hearing on January 28, 2014, at 8:45 a.m.

DATED this 22 day of January, 2014.

TESCHER & SPALLINA, P.A.

By: _____
ROBERT L. SPALLINA, ESQUIRE
Florida Bar No. 497381
4855 Technology Way, St. 720
Boca Raton, FL 33431
Telephone: 561-997-7008
rspallina@tescherspallina.com
kmoran@tescherspallina.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) and U.S. Mail, as noted, to all parties on the following Service List, this 22 day of January, 2014.

Robert L. Spallina, Esq.

SERVICE LIST

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3615 West Boynton Beach Boulevard
Boynton Beach, Florida 33436

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

Bernstein Family Realty, LLC
c/o Janet Craig, CTFA
Senior Vice President & Compliance Office
Oppenheimer Trust Company
18 Columbia Turnpike
Florham, NJ 07932

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

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CIVIL DIVISION

CASE NO: 502012CA013933 MB AA

DIVISION: BLANC

CLERK:
Please update Attorney or Address Information

FILED
2014 JAN 31 PM 3:53
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL

ORDER ON MOTION TO WITHDRAW AS COUNSEL OF RECORD

THIS CAUSE came before the Court on January 28, 2014 on the Motion to Withdraw as Counsel of Record for Donald L. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon Bernstein; and Bernstein Family Realty, LLC, filed by MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ., and the Court having reviewed the file, heard argument of counsel and being otherwise fully advised in the premises, it is hereupon ORDERED AND ADJUDGED, as follows:

1. The Motion is granted.

2. MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ. are hereby relieved as counsel of record for Donald L. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon Bernstein; and Bernstein Family Realty, LLC.

3. The Co-Personal Representatives and Bernstein Family Realty, LLC shall have 30

days to obtain new counsel.

4. In the meantime, all future pleadings or documents shall be served upon Donald L. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon Bernstein; and Bernstein Family Realty, LLC, at their last known address:

Donald R. Tescher
4855 Technology Way, Suite 720
Boca Raton, Florida 33431
E-mail: dtescher@tescherspallina.com

Robert L. Spallina
4855 Technology Way, Suite 720
Boca Raton, Florida 33431
E-mail: rspallina@tescherspallina.com

Bernstein Family Realty, LLC
c/o Janet Craig, CTFA, Senior Vice President & Compliance Office
Oppenheimer Trust Company
18 Columbia Turnpike
Florham Park, NJ 07932
E-mail: Janet.Craig@opco.com

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida, this 28 day of January, 2014.

PETER D. BLANC
CIRCUIT COURT JUDGE

Copies furnished to:
Mark R. Manceri, Esq.
Alan B. Rose, Esq.
Peter Feaman, Esq.
Donald R. Tescher, as Co-Per. Rep.
Robert L. Spallina, as Co. Per. Rep.
Bernstein Family Realty, LLC

Filing # 10715991 Electronically Filed 02/26/2014 02:05:49 PM

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CIVIL DIVISION

CASE NO: 502012CA013933 MB AA

DIVISION: BLANC

MOTION FOR ATTORNEY'S FEES AND COSTS

COME NOW, Mark R. Manceri, P.A. (hereinafter the "Movant"), by and through it's undersigned attorney and hereby files this Motion for Attorney's Fees and Costs and in support thereof states, as follows:

1. Pursuant to the Florida Probate Code, the Movant rendered services which provided a benefit to the Estate of Simon L. Bernstein.

2. Respondents, Donald Tescher and Robert Spallina, as Co-Personal Representatives retained Mark R. Manceri, P.A. to represent them in these proceedings and agreed to pay attorney's fees and costs in furtherance of that representation.

MARK R. MANCERI, P.A. • 2929 East Commercial Blvd. • Suite 702 • Fort Lauderdale, FL 33308 • (954) 491-7099

3. Due to the attorney-client nature of the entries in the Statements for Services Rendered issued by the Movant to the Clients, they are not attached hereto. Movant requests that any examination of same they be made in camera.

WHEREFORE, the Movant hereby request that this Honorable Court enter an Order consistent with the relief requested herein and award of attorney's fees and costs and any other relief this Honorable Court deems just, equitable and proper.

MARK R. MANCERI, P.A.
2929 East Commercial Blvd., Suite 702
Ft. Lauderdale, FL 33308
Telephone: (954) 491-7099
E-mail: mrmlaw@comcast.net
mrmlaw1@gmail.com

By: _____
Mark R. Manceri, Esq.
Florida Bar No. 444560

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) to all parties on the following Service List, this 26th day of February, 2014.

_____
Mark R. Manceri, Esq.

SERVICE LIST

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3615 West Boynton Beach Blvd.
Boynton Beach, Florida 33436

Alan B. Rose, Esq.
Page, Mrachek, Fitzgerald, et.al.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401

Donald R. Tescher, Co-Personal Representative
4855 Technology Way, Suite 720
Boca Raton, Florida 33431

Robert L. Spallina, Co-Personal Representative
4855 Technology Way, Suite 720
Boca Raton, Florida 33431

Bernstein Family Realty, LLC
c/o Janet Craig, CTFA
Senior Vice President & Compliance Office
Oppenheimer Trust Company
18 Columbia Turnpike
Florham Park, NJ 07932

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*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

CASE NO: 50 2012 CA 013933 MB AA

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants. /

DEFENDANT'S, TED S. BERNSTEIN, MOTION TO STAY PROCEEDINGS

Defendant, Ted S. Bernstein, ("Defendant"), moves this Court to stay proceedings in this case for 30 to 45 days:

1. Simon L. Bernstein, while he was alive, was a Defendant in this action. After the death of Simon, his personal representatives and the trustees of his trust were named and/or substituted in as parties defendant, and were defending the case through counsel. In addition, an entity, Bernstein Family Realty, LLC, is a Defendant who was represented by counsel.

2. On January 28, 2014, this Court entered an Order permitting the withdrawal of counsel for the Estate and Trust of Simon L. Bernstein, as well as for Bernstein Family Realty, LLC.

3. Due to the resignation of the personal representatives of the Estate, there currently is no one capable of defending the Estate or Trust in this action, nor capable of retaining counsel.

Ted Bernstein has moved for the appointment of a personal representative before the probate court, but that motion was opposed, for whatever reason, by the Plaintiff in this action, William Stansbury. As a result of Mr. Stansbury's intervention, the probate court has not appointed a successor personal representative and needs to conduct a hearing, some time in the next 30 to 45 days. Until such time, there will be no one duly authorized to defend the Estate or Trust.

4. This stay will briefly delay these proceedings, but is necessary given the unusual circumstances of this case.

CERTIFICATE OF GOOD FAITH CONFERENCE WITH OPPOSING COUNSEL

The undersigned have conferred with Stansbury's counsel in connection with this request, but have been unable to reach agreement on a stay or other resolution of this motion.

WHEREFORE, Defendant requests that this Court stay these proceedings for a period of 30 to 45 days, or such earlier time as the probate court appoints a successor personal representative.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to the Service List set forth below by: ■ E-mail Electronic Transmission; ☐ Facsimile; ☐ U.S. Mail; ☐ Overnight Delivery; ☐ Hand-delivery, this 5th day of March, 2014.

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Counsel for Ted S. Bernstein; LIC Holdings, Inc.; Arbitrage International Management, LLC; and Shirley Bernstein Trust

By: /s/ Alan B. Rose
Alan B. Rose (Florida Bar No. 961825)
N. Patrick Hely (Florida Bar No. 009146)

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Estate of Simon Bernstein

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Estate of Simon Bernstein

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*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

OBJECTION OF PLAINTIFF WILLIAM E. STANSBURY TO THE MOTION TO STAY PROCEEDINGS FILED BY DEFENDANT TED S. BERNSTEIN

Plaintiff, William E. Stansbury ("Stansbury"), by and through his undersigned counsel, files his Objection to the Motion to Stay Proceedings filed by Defendant Ted S. Bernstein ("Bernstein") for the following reasons:

1. Bernstein has no standing to request a stay arising out of matters that affect the Estate of his deceased father, Simon Bernstein, which is a co-defendant in this action ("the Estate"). Whether or not any one is capable of defending the Estate or Trust in this action or is capable of retaining counsel for either is an issue for those respective parties to bring before this Court, not Bernstein. This case has had limited activity in recent months due to the necessity of

pursuing matters in the probate court that directly or indirectly may affect the outcome of this case. Through this motion Bernstein seeks further delay.

2. Bernstein makes several inaccurate and misleading representations in his motion in an attempt to portray Plaintiff as the party responsible for the current status of the Estate of Simon Bernstein, trying to blame Plaintiff for his "need" to request this stay. Bernstein's attempt to make Mr. Stansbury the "bad guy" is disingenuous at best. The misstatements cannot go unchallenged.

3. Bernstein states: "Ted Bernstein has moved for the appointment of a personal representative before the probate court, but that motion was opposed, **for whatever reason**, by the Plaintiff in this action, William Stansbury. **As a result of Mr. Stansbury's intervention**, the probate **court has not appointed a successor** personal representative **and needs to conduct a hearing, some time the next 30 to 45 days.** Until such time there is and will be no one duly authorized to defend the Estate." (Emphasis added.) (*See,* Ted Bernstein's Motion to Stay Proceedings, paragraph 3.)

4. The assertion is replete with factual inaccuracies:

a. Ted Bernstein filed <u>two</u> Motions in the probate court in the Estate: a Motion to Appoint a Curator or Administrator Ad Litem, and a Petition to Appoint a Successor Personal Representative. Bernstein failed to inform Court that he moved to have <u>himself</u> appointed Curator or Successor Personal Representative.

b. Plaintiff Stansbury did not "intervene," as Bernstein phrases it. Rather, Plaintiff <u>objected</u> to the appointment of Bernstein as Curator or Successor Personal Representative on the grounds that numerous allegations of misconduct in the Estate of Shirley Bernstein and in other contexts, along with conflicts of interest arising out of this case,

disqualified him from serving as fiduciary in his father's estate. Additionally, Plaintiff Stansbury filed a similar Motion, as an Interested Party, for the Appointment of a Curator or, for the appointment of Eliot Bernstein, Ted's brother, as Successor Personal Representative or, alternatively for the appointment of an Independent Third Party Successor Personal Representative. (See Motion attached as Exhibit "A," [without exhibits].)

c. Two hearings on these motions were held on February 19 and February 25, respectively. Bernstein's motions were denied (See Transcript of 2/19/14 hearing, page 5, lines 17-18, Exhibit "B" attached) and Plaintiff's Motion to Appoint a Curator was granted (See Transcript, Page 6, line 16, Exhibit "B" attached). A Curator was appointed. (See Order Appointing Curator attached hereto as Exhibit "C.") Therefore, as of the date of the filing of his Motion to Stay Proceedings, Bernstein knew exactly why Stansbury opposed his Motion and Petition: he objected to having Defendant Ted Bernstein serve as fiduciary of the Estate of Simon Bernstein.

d. Additionally, contrary to Bernstein's suggestion that it is Plaintiff Stansbury's fault that the probate court did not appoint a personal representative, there is nothing in the record to suggest anything of the kind. In fact, the court appointed a fiduciary—a Curator, Attorney Benjamin Brown—to act on behalf of the Estate. Additionally, the probate court has never stated on the record or otherwise that it needed to conduct a hearing in the next 30 to 45 days for any reason, let alone to appoint a Successor Personal Representative.

5. This case needs to move forward. Defendant Ted Bernstein should not be able to benefit from his misstatements and misrepresentations by convincing this Court under such circumstances to impose even more delay.

WHEREFORE, Plaintiff, William E. Stansbury respectfully requests that Defendant Ted S. Bernstein's Motion to Stay Proceedings be denied, for his costs herein expended including reasonable attorney fees, and for such other relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; at bbrown@matbrolaw.com to Benjamin P. Brown, Esq., 625 North Flagler Drive, Suite 401, West Palm Beach, FL 33401-402504; and at janet.craig@opco.com to Bernstein Family Realty, LLC, c/o Janet Craig, CTFA, Sr. V.P. & Compliance Officer, Oppenheimer Trust Company, 18 Columbia Turnpike, Florham Park, NJ 07932 on this 10th day of March, 2014.

PETER M. FEAMAN, P.A.
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By: _____
Peter M. Feaman
Florida Bar No.: 0260347

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

IN RE:

Case No.: 50 2012 CP 004391 SB
JUDGE MARTIN COLIN

ESTATE OF SIMON
BERNSTEIN,
Deceased. Division: IY
_____/

RESPONSE IN OPPOSITION TO MOTION FOR APPOINTMENT OF TED BERNSTEIN AS CURATOR AND MOTION FOR THE APPOINTMENT OF ELIOT BERNSTEIN AS CURATOR OR SUCCESSOR PERSONAL REPRESENTATIVE OR, IN THE ALTERNATIVE, FOR APPOINTMENT OF AN INDEPENDENT THIRD PARTY AS SUCCESSOR PERSONAL REPRESENTATIVE OR CURATOR

COMES NOW Petitioner, William E. Stansbury ("Stansbury"), an unsecured creditor and "Interested Person," pursuant to the §731.201(23) Fla. Stat. (2013), by and through his undersigned counsel, and files this Response in Opposition to Motion for Appointment of Ted Bernstein as Curator and Motion for the Appointment of Eliot Bernstein as Curator or Successor Personal Representative or, in the Alternative, for Appointment of an Independent Third Party as Successor Personal Representative or Curator. In support, Petitioner states as follows:

1. The currently serving Co-Personal Representatives of the Estate, Donald R. Tescher and Robert L. Spallina have petitioned this Court for Resignation and Discharge. In considering the resignation, the Court, under the provisions of Fla. Prob. R. 5.430(d), is required to determine the necessity of appointing a successor fiduciary.

2. In this Estate, the Court is required to appoint a successor fiduciary since both Co-Personal Representatives are resigning. The Court is also empowered to appoint a curator under §733.506, Fla. Stat. (2013) and Fla. Prob. R. 5.122(a) until a new Successor Personal Representative is appointed.

EXHIBIT A

I. Stansbury has standing to bring this Response and Motion

3. When removal of a Personal Representative is at issue, Fla. Prob. R. 5.440 specifically provides that, " ... **any interested person, by petition,** may commence a proceeding to remove a personal representative. ..." (Emphasis added.) By logical extension an "interested person" would also have standing to petition the court for the appointment of a successor fiduciary.

4. The provisions of §731.201(23), Fla. Stat. (2013) define an "interested person" as:

> (23) "Interested person" means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved..."

5. Stansbury has filed a claim against the Estate of Simon Bernstein (the "Estate") and has sued the Estate in a separate lawsuit styled *William E. Stansbury v. Ted Bernstein, et al,* Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida. A copy of the Statement of Claim is attached as Exhibit "A." A copy of the Amended Complaint which forms the basis of the Statement of Claim is attached hereto as Exhibit "B."

6. Stansbury, as a claimant of the Estate, has an interest in ensuring that the successor fiduciary ultimately appointed will act without bias and in the best interests of the creditors and devisees of the Estate. The Fourth District Court of Appeal has recognized that a claimant to an estate is an "interested person" and has standing in a proceeding to approve the personal representative's final accounting and petition for discharge. *See,* Arzuman v. Estate of Prince Bander BIN Saud Bin, etc., 879 So.2d 675 (Fla. 4th DCA 2004). *See also,* Montgomery v. Cribb, 484 So.2d 73 (Fla. 2d DCA 1986) (Wrongful death claimant was entitled to notice of hearing as an "interested person" under the probate code even though case was dismissed by trial court and disputed settlement was on appeal.) Stansbury is therefore an "interested person" as to

the outcome of this or any subsequent proceeding in which a successor fiduciary or a curator will be appointed, and Stansbury has standing to file and advance this Petition.

II. Ted Bernstein should not be appointed as Curator or Successor Personal Representative

A. Misconduct in the Shirley Bernstein Estate

7. There are serious allegations of fraud and forgery in the Shirley Bernstein Estate where Ted Bernstein is now the Personal Representative. Documents were submitted to the Court bearing notarized signatures of Simon Bernstein, alleged signatures by him, but on a date after he had passed away.

8. This Court was apprised of these allegations in a hearing conducted September 13, 2013 wherein the Court questioned whether the potential parties involved should be read their Miranda Rights. (*See* Transcript of Proceedings, pages 15 and 16, attached as Exhibit "C.")

B. The "lost" Insurance Trust

9. At the time of Simon Bernstein's death, it was determined that there existed a life insurance policy issued by Heritage Mutual Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust as beneficiary (the "Insurance Trust"). According to an SS-4 Application for EIN form submitted to the IRS on June 21, 1995, Shirley Bernstein was represented as Trustee of the Insurance Trust. (*See* SS-4 Application for EIN as Exhibit "D.")

10. Notwithstanding the earlier SS-4 EIN form, on November 1, 2012, Robert Spallina, one of the resigning Co-Personal Representatives, submitted a claim form to Heritage on behalf of the Insurance Trust for the benefit of the grown children of Simon Bernstein. In doing so, Spallina represented that he was the Trustee of the Insurance Trust. (*See* Exhibit "E")

Spallina made this representation despite having informed Heritage by letter shortly thereafter that he was "unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995." (*See* Exhibit "F" attached.) If the Trust instrument cannot be found, the insurance proceeds would be payable to the Simon Bernstein Estate, and as such, would be available to pay creditors of the Estate such as Stansbury.

11. Spallina, with the knowledge of Ted Bernstein, represented that he was "Trustee" of the Insurance Trust in an effort to collect the insurance proceeds on behalf the Insurance Trust and for the benefit of the grown children of Simon Bernstein, so as to circumvent the Simon Bernstein Estate.

12. Heritage refused to pay the life insurance proceeds to anyone without a court order. The Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois (the case has since been removed to Federal Court). In paragraph 2 of the Complaint, the Plaintiff, the Insurance Trust, although apparently still "lost," alleges that Ted Bernstein is the "trustee" of the Insurance Trust. Yet, there exists no trust document establishing the continued existence of the Insurance Trust, let alone that Ted is the Trustee. As a result, Ted's representation, like that of Spallina, appears plainly false.

C. Ted Bernstein has a Conflict of Interest ---

13. Ted Bernstein, as well as his siblings (other than Eliot) - Lisa Sue Friedstein, Pamela Beth Simon, and Jill Iantoni - have a conflict of interest precluding them from faithfully executing the duties of fiduciary on behalf of the Estate.

14. One of the considerations for removal of a Personal Representative as set forth in §733.504(9) (2013) is, **"(9) Holding or acquiring conflicting or adverse interests against the estate that will or may interfere with the administration of the estate as a whole."**

15. A trail of e-mails indicates that Ted Berstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni were advocating and scheming to keep the proceeds from the Heritage life insurance policy, as described above in paragraphs 9 thru 12 from being paid to the Estate. The stated purpose of this scheme was to avoid making the life insurance proceeds available to pay creditors of the Estate such as Stansbury. (*See,* selected e-mail messages, attached hereto as Composite Exhibit "G".) The residuary beneficiaries of the Will, that is, the grandchildren of Simon Bernstein, would also be prejudiced by such a determination.

16. Section 733.602(1), Fla. Stat. (2013), expressly provides that ". . . A personal representative shall use the authority conferred by this code, the authority in the will, if any, and the authority of any order of the court, **for the best interests of interested persons, including creditors."** (Emphasis added.)

17. While the ultimate outcome of the adjudication of the issues surrounding the Heritage life insurance proceeds is uncertain, what is clear is that each of the children of Simon Bernstein, other than Eliot Bernstein, have advocated, and continue to advocate a position that is contrary to the best interests of the Estate, its creditors and beneficiaries. These two conflicting and contrary positions between the interests of the children of Simon Bernstein (other than Eliot) and the duty of the successor fiduciary to act in the best interests of the Estate, including the creditors and beneficiaries, render Ted Bernstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni unqualified to serve as successor fiduciaries. *See* Estate of Bell v. Johnson, 573 So.2d 57 (Fla. 1st DCA, 1990) (conflict between personal representative, in that capacity, and as power of attorney, necessitated removal as personal representative).

D. The "Schiller" Lawsuit

18. Further, Ted Bernstein is a Defendant in yet another lawsuit filed in this Circuit Court. *See,* Schiller v. Life Insurance Concepts, et al, Case No. 502013CA007442 AD, wherein Ted Bernstein and others are accused of negligence and other business torts in connection with their business dealings.

E. Curator and Successor Personal Representative

19. Stansbury nominates Eliot Bernstein ("Eliot"), a son of the Decedent, to serve as successor Personal Representative. Eliot is qualified under §733.302, Fla. Stat. (2013) as he is *sui juris* and was a resident of Florida at the time of his father's death on September 13, 2012. Additionally, he is entitled to "preferential" consideration under §733.301(1)(a)(3) in that he is a devisee under Simon Bernstein's Will dated July 25, 2012 that has been admitted to probate.

20. In addition to his technical qualifications to serve as Personal Representative under the Florida Probate Code, Eliot also deserves significant consideration since he has been the only child of Simon and Shirley Bernstein to bring to the Court's attention the potential fraud and forgery issues that exist in connection with the closing of the Estate of Shirley Bernstein, as more fully set forth in paragraphs 7 and 8 above.

21. Stansbury acknowledges that Eliot's siblings, Theodore "Ted" Bernstein, Lisa Sue Friedstein, Pamela Beth Simon, and Jill Iantoni are also technically qualified to serve under §733.302, Fla. Stat. (2013) and §733.301(1)(a)(3). However, for the reasons set forth above, each of them should not be considered or appointed Curator or Successor Personal Representative by this Court.

22. Alternatively, should the Court determine that all of the Bernstein children, Eliot included, are not appropriate to serve, Stansbury moves this Court for the appointment of an

independent, third party Curator or Personal Representative that will administer the Estate in an objective, unbiased and fair manner, as set forth in § 733.5061, Fla. Stat. (2013) and in accordance with the procedure set forth in §733.501, Fla. Stat. (2013).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to parties listed on the attached Service list by U.S. Mail and via e-mail service at arose@mrachek-law.com and mchandler@mrachek-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, and at courtfilings@pankauskilawfirm.com to John J. Pankauski, Esq., PANKAUSKI LAW FIRM, 120 South Olive Avenue, Suite 701, West Palm Beach, FL 33401, on this 11th day of February, 2014.

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By: _____
Peter M. Feaman
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Lisa Friedstein
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Alexandra Bernstein
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Michael Bernstein
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Matt Logan
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Delray Beach, Fl 33445

Molly Simon
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Tucson, AZ 85745

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His Parents and Natural Guardians
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Boca Raton, FL 33434

Jacob Bernstein, a Minor
c/o Eliot and Candice Bernstein,
His Parents and Natural Guardians
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Boca Raton, FL 33434

Joshua Bernstein, a Minor
c/o Eliot and Candice Bernstein,
His Parents and Natural Guardians
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Julia Iantoni, a Minor
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Max Friedstein, a Minor
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His Parents and Natural Guardians
2142 Churchill Lane
Highland Park, IL 60035

Carley Friedstein, a Minor
c/o Jeffrey and Lisa Friedstein,
Her Parents and Natural Guardians
2142 Churchill Lane
Highland Park, IL 60035

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 November 6, 2012.

William E. Stansbury, Claimant

Attorneys for Claimant

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Copy mailed to attorney for Personal Representative on _____ 2012.

MUST BE FILED IN DUPLICATE

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

CASE NO.: 502012CP004391XXXXSB

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

Deceased.

ELIOT IVAN BERNSTEIN, PRO SE

Petitioner(s),

vs.

TESCHER & SPALLINA, P.A., (and all parties associated 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.,

Respondent(s).
_____/

EXCERPT OF PROCEEDINGS BEFORE

HONORABLE MARTIN COLIN

DATE: February 19, 2014

TIME: 2:30 p.m. - 5:03 p.m.

EXHIBIT B

APPEARING ON BEHALF OF WILLIAM E. STANSBURY:
PETER M. FEAMAN, P.A.
3615 W. BOYNTON BEACH BOULEVARD
BOYNTON BEACH, FL 33436
By: PETER M. FEAMAN, ESQ.
NANCY GRIFFEY, ESQ.
APPEARING ON BEHALF OF LISA SUE FRIEDSTEIN AND PAMELA BETH SIMON:

GOLDEN & COWAN
17345 S. DIXIE HIGHWAY
PALMETTO BAY, FL 33157
By: WILLIAM GLASKO, ESQ.

APPEARING ON BEHALF OF TED BERNSTEIN:

PAGE, MRACHEK, FITZGERALD ROSE
KONOPKA & DOW, P.A.
505 SOUTH FLAGLER DRIVE, SUITE 600
WEST PALM BEACH, FL 33401
By: ALAN B. ROSE, ESQ.

PANKAUSKI LAW FIRM
120 SOUTH OLIVE AVENUE, SUITE 701
WEST PALM BEACH, FL 33401
By: JOHN J. PANKAUSKI, ESQ.

BE IT REMEMBERED, that the following proceedings were taken in the above-styled cause before the Honorable MARTIN COLIN, at the Palm Beach County Courthouse, 205 North Dixie Highway, Room 8, in the City of Delray Beach, County of Palm Beach, State of Florida, on February 19, 2014, to wit:

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

* * * * *

THE COURT: All right. Okay. Have a seat.

Can I see the motion that -- Mr. Pankauski -- that you filed in behalf of Ted to be appointed PR and the motion that asks for -- and I think it was both counsel, including Mr. Glasko -- for a curator instead.

MR. PANKAUSKI: Yes, Your Honor.

THE COURT: Let me see those physically.

MR. PANKAUSKI: This is my motion for appointment. And I can get you the response in opposition.

THE COURT: Okay. I remember seeing the response, but -- okay. So here's -- everyone finished, ready for me to rule? I'm ready to rule on everything.

MR. FEAMAN: The only thing I would add, Your Honor, would be the case that we faxed to you earlier today, and to everybody else, Metcalf v. Metcalf, 785 So. 2d. 747, which states, quote, in considering whether the attorney-client privilege applies to disqualify an attorney from opposing a former client, the focus is on the perspective of the person seeking out the lawyer, not on what the

lawyer does after the consultation.

THE COURT: Okay. I agree that's the law.

All right. So -- yes.

MR. GLASKO: Judge, are you making a ruling on the appointment of curator today?

THE COURT: I am. I'm doing it in, like, about a minute or two.

MR. GLASKO: I would like to ask the court because we wanted to lodge an ore tenus objection to that. And I think the court needs --

THE COURT: Why?

MR. GLASKO: -- the court needs to hear some information with regard to Ted's ability to be appointed as personal representative.

THE COURT: Well, hear what I'm going to do and then you see if you want to do that.

MR. GLASKO: Yes, sir.

THE COURT: Okay. Motion to disqualify is denied.

The burden is on Eliot. And I'm treating this as really being Eliot's motion to show that he's an interested person under 731.20. He has not carried that burden. And so that would disqualify him from being someone who has an interest in trying to stop Mr. Pankauski

from representing Ted.

And, you know, I agree with the law that counsel -- Mr. Feaman just cited. This is really a view of Eliot from a subjective point of view as to -- as a prospective client of Mr. Pankauski, now that Mr. Pankauski is venturing to represent Ted, which is a subsequent representation, Mr. Pankauski is barred from representing Ted if there are interests that in the estate that materially -- that are materially adverse to those of Eliot, and the rest of the rule.

I find that Eliot has not carried his burden of proof on that, even from a light most favorable to him, which I'm giving him.

So motion to disqualify denied.

Ted's motion for appointment of himself as curator or administrator ad litem, denied.

William Stansbury and -- your client is who?

MR. GLASKO: Excuse me, my client is Lisa and Jill.

THE COURT: Okay. Are they -- are they a moving party in a formal sense?

MR. GLASKO: They are the children of the

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decedents', Judge.
THE COURT: But have they filed -- I don't have all the paperwork, I want to make sure I do -- have they filed requesting a -- that there be a curator other than Ted?
MR. GLASKO: No, sir. I've only made an ore tenus motion.
THE COURT: The ore tenus motion is denied only -- not on the merit, because I'm not doing this -- but I don't have to because William is an interested person, able to, as a secured creditor, who does have an interest under the case law and under the statute in having this estate, which is Simon Berntein's estate, administered, taking himself as a creditor into consideration.
That motion is granted.
So you are going to have the following choices: Within x days, you'll tell me, in a moment, you're going to tell me how much time you, Pankauski, Feaman, Glasko, need, to tell me who you want as curator. If that person is a lawyer, the fees are capped at $350 an hour and cannot exceed $5,000 in any increment without coming before the court and telling me why I should raise that cap incrementally.

7

We're putting a cap on this situation.
Okay. So you may need to make sure you can find someone who is willing to serve in that capacity.
If you can't agree on someone, Pankauski you're going to write two names out, Feaman you're going to write two names out, Mr. Glasko you'll write two names out, on a little piece of paper. We're going to put them in a jar and you three will come in on UMC after -- if you, unfortunately, can't agree upon someone, my judicial assistant will come out and in your presence shake the jar and pick. So I'll have nothing to do with the actual person because it will be someone that one of the three of you picks. They all -- the only way that that won't work out is if one of the people you pick are obviously not qualified, but I assume that's not going to be the case.
So you need to -- if we go that route, on the two names that each side of the three sides are going to pick, make sure that they are willing to serve in advance.
Okay. The reason I don't want Ted is because under 733.501 I take a position that

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given where this case is and the hype that -- we're achieving a disconnect between what should be involved and what could be a sensible straightforward estate administration on the estate portion of the case -- because that's all that's before me right now. And not get carried on into a whole bunch of other things that aren't yet before me or not yet filed.
So we're going to take this in nice small steps. This order applies to the estate case because there is no other case before me.
So we're not going to let this blossom into something that is not or shouldn't be.
Okay. So who's going to write up orders?
MR. FEAMAN: As to two of the motions, I believe your ruling was that just that they were denied, and I have blank orders on that. That would be the order on the verified motion to disqualify counsel. And it says the motion of Eliot Bernstein.
THE COURT: Okay.
MR. FEAMAN: Because --
THE COURT: But you can do it for reasons I mentioned on the record. So if someone --
MR. FEAMAN: For reasons mentioned on the

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record?
THE COURT: Yeah, that's a good way of doing it. That way you don't have to start recreating it. I gave reasons on there.
MR. FEAMAN: And then I have a blank order on a motion for appointment of curator or administrator ad litem, which you denied, by Ted Bernstein.
THE COURT: Okay. That's denied.
MR. FEAMAN: And then the other order on Mr. Stansbury -- not sure how much detail you want to get in there.
THE COURT: Well, you're going to enter that order once you folks talk, now. Okay.
MR. FEAMAN: Okay.
THE COURT: I mean right now. And Eliot is included in that conversation of whether you can agree upon someone. Because, I mean, I am not suggesting that you, you know, you can't, but you should be able to. I mean, especially -- and you may want to say here's name one, here's name two, here's name three, just to make sure that the people that you now talk about will accept the assignment. Then don't give me the order yet. Go actually speak to these people, make sure they

accept, and then under the conditions that I'm mentioning. And then we're going to go from there. And then you put the name in the order. Okay.

MR. PANKAUSKI: Yes, Your Honor.

THE COURT: Understand?

MR. PANKAUSKI: Understood.

THE COURT: All right. Understand, Eliot?

MR. ELIOT BERNSTEIN: Yes, sir.

THE COURT: Okay. Great. So speak now. I'm going to stay, but I'm going to ask you to start -- go outside because we need to kind of close the court -- but I'm going to stay here and let the lawyers and Eliot come back in to tell me what you've agreed to.

Okay. Thanks.

(Thereupon, the proceedings were concluded at 5:03 p.m.)

CERTIFICATE

THE STATE OF FLORIDA
COUNTY OF PALM BEACH.

I, DAVID L. MARSAA, 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 20th day of February, 2014.

_____
DAVID L. MARSAA, COURT REPORTER

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

PROBATE DIV.

CASE NO.: 50 2012 CP 004391 XXXX SB

IN RE: ESTATE OF SIMON L. BERNSTEIN,
Deceased.
_____/

ORDER ON "INTERESTED PERSON" WILLIAM STANSBURY'S MOTION FOR THE APPOINTMENT OF A CURATOR OR SUCCESSOR PERSONAL REPRESENTATIVE

THIS CAUSE came on to be heard by this Honorable Court on Wednesday, February 19, 2014, on the Motion of William Stansbury, as an "Interested Person" in the Estate, For the Appointment of a Curator or Successor Personal Representative, and the Court having received evidence, reviewed the file, heard argument of counsel, and being otherwise duly advised in the premises, it is

ORDERED and ADJUDGED:

1. The Motion of William Stansbury is hereby granted.

2. The Court hereby appoints Benjamin Brown, Esq., Matwiczyk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401 as Curator of this Estate pursuant to §733.501 Fla. Stat. (2013) and Florida Probate Rule 5.122(a).

3. Reasonable fees for the Curator are capped at $350.00 per hour.

EXHIBIT C 2/25/14

4. Fee payments will be made in $5,000.00 increments. Any fee requests in excess of that amount for any given period will require a court hearing.

5. In accordance with §733.501(2) Fla. Stat. (2013), bond is hereby set in the amount of $ none.

DONE and ORDERED in West Palm Beach, Palm Beach County, Florida on this ___ day of February, 2014.

SIGNED & DATED
FEB 25 2014
JUDGE MARTIN H. COLIN

MARTIN COLIN
Circuit Court Judge

Copies to:

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

John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, courtfilings@pankauskilawfirm.com;

Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, service@feamanlaw.com;

Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, *iviewit@iviewit.tv;*

William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com.

Filing # 11200599 Electronically Filed 03/11/2014 02:39:29 PM

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

CASE NO. 50 2012 CA 013933 MB AA

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC.

Defendants.

_____/

NOTICE OF APPEARANCE

YOU ARE NOTIFIED that the undersigned is appearing as Curator in the Estate of Simon Bernstein, Deceased, pursuant to the Letters of Curatorship issued by this Court under File No. 502012CP004391SB. All copies of pleadings, motions, and other papers should be served on the undersigned.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail upon Alan B. Rose, Esq. and N. Patrick Hely, Esq., Mrachek, Fitzgerald, Rose, et al., 505 S. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@mrachek-law.com, mchandler@mrachek-law.com; phely@mrachek-law.com and tclarke@mrachek-law.com; Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, service@feamanlaw.com, pfeaman@feamanlaw.com; Donald R. Tescher, Esq., 4855 Technology Way, Suite 720, Boca Raton, FL 33431, dtescher@tescherspallina.com; Robert L.

Spallina, Esq., 4855 Technology Way, Suite 720, Boca Raton, FL 33431 rspallina@tescherspallina.com; Bernstein Family Realty, LLC, c/o Janet Craig, CTFA, Sr. Vice President & Compliance Officer, Oppenheimer Trust Company, 18 Columbia Turnpike, Florham Park, NJ 07932, janet.craig@opco.com., on this 11 day of March, 2014.

MATWICZYK & BROWN, LLP
625 North Flagler Drive, Suite 401
West Palm Beach, Florida 33401
Telephone: (561) 651-4004
E-mail: attorneys@matbrolaw.com

By: _____
Benjamin P. Brown, Esq.
Florida Bar No. 841552

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

CASE NO: 50 2012 CA 013933 MB AA

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants. /

FILED
14 MAR 13 PM 4:01
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 2

ORDER ON DEFENDANTS', TED S. BERNSTEIN, MOTION TO STAY PROCEEDINGS

THIS MATTER came before the Court on March 13, 2014 on Defendant's, Ted S. Bernstein, Motion to Stay Proceedings (the "Motion"). The Court having heard argument of counsel and being otherwise fully advised, does hereby

ORDER and ADJUDGE as follows:

1. The Motion is hereby ~~Granted.~~ Denied without prejudice.

~~2. The matter shall be stayed for _____ days.~~

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 13 day of March, 2014.

PETER D. BLANC
Circuit Court Judge

Copies furnished to:

Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 West Boynton Beach Blvd., Boynton Beach, FL 33436, Email: (pfeaman@feamanlaw.com); (service@feamanlaw.com); (mkoskey@feamanlaw.com) Counsel for Plaintiff

Donald R. Tescher, 4855 Technology Way, Suite 720, Boca Raton, FL 33431
Email: (dtescher@tescherspallina.com) Co-Personal Representative of the Estate of Simon Bernstein

Robert L. Spallina, 4855 Technology Way, Suite 720, Boca Raton, FL 33431
Email: (rspallina@tescherspallina.com) Co-Personal Representative of the Estate of Simon Bernstein

Bernstein Family Realty, LLC
c/o Janet Craig, CTFA, Sr. Vice President & Compliance Officer
Oppenheimer Trust Company, 19 Columbia Turnpike, Florham Park, NJ 07932
Email: (janet.craig@opco.com)

Alan B. Rose, Esq., Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A., 505 South Flagler Drive, Suite 600, West Palm Beach, FL 33401, Email: (arose@mrachek-law.com); (mchandler@mrachek-law.com) Counsel for Ted S. Bernstein, LIC Holdings, Inc., Arbitrage International Management, LLC, Shirley Bernstein Trust Agreement dated May 20, 2008

Filing # 11347647 Electronically Filed 03/14/2014 12:11:16 PM

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

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

CASE NO. 502012CA13933XXXXMB
Division: AA

WILLIAM E. STANSBURY,

Plaintiff,

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT Dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

NOTICE OF APPEARANCE FOR BERNSTEIN FAMILY REALTY, LLC AND DESIGNATION OF E-MAIL ADDRESSES

The law firm of GrayRobinson, P.A., by and through its undersigned attorneys, files this Notice of Appearance and Designation of E-Mail Addresses on behalf of Defendant, Bernstein Family Realty, LLC, and requests that copies of all pleadings, motions, notices and orders be served upon the undersigned counsel. Furthermore, pursuant to Florida Rule of Judicial Administration 2.516, the undersigned counsel designates his primary e-mail address as Steven.Lessne@gray-robinson.com, and his secondary e-mail addresses as Lori.Politis@gray-robinson.com and Anne.Morinelli@gray-robinson.com.

GRAYROBINSON, P.A.
Counsel for Bernstein Family Realty, LLC
225 N.E. Mizner Boulevard, Suite 500
Boca Raton, FL 33432
Telephone: (561) 368-3808
Facsimile: (561) 368-4008

By: */s/ Steven Lessne*
Steven Lessne, Esq.
Florida Bar No. 107514
steven.lessne@gray-robinson.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via e-mail to all parties on the attached Service List on this 14th day of March, 2014.

/s/ Steven Lessne

SERVICE LIST

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3625 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
Email: pfeaman@feamanlaw.com
Counsel for Plaintiff, William E. Stansbury

Donald R. Tescher, Esq.
Robert L. Spallina, Esq.
Tescher & Spallina, P.A.
Wells Fargo Plaza
925 South Federal Highway, Suite 500
Boca Raton, FL 33432
Phone: 561-997-7008
Fax: 561-997-7308
Email: dtescher@tescherspallina.com
Email: rspallina@tescherspallina.com
Co-Personal Representatives of the
Estate of Simon L. Bernstein and as Co-Trustees
Of the Shirley Bernstein Trust Agreement

Alan B. Rose, Esq.
Mrachek Fitzgerald Rose Konopka Thomas Weiss
505 S Flagler Drive, Suite 600
West Palm Beach, Florida 33401-5945
Tel: 561-655-2250
Fax: 561-655-5537
E-Mail: arose@mrachek-law.com
Counsel for Defendants, Ted Bernstein,
LIC Holdings, Inc. and Arbitrage International Management, LLC

Filing # 11610415 Electronically Filed 03/21/2014 12:04:57 PM

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND FOR IN CAMERA INSPECTION

COMES NOW Plaintiff, WILLIAM E. STANSBURY, by and through his undersigned counsel, and moves this Court to compel Defendants, TED BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE, LLC ("Defendants") to produce the documents subpoenaed from a Third Party but withheld from production by Defendants, and for an *in camera* inspection of the documents to determine if any privilege protects such documents from discovery. More specifically, Plaintiff states:

1. On July 26, 2013, Plaintiff, through counsel, served a Notice of Production from a Non-Party, CBIZ MHC, LLC. The Notice of Production from a Non-Party and copy of the Subpoena Duces Tecum Without Deposition are attached hereto as Exhibit "A."

2. The Defendants objected to the Plaintiff's Notice of Production from Non-Party, however, by Order dated November 15, 2013, the Honorable Peter Blanc overruled the objections to the extent any objections based on privilege should be specified in a privilege log. A copy of the November 15, 2013 Order is annexed as Exhibit "B."

3. On January 27, 2014, Defendants' counsel provided a privilege log asserting that several CBIZ MHC, LLC documents were "accountant-client" and/or "attorney/client" privileged. See privilege log annexed as Exhibit "C."

4. A review of the descriptions of the withheld documents in the privilege log does not provide sufficient detail regarding whether the documents were created in the "rendition of accounting services" or "legal services" and therefore there is no showing that any of them are protected from discovery by the accountant-client, attorney–client, or any other privilege. *Cone v. Culverhouse,* 687 So. 2d 888, 892 (Fla. 2d DCA 1997) (burden of proving accountant/client and lawyer/client privileges rests on the party invoking the privilege); *see also National Union Fire Ins. Co. of Pittsburgh, PA v. KPMG Peat Marwick*, 742 So. 2d 328, 330 (Fla. 3d DCA 1999) (accountant-client privilege is narrowly construed).

5. Because Defendants have failed to meet their burden of proving privilege, their claim of privilege should be overruled.

6. Alternatively, an *in camera* inspection of the withheld documents by this Honorable Court is necessary to determine whether some or any of the documents are protected by any applicable privilege so that the Defendant can be compelled to produce to the Plaintiff all non-privileged documents. *Superior Ins. Co. v. Holden*, 642 So. 2d 1139, 1140 (Fla. 4th DCA 1994) (in camera inspection was proper to ensure that withheld documents properly met specific criteria for accountant/client and attorney/client privileges).

WHEREFORE, Plaintiff requests this Honorable Court enter an Order compelling Defendants to deliver to the Court the documents withheld from production, that the Court conduct an *in camera* inspection of each of the documents at issue to determine whether any privilege protects such document from discovery, and that the Defendants be ordered to produce all non-privileged documents within 10 days from the date of the Court's Order, or as soon as possible.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; at steven.lessne@gray-robinson.com, Steven Lessne, Esq., GRAY ROBINSON, P.A., 225 N.E. Mizner Boulevard, Suite 500, Boca Raton, FL 33432; and at bbrown@matbrolaw.com to Benjamin P. Brown, Esq., Matwiczyk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401, on this 19 day of March, 2014.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
e-service: service@feamanlaw.com
mkoskey@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No.: 0260347

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

WILLIAM E. STANSBURY,

Plaintiff,

v.

CASE NO: **50 2012 CA 013933 MB AA**

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.

_____/

NOTICE OF PRODUCTION FROM NON-PARTY
(F.R.Civ.P. 1.351)

YOU ARE NOTIFIED that ten (10) days from the date of service of this Notice, if service is by delivery, or fifteen (15) days from the date of service if service is by mail, and if no objection is received from any party, the undersigned will issue, or will apply to the Clerk of this Court for issuance of, the attached Subpoena directed to Records Custodian of the following:

CBIZ MHM, LLC
f/k/a Goldstein Lewin & Company
1675 N. Military Trail
Fifth Floor
Boca Raton, Florida 33486

The above listed entity is not a party to this action, and the address for such entity is listed above. The listed entity will be requested to produce the items listed at the time and place specified in the Subpoena, which is attached hereto.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at

EXHIBIT A

arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc. and Arbitrage International Management, LLC,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 26th day of July, 2013.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Telephone: (561) 734-5552
Facsimile: (561) 734-5554
pfeaman@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No. 0260347

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

SUBPOENA DUCES TECUM WITHOUT DEPOSITION
(RECORDS MAY BE MAILED IN LIEU OF APPEARANCE)

TO: **CBIZ MHM, LLC**
f/k/a Goldstein Lewin & Company
1675 N. Military Trail, Fifth Floor
Boca Raton, Florida 33486
ATTENTION: Gerald R. Lewin, CPA

DEFINITIONS

A. As used herein, the singular shall include the plural and the plural shall include the singular.

B. When the terms "you" "your" and "yours" are used herein, they shall mean CBIZ MHM, LLC, f/k/a Goldstein Lewin & Company, or any agent, representative, employee, attorney, accountant or person acting, or purporting to act on its behalf.

C. When the term "document," as used herein, means any document, letter, log, record, report, memorandum, note, telegram, message, agreement, communication, e-mail,

telecopy, facsimile reproduction or "fax" (including cover sheets and proof of sending), State or Federal governmental hearing or report, summary or record of telephone conversations, e-mail (including attachments), summary or record of personal conversations or interviews, diary, graph, notebook, note chart, plan, drawing, sketch, map, summary or record of meeting or conferences, summary or report of investigations or negotiations, opinion or report of consultants, photograph, motion picture, film, brochure, pamphlet, advertisement, circular, press release, draft, letter, any marginal comments appearing on any document or any other form of written or recorded matter of every kind or description, however produced or reproduced, whether draft or final, original or reproduction, in the custody or control of you and/or your attorneys or anyone acting on your behalf.

DOCUMENTS TO PRODUCE

YOU ARE COMMANDED to appear at the offices of Peter Feaman, at 3615 West Boynton Beach Boulevard Boynton Beach, Florida 33436-4501, telephone number (561) 734-5552, within fifteen (15) days from the date of service of this Subpoena and to produce the following documents:

1. All documents provided to you by, or prepared by you on behalf of, LIC Holdings, Inc. ("LIC") and Arbitrage International Management, LLC f/k/a Arbitrage International Holdings, LLC ("Arbitrage") that show the total revenue generated by LIC and Arbitrage for the tax years 2007, 2008, 2009, 2010, 2011, and 2012.

2. All documents provided to you by, or prepared by you on behalf of, LIC and Arbitrage that show the expenses paid by LIC and Arbitrage for the tax years 2007, 2008, 2009, 2010, 2011, and 2012.

3. All documents provided to you by, or prepared by you on behalf of, LIC and Arbitrage that show the salaries, distributions and other compensation paid to Simon Bernstein, Ted Bernstein and William Stansbury by LIC and Arbitrage in the tax years 2007, 2008, 2009, 2010, 2011, and 2012.

4. All documents provided to you by, or prepared by you on behalf of, LIC and Arbitrage that list, by company name, the commissions, both first time commissions and renewal commissions, paid to LIC and Arbitrage for the tax years 2007, 2008, 2009, 2010, 2011, and 2012.

5. All documents provided to you by, or prepared by you on behalf of, LIC and Arbitrage entitled "Estimated Income Projection & Allocation" for the tax years 2007, 2008, 2009, 2010, 2011, and 2012.

6. All documents provided to you by, or prepared by you on behalf of, LIC for the tax years 2007, 2008, 2009, 2010, 2011, and 2012 that stated, estimated or projected that Simon Bernstein, Ted Bernstein and/or William Stansbury would incur, or potentially may incur, taxable "phantom" income related to their respective equity interests in LIC.

7. All documents provided to you by, or prepared by you on behalf of, LIC that supports that a shareholder distribution in the amount of $184,530 was made to William Stansbury attributable to tax year 2008.

8. All documents provided to you by, or prepared by you on behalf of, LIC that supports that a shareholder distribution in the amount of $184,530 was in fact actually paid to William Stansbury attributable to tax year 2008.

9. A copy of each Form K-1, including all amendments, revisions, or restatements thereto, prepared for and distributed to Simon Bernstein, Ted Bernstein and William Stansbury for the tax years 2007, 2008, 2009, 2010, 2011 and 2012.

You are required to produce the records by mail or in person to Peter Feaman, at 3615 West Boynton Beach Boulevard Boynton Beach, Florida 33436-4501.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of preparation. **YOU MAY MAIL OR DELIVER THE COPIES TO THE ATTORNEY WHOSE NAME APPEARS ON THIS SUBPOENA AND THEREBY ELIMINATE YOUR APPEARANCE ON THE DATE SPECIFIED ABOVE.** You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. **THIS IS NOT A DEPOSITION. NO TESTIMONY WILL BE TAKEN.**

If you fail to:

(1) appear as specified; or
(2) furnish the materials requested instead of appearing as provided above; or
(3) object to this subpoena;

you may be in contempt of court. You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

DATED this ____ day of _____, 2013.

Issued by: _____
PETER M. FEAMAN, ESQ.
FOR THE COURT

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Telephone: (561) 734-5552
Facsimile: (561) 734-5554

By: _____
Peter M. Feaman
Florida Bar No. 0260347

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

ORDER ON OBJECTIONS OF DEFENDANTS, TED BERNSTEIN, LIC HOLDINGS, INC, ARBITRAGE, LLC, DONALD TESCHER AND ROBERT SPALLINA AS CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF SIMON L. BERNSTEIN TO NOTICE OF PRODUCTION FROM NON-PARTY CBIZ MHM, LLC

THIS CAUSE came on to be heard before this Honorable Court on Tuesday, November 12, 2013, upon Objections of Defendants, Ted Bernstein, LIC Holdings, Inc., Arbitrage, LLC, Donald Tescher and Robert Spalina, as co-Personal Representatives of the Estate of Simon L. Bernstein to Notice of Production from Non-Party CBIZ MHM, LLC, and the Court having reviewed the file, heard argument of counsel and being otherwise duly advised in the premises, it is hereby

EXHIBIT B

11/15/13

ORDERED and ADJUDGED:

1. The objections are overruled to the extent that the subpoena may be issued and third party, CBIZ MHM, LLC will respond. The documents not objected to on the basis of privilege will be produced within 30 days from the date of this Order.

2. In the event that an objection is made on the basis of privilege, the objection should specify the privilege raised and a privilege log should be prepared on those items upon which a privilege is claimed, in accordance with *TIG Insurance v. Johnson*, 799 So.2d 339 (Fla. 4th DCA, 2001).

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida on this 15 day of November, 2013.

HONORABLE PETER BLANC
Circuit Judge

Copies to:

Alan Rose, Esq., Page Mrachek, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; e-mail: arose@pm-law.com;
Mark R. Manceri, Esq., Mark R. Manceri, P.A., 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; e-mail: mrmlaw@comcast.net
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL; e-mail: pfeaman@feamanlaw.com

MRACHEK
FITZGERALD
ROSE
KONOPKA
& DOW, P.A.

TRIAL LAWYERS

WEST PALM BEACH | STUART

WRITER'S DIRECT DIAL NUMBER: 561-355-6991
WRITER'S E-MAIL ADDRESS: arose@pm-law.com

January 27, 2014

Peter M. Feaman, Esq.
3615 West Boynton Beach Boulevard
Boynton Beach, FL 33436

Re: Stansbury v. Bernstein

Dear Peter:

Enclosed is a disk with the non-privileged CBIZ documents responsive to the subpoena, along with a log of privileged items.

Best wishes.

Sincerely,

Alan B. Rose

ABR:bl
Enc.

EXHIBIT C

WILLIAM E. STANSBURY vs. TED S. BERNSTEIN
CASE NO: 50 2012 CA 013933 MB AA

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
Lewin and List Emails					
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 8:48 am	Call with agent re lien	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	05/17/10 8:22 am	Call with agent re lien	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin	05/16/10	Call with agent re lien	Accountant-Client
E-Mail	Jerry Lewin	Dana Aranosian	12/11/13 8:49 am	CBIZ Fees	Accountant-Client
E-Mail	Jerry Lewin	Ted Bernstein	10/13/12 1:53 pm	CBIZ Fees	Accountant-Client
E-Mail	Ted Bernstein	Jerry Lewin	10/13/12 9:57 am	CBIZ Fees	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 8:51 am	Equity Term sales approach	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin	05/24/11 12:04 pm	Equity Term sales approach	Accountant-Client

000522

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Jerry Lewin	Ted Bernstein	05/23/11 3:34 pm	Equity Term sales approach	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin	05/22/11 10:28 am	Equity Term sales approach	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	05/20/11 12:50 pm	Equity Term sales approach	Accountant-Client
E-mail	Jerry Lewin	Ransom Jones cc Ted Bernstein	05/20/11 12:04 pm	Equity Term sales approach	Accountant-Client
E-mail	Ransom Jones	Jerry Lewin cc Ted Bernstein	05/19/11 2:36 pm	Equity Term sales approach	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	05/20/11 12:36 pm	Equity Term sales approach	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 8:54 am	CBIZ payment	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	05/24/11 2:34 PM	Equity Term sales approach	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	01/20/11 12:46 pm	CBIZ payment	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin	01/20/11 12:40 pm	CBIZ payment	Accountant-Client

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Jerry Lewin	Ted Bernstein	01/20/11 12:25 pm	CBIZ payment	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin	01/20/11 7:36 am	CBIZ payment	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 8:55 am	Meeting with Marc List	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	07/15/10 11:41 am	Meeting with Marc List	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin	07/15/10 11:36 am	Meeting with Marc List	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 8:55 am	Payment to CBIZ	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin	09/15/10 9:14 am	Payment to CBIZ	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	09/15/10 8:17 pm	Payment to CBIZ	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 8:56 am	Equity Term product	Accountant-Client

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Jerry Lewin	Ted Bernstein	05/31/10 2:51 pm	Equity Term product	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin	05/31/10 11:22 am	Equity Term product	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 8:56 am	Equity Term Program	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	06/23/10 11:15 am	Equity Term Program	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin	06/23/10 11:11 am	Equity Term Program	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 8:57 am	IRS payment	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	05/09/10 8:32 pm	IRS payment	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin	05/09/10 7:08 pm	IRS payment	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 8:57 am	Tax return	Accountant-Client

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Jerry Lewin	Ted Bernstein	05/13/10 3:21 pm	Tax return	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin	05/13/10 2:36 pm	Tax return	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:00 am	Availability	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	07/16/12 4:50 pm	Availability	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin	07/16/12 4:48 pm	Availability/Status with Stansbury	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	07/16/12 4:39 pm	Availability	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:03 am	Meeting re LIC issue	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	02/21/12 1:30 pm	Meeting re LIC issue	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin	02/21/12 1:12 pm	Meeting re LIC issue	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	02/21/12 12:27 pm	Meeting re LIC issue	Accountant-Client

000526

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Ted Bernstein	Jerry Lewin	02/21/12 12:21 pm	Meeting re LIC issue	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:04 AM	2010 IRS Notice	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	12/30/11 2:22 pm	2010 IRS Notice	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin	12/30/11 2:20 pm	2010 IRS Notice	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	12/30/11 2:06 pm	2010 IRS Notice	Accountant-Client
E-mail	Ted Bernstein	Anthony Messuri cc Jerry Lewin	12/30/11 1:13 pm	2010 IRS Notice	Accountant-Client
E-mail	Anthony Messuri	Ted Bernstein cc Jerry Lewin	12/29/11	2010 IRS Notice	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:05 am	Meeting	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein Simon Bernstein	07/12/11 6:29 pm	Meeting	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin Simon Bernstein	07/12/11 5:20 pm	Meeting	Accountant-Client

000527

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Jerry Lewin	Ted Bernstein Simon Bernstein	07/12/11 5:13 pm	Meeting	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:05 am	Life Insurance Concepts and Life Insurance Innovations	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein Anthony Messuri	09/11/12 1:30 pm	Life Insurance Concepts and Life Insurance Innovations	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin Anthony Messuri	09/10/12 7:02 pm	Life Insurance Concepts and Life Insurance Innovations	Accountant-Client
E-mail	Lindsay Giles	Ted Bernstein	09/05/12 1:11 pm	Life Insurance Concepts and Life Insurance Innovations	Accountant-Client
E-mail	Ted Bernstein	Lindsay Giles	09/04/12 10:12 pm	Life Insurance Concepts and Life Insurance Innovations	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:05 am	Arbitrage International Management LLC Retirement Plan	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	12/28/11 1:39 pm	Arbitrage International Management LLC Retirement Plan	Accountant-Client

000528

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Ted Bernstein	Hui Hui Jiang cc John Sethman Jerry Lewin Lindsay Giles	12/20/11 9:13 am	Arbitrage International Management LLC Retirement Plan	Accountant-Client
E-mail	Hui Hui Jiang	Ted Bernstein cc John Sethman gl@goldsteinlewin.com	12/19/11 3:48 pm	Arbitrage International Management LLC Retirement Plan	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:09 am	LIC Audit	Accountant-Client
E-mail	Jerry Lewin	Adam Segal	07/25/08 12:47 pm	LIC Audit	Accountant-Client
E-mail	Adam Segal	Jerry Lewin cc Bob Gatrick	07/25/08 9:54 am	LIC Audit	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:10 am	LIC Audit	Accountant-Client
E-mail	Jerry Lewin	Marc List, Esq.	08/22/08 10:24 pm	LIC Audit	Accountant-Client Attorney-Client
E-mail	Marc List	Jerry Lewin	08/22/08 6:34 pm	LIC Audit	Accountant-Client

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:12 am	LIC update	Accountant-Client
E-mail	Jerry Lewin	Adam Segal	07/31/08 5:48 pm	LIC update	Accountant-Client
E-mail	Adam Segal	Jerry Lewin cc Bob Garick Paul Feuerberg Alexandra Cook Kerrick Henriquez	07/31/08 5:48 pm	LIC update	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:18 am	LIC potential change order	Accountant-Client
E-mail	Jerry Lewin	Adam Segal	05/19/08 5:51 pm	LIC potential change order	Accountant-Client
E-mail	Adam Segal	Jerry Lewin	05/19/08 4:48 pm	LIC potential change order	Accountant-Client
E-mail	Alexandra Cook	Adam Segal	05/19/08 4:02 pm	LIC potential change order	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:18 am	Sy Bernstein	Accountant-Client
E-mail	Jerry Lewin	Paul Feuerberg	05/20/08 12:52 pm	Sy Bernstein	Accountant-Client

000530

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Paul Feuerberg	Jerry Lewin	5/20/08 12:51 pm	Sy Bernstein	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:19 am	Requesting Tax Returns	Accountant-Client
E-mail	Jerry Lewin	Karen Million	04/22/08 3:37 pm	Requesting Tax Returns	Accountant-Client
E-mail	Diana Banks	Jerry Lewin	04/10/08 4:45 pm	Requesting Tax Returns	Accountant-Client
E-mail	Simon Bernstein	Diana Banks	04/10/08 4:41 pm	Requesting Tax Returns	Accountant-Client
E-mail	Eliot Bernstein	Simon Bernstein	04/10/08 1:17 pm	Requesting Tax Returns	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:22 am	IRS Correspondence	Accountant-Client
E-mail	Jerry Lewin	T. Kratish M. Munson cc Ted Bernstein 2	04/01/08 2:18 pm	IRS Correspondence	Accountant-Client
E-mail	T. Kratish	Jerry Lewin Michael Munson cc Ted Bernstein 2	04/01/08 2:04 pm	IRS Correspondence	Accountant-Client

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:24 am	Stanford Trust Company Resignations with attached forms	Accountant-Client Relevancy
E-mail	Jerry Lewin	Traci Kratish, Esq.	10/09/07 11:59 am	Stanford Trust Company Resignations with attached forms	Accountant-Client Attorney-Client Relevancy
E-mail	Elsa Beltran	Jerry Lewin	10/09/07 9:38 am	Stanford Trust Company Resignations with attached forms	Accountant-Client Relevancy
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:24 am	Corporate Credit Card	Accountant-Client
E-mail	Jerry Lewin	Diana Banks	03/18/08 5:45 pm	Corporate Credit Card	Accountant-Client
E-mail	Diana Banks	Jerry Lewin	03/18/08 5:26 pm	Corporate Credit Card	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:33 am	Reorganized companies	Accountant-Client
E-mail	Jerry Lewin	Neil Useden	07/10/07 5:37 pm	Reorganized companies	Accountant-Client Attorney-Client

000532

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Neil Useden	Kahnj@gtlaw.com Feingold@gtlaw.com cc Jerry Lewin Ted Bernstein 2	07/10/07 10:37 am	Reorganized companies	Accountant-Client Attorney-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:35 am	2008 cc statements - total expenses	Accountant-Client
E-mail	Rachel Walker	Simon Bernstein	10/13/09	2008 cc statements - total expenses	Accountant-Client
E-mail	Diana Banks	Jerry Lewin	10/13/09	2008 cc statements - total expenses	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:36 am	Si and Shirley Expenses	Accountant-Client
E-mail	Diana Banks	Jerry Lewin cc Linda DeRosa Anthony Messuri	10/12/09 4:34 pm	Si and Shirley Expenses	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:39 am	from Simon Bernstein	Accountant-Client
E-mail	Jerry Lewin	Diana Banks	12/15/09 4:31 pm	from Simon Bernstein	Accountant-Client

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Diana Banks	Jerry Lewin cc Anthony Messuri Traci Kratish, Esq.		from Simon Bernstein	Accountant-Client Attorney-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:42 am	IRS payment	Accountant-Client
E-mail	Jerry Lewin	Ted Bernstein	11/23/09 4:55 pm	IRS payment	Accountant-Client
E-mail	Ted Bernstein	Jerry Lewin Athony Messuri	11/21/09 10:58 am	IRS payment	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:44 am	Meeting with Si Ted and Bill	Accountant-Client
E-mail	Jerry Lewin	Diana Banks	11/05/09 12:23 pm	Meeting with Si Ted and Bill	Accountant-Client
E-mail	Diana Banks	Jerry Lewin	11/05/09 9:14 am	Meeting with Si Ted and Bill	Accountant-Client
E-mail	Jerry Lewin	Diana Banks	11/04/09 9:06 pm	Meeting with Si Ted and Bill	Accountant-Client
E-mail	Diana Banks	Jerry Lewin	11/04/09 2:20 pm	Meeting with Si Ted and Bill	Accountant-Client

000534

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:45 am	Arbitrage International Management Check	Accountant-Client
E-mail	Jerry Lewin	John Sethman	10/27/09 6:40 am	Arbitrage International Management Check	Accountant-Client
E-mail	John Sethman	Jerry Lewin	10/26/09 2:19 pm	Arbitrage International Management Check	Accountant-Client
E-mail	Jerry Lewin	Dana Aranosian	12/11/13 9:39 am	Arbitrage International Management LLC Retirement Plan	Accountant-Client
E-mail	Jerry Lewin	Anthony Messuri	12/17/09 2:22 pm	Arbitrage International Management LLC Retirement Plan	Accountant-Client
E-mail	Anthony Messuri	Jerry Lewin	12/17/09 8:36 am	Arbitrage International Management LLC Retirement Plan	Accountant-Client
E-mail	Jerry Lewin	Anthony Messuri	12/11/09 4:49 pm	Arbitrage International Management LLC Retirement Plan	Accountant-Client
E-mail	OttD@gtlaw.com	nuseden@erisapension.com Jerry Lewin cc KahnJ@gtlaw.com	12/11/09 1:50 pm	Arbitrage International Management LLC Retirement Plan	Accountant-Client Attorney-Client

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-Mail	List, Marc	Aranosian, Dana	12/13/13 8:51 am	Bill Stansbury Stock Redemption	Accountant-Client
E-Mail	Marc List	Ted Bernstein	12/19/11 11:15 am	Bill Stansbury Stock Redemption	Accountant-Client
E-Mail	Ted Bernstein	Marc List Jerry Lewin	12/17/11 1:43 am	Bill Stansbury Stock Redemption	Accountant-Client
2007 LIC Documents					
Email	Simone Bernstein	Diana Banks	10/22/08 12:08 pm	Requesting LIC Tax Information	Accountant-Client
Email	Diana Banks	Anthony Messuri Linda DeRosa cc Jerry Lewin	10/23/08 10:05 am	Requesting LIC Tax Information	Accountant-Client
Email	Diana Banks	Anthony Messuri Linda DeRosa cc Jerry Lewin	10/23/08 1:06 pm	Re: LIC Tax Information	Accountant-Client
Email	Diana Banks	Anthony Messuri Linda DeRosa cc Jerry Lewin	10/23/08 3:31 pm	Requesting LIC Tax Information	Accountant-Client
Email	Anthony Messuri	Diana Banks	10/27/08 9:22 am	Re: LIC Tax Information	Accountant-Client

000536

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
Email	Diana Banks	Anthony Messuri	10/27/08 9:28 am	Re: LIC Tax Information	Accountant-Client
Email	Anthony Messuri	Diana Banks cc Ted Bernstein	10/27/08 9:57 am	Re: LIC Tax Information	Accountant-Client
Email	Ted Bernstein	Anthony Messuri Diana Banks	10/28/08 12:09 pm	Re: Authorization to Release Tax info	Accountant-Client
Email	Anthony Messuri	Michael Munson	09/15/08 4:17 pm	Arbitrage International Cash Balance	Accountant-Client
Email	Anthony Messuri	Traci Kratish, Esq. cc Jerry Lewin	09/15/08 4:21 pm	Arbitrage International Cash Balance	Accountant-Client
Email	Traci Kratish, General Counsel	Jerry Lewin Michael Munson Anthony Messuri doug@erisapension.com cc Ted Bernstein 2 Ransom Jones	09/15/08 4:27 pm	Arbitrage International Cash Balance	Accountant-Client
Email	Anthony Messuri	Anthony Messuri	09/15/08 4:38 pm	2007 LIC correspondence re cash balance plan	Accountant-Client
Email	Anthony Messuri	Jerry Lewin	09/03/08 11:34 am	Arbitrage's Pension plan and profit sharing	Accountant-Client

000537

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
Email	Anthony Messuri	Michael Munson	09/15/08 4:17 pm	Arbitrage's Pension plan and profit sharing	Accountant-Client
Routing Sheet			10/20/08	12/31/07 LIC financial statements	Accountant-Client
2009-2012 LIC Documents					
E-mail	Ransom Jones	Anthony Messuri	06/02/10 1:28 pm	LIC Consolidated Financials	Accountant-Client
E-mail	Bob Garick	Ransom Jones Anthony Messuri Jerry Lewin cc Ted Bernstein Maryanne Hayes	04/14/10 5:50 pm	Reconciliation of Garick to LIC Taxable Income 2009	Accountant-Client
E-mail	Ransom Jones	Anthony Messuri Bob Garick cc Ted Bernstein Maryanne Hayes	04/13/10 11:26 am	Reconciliation of Garick to LIC Taxable Income 2009	Accountant-Client
E-mail	Ransom Jones	Anthony Messuri cc Maryanne Hayes	04/13/10 12:22 pm	2009 workpapers analysis of Biviano chargeback LIC	Accountant-Client

000538

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Anthony Messuri	Maryanne Hayes cc Ransom Jones	03/10/11 6:18 pm	2010 workpapers attaching depreciation schedules	Accountant-Client
E-mail	Maryanne Hayes	Anthony Messuri Ransom Jones cc Maryanne Hayes	03/07/11 9:47 am	Depreciation for tax return	Accountant-Client
E-mail	Maryanne Hayes	Anthony Messuri cc Ransom Jones Maryanne Hayes	03/04/11 1:35 pm	Depreciation for tax return	Accountant-Client
E-mail	Ted Bernstein	Anthony Messuri Ransom Jones cc Jerry Lewin	08/15/12 3:27 pm	2011 client preparing corp. return	Accountant-Client
E-mail	Anthony Messuri	Ransom Jones cc Ted Bernstein Linda DeRosa	11/18/13 10:45 am	2012 allocations re Simon Bernstein's estate	Accountant-Client
2009-2011 AIM Documents					
Internal Routing Sheet and File insturctions	L DeRosa	Ransom Jones	01/26/10	with 2009 AIM 1096 and 1099s with filing instructions	Accountant-Client
E-mail	Anthony Messuri	Red Bernstein cc Jocelyn Johnson	01/22/09 3:11 pm	attaching 2009 AIM form 8822 Change of Address	Accountant-Client
E-mail	Traci Kratish, Esq.	Jocelyn Johnson Anthony Messuri cc John Sethman	01/26/09 11:28 am	attaching AIM form 8822 Change of Address filed in 2006	Accountant-Client Attorney-Client

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Diana Banks	Anthony Messuri	03/23/09 12:32 pm	2009 correspondence re AIM 941	Accountant-Client
E-mail	Anthony Messuri	Diana Banks cc Ted Bernstein Jocelyn Johnson	03/25/09 2:39 pm	2009 correspondence re AIM 941	Accountant-Client
E-mail	Diana Banks	Anthony Messuri	03/25/29 2:46 pm	2009 correspondence re AIM 941	Accountant-Client
E-mail	Anthony Messuri	Diana Banks	03/25/09 2:56 pm	2009 correspondence re AIM 941	Accountant-Client
E-mail	Diana Banks	Anthony Messuri cc Jerry Lewin	02/25/10 1:16 pm	2009 response to client re AIM 941	Accountant-Client
E-mail	Anthony Messuri	Diana Banks cc Jerry Lewin	02/25/10 2:05 pm	2009 response to client re AIM 941	Accountant-Client
E-mail	Diana Banks	Anthony Messuri	02/25/10 2:07 pm	2009 response to client re AIM 941	Accountant-Client
E-mail	Anthony Messuri	Diana Banks cc Jerry Lewin	02/26/10 11:15 am	2009 response to client re AIM 941 attaching copy of IRS check	Accountant-Client

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Maryanne Hayes	Anthony Messuri cc Ransom Jones	03/12/10 11:26 am	2010 Tangible Tax Returns and Reconciled Fixed Assets attaching: 2010 Mgmt Tangible Tax Return; 2010 Mktg Tangible Tax Return 2009 Fixed Asset Detail Recocndiled to Tax; 2010 TBS Tangible Tax Return	Accountant-Client
Letter	Jeffrey S. Kahn, Esq.	Ted Bernstein Arbitrage International Management, LLC Neil Useden Gerald Lewin	12/10/09	restatement of retirement plan	Accountant-Client Attorney-Client
E-mail	OttD@gtlaw.com	Neil Useden Jerry Lewin Jeffrey Kahn, Esq.	12/11/09 1:50 pm	AIM Retirement Plan	Accountant-Client Attorney-Client
E-mail	Jerry Lewin	Anthony Messuri	12/11/09 4:49 pm	AIM Retirement Plan	Accountant-Client Attorney-Client
E-mail	Anthony Messuri	Jerry Lewin	12/17/09 8:36 am	AIM Retirement Plan	Accountant-Client Attorney-Client
E-mail	Jerry Lewin	Anthony Messuri	12/17/09 2:22 pm	AIM Retirement Plan	Accountant-Client Attorney-Client

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Anthony Messuri	Ransom Jones	02/15/11 6:43 pm	2010 correspondence client to prepare tangible	Accountant-Client
E-mail	Ransom Jones	Maryanne Hayes John Sethman	02/16/11 9:07 am	2010 correspondence client to prepare tangible	Accountant-Client
E-mail	John Sethman	Ransom Jones Maryanne Hayes	02/16/11 9:08 am	2010 correspondence client to prepare tangible	Accountant-Client
E-mail	Maryanne Hayes	Anthony Messuri Ransom Jones cc Ransom Jones John Sethman	02/16/11 9:38 am	2010 correspondence client to prepare tangible	Accountant-Client
E-mail	Jerry Lewin	Anthony Messuri	04/20/10 12:23 pm	Arbitrage Retirement Plan	Accountant-Client Attorney-Client
E-mail	Jocelyn Johnson	Jeffrey Kahn Ted Bernstein cc Jerry Lewin B. Feingold	04/19/10 4:47 pm	Arbitrage Retirement Plan	Accountant-Client Attorney-Client
E-mail	Jeffrey Kahn, Esq.	Ted Bernstein cc: Jocelyn Johnson G. Goldstein B. Feingold	04/19/10 4:41 pm	Arbitrage Retirement Plan	Accountant-Client Attorney-Client

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
E-mail	Anthony Messuri	John Sethman	12/28/10 1:55 pm	2010 workpapers year end payroll	Accountant-Client
E-mail	John Sethman	Anthony Messuri	12/28/10 1:44 pm	2010 workpapers year end payroll	Accountant-Client
E-mail	Maryanne Hayes	John Sethman	12/28/10 1:19 pm	2010 workpapers year end payroll	Accountant-Client
E-mail	Anthony Messuri	Ransom Jones cc Simon Bernstein Ted Bernstein Maryanne Hayes	12/28/10 1:14 pm	2010 workpapers year end payroll	Accountant-Client
E-mail	Jerry Lewin	Anthony Messuri	12/28/10 12:40 pm	2010 workpapers year end payroll	Accountant-Client
E-mail	Susan Turnbull	Jerry Lewin	02/06/12 1:59 pm	attaching Arbitrage 2011 Form 945 and Revised Arbitrage Copy D 2011	Accountant-Client
E-mail	Jerry Lewin	Anthony Messuri Linda DeRosa	02/06/10 5:58 pm	attaching Arbitrage 2011 Form 945 and Revised Arbitrage Copy D 2011	Accountant-Client

000543

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
2008 LIC Documents					
Email	John Sethman	Traci Kratish, Esq.	01/05/10 5:22 pm	2008 1120S tax notice to LIC	Accountant-Client Attorney-Client
Email	Traci Kratish	Anthony Messuri cc Ted Bernstein John Sethman	01/07/10 9:30 am	2008 1120S tax notice to LIC	Accountant-Client Attorney-Client
Email	Anthony Messuri	Traci Kratish, Esq.	01/07/10 10:41 am	2008 1120S tax notice to LIC	Accountant-Client Attorney-Client
Email	Traci Kratish, Esq.	Anthony Messuri	01/07/10 10:54 am	2008 1120S tax notice to LIC	Accountant-Client Attorney-Client
Email	Anthony Messuri	Traci Kratish, Esq.	01/07/10 12:22 pm	2008 1120S tax notice to LIC	Accountant-Client Attorney-Client
Email	Traci Kratish, Esq.	Anthony Messuri cc Ted Bernstein	01/08/10 1:21 pm	2008 1120S tax notice to LIC	Accountant-Client
Email	Anthony Messuri	Traci Kratish, Esq. Cc Ted Bernstein Gerald Lewin	01/08/10 3:56 pm	2008 1120S tax notice to LIC	Accountant-Client
Email	John Sethman	Traci Kratish, Esq.	01/27/10 1:18 pm	LIC penalty removal notice	Accountant-Client Attorney-Client

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
Email	John Sethman	Traci Kratish, Esq.	01/05/10 5:22 pm	2008 1120S tax notice to LIC	Accountant-Client Attorney-Client
Email	Traci Kratish, Esq.	Anthony Messuri Ted Bernstein John Sethman	01/07/10 9:30 am	2008 1120S tax notice to LIC	Accountant-Client Attorney-Client
Email	Anthony Messuri	Traci Kratish, Esq.	01/07/10 10:41 am	2008 1120S tax notice to LIC	Accountant-Client Attorney-Client
Email	Traci Kratish, Esq.	Anthony Messuri	01/07/10 10:54 am	2008 1120S tax notice to LIC	Accountant-Client Attorney-Client
Email	Anthony Messuri	Traci Kratish, Esq.	01/07/10 12:22 pm	2008 1120S tax notice to LIC	Accountant-Client Attorney-Client
Email	Traci Kratish, Esq.	Anthony Messuri cc Ted Bernstein	01/08/10 1:21 pm	2008 1120S tax notice to LIC	Accountant-Client Attorney-Client
Email	Anthony Messuri	Traci Kratish, Esq. Cc Ted Bernstein Gerald Lewin	01/08/10 3:56 pm	2008 1120S tax notice to LIC	Accountant-Client Attorney-Client
Email	Traci Kratish, Esq.	Anthony Messuri cc Ted Bernstein Jerry Lewin	01/27/10 1:34 pm	2008 1120S tax notice to LIC	Accountant-Client Attorney-Client
Email	Ted Bernstein	Anthony Messuri	11/20/09 12:24 pm	2008 Authorization to Release Tax Return to Ransom	Accountant-Client

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
Letter	Robert H. Garick, CBIZ	Ransom Jones	04/15/10	amendment to LIC 2008 1120S and 1040	Accountant-Client
Email	Ransom Jones	Alan B. Rose, Esq. Ted Bernstein	09/27/13 12:13 pm	Analysis of Compensation	Accountant-Client Attorney-Client
Email	Ransom Jones	Anthony Messuri cc Ted Bernstein	09/30/13 2:26 pm	Analysis of Compensation	Accountant-Client Attorney-Client
Routing Sheet		Ransom Jones	01/12/10	2008 LIC financial statement	Accountant-Client
Email	Maryanne Hayes	Anthony Messuri	12/18/08 1:06 pm	2008 reconciliation from NCR to QB	Accountant-Client
Email	Bob Barick	Anthony Messuri	09/25/09 1:25 pm	2008 workpapers Rivised LIC book to tax as of 09/25/09	Accountant-Client
				2008 workpapers LIC August Interim Distributions	Accountant-Client
				2008 workpapers estimate of LIC K-1	Accountant-Client
Email	Maryanne Hayes	Anthony Messuri	12/16/08 3:19 pm	forwarding 2008 workpapers PBC Feb 2008 amex stmt	Accountant-Client Relevancy
Email	Maryanne Hayes	Anthony Messuri cc John Sethman	12/16/08 1:04 pm	forwarding 2008 workpapers PBC Jan 2008 - July 2008 Amex breakdown	Accountant-Client Relevancy

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
Email	Maryanne Hayes	Anthony Messuri	12/16/08 3:08 pm	forwarding 2008 workpapers PBC Mar-Apr Amex	Accountant-Client Relevancy
Email	Maryanne Hayes	Anthony Messuri	12/16/08 2:44 pm	forwarding 2008 workpapers PBC May-July Amex	Accountant-Client Relevancy
Email	Bob Garick	Anthony Messuri	09/24/09 1:38 pm	Analysis of Liabilities at 12-31-08	Accountant-Client
Email	Bob Garick	Ransom Jones cc: Jerry Lewin	09/24/09 10:50 am	Analysis of Liabilities at 12-31-08	Accountant-Client
Email	Ransom Jones	Bob Garick cc: Jerry Lewin	09/24/09 10:38 am	Analysis of Liabilities at 12-31-08	Accountant-Client
Email	Bob Garick	Ransom Jones cc: Jerry Lewin	09/24/09 10:28 am	Analysis of Liabilities at 12-31-08	Accountant-Client
Email	Bob Garick	Anthony Messuri	09/24/09 1:39 pm	Analysis of Liabilities at 12-31-08 with attached Analysis	Accountant-Client Draft Analysis
				2008 workpapers LIC tax prep budget	Accountant-Client
				2008 workpapers LIC tax prep. budget	Accountant-Client

000547

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
2007-2008 AIM Documents					
Routing Sheet			01/31/08	1099's from QB	Accountant-Client
Email	Anthony Messuri	Ted Bernstein Jocelyn Johnson	01/22/09 4:08 pm	2007 AIM Form 3911	Accountant-Client
Email	Maryanne Hayes	Traci Kratish2 cc Anthony Messuri	01/17/08 5:13 pm	12/31/07 AIM deposit	Accountant-Client Attorney-Client
Email	Anthony Messuri	Maryanne Hayes	01/17/08 8:21 pm	12/31/07 AIM deposit	Accountant-Client
Email	Maryanne Hayes	Traci Kratish 2 Ted Bernstein 2	01/18/08 8:28 am	12/31/07 AIM deposit	Accountant-Client Attorney-Client
Email	Ted Bernstein 2	Maryanne Hayes	01/18/08 11:07 am	12/31/07 AIM deposit	Accountant-Client
Email	Maryanne Hayes	Anthony Messuri	01/18/08 11:45 am	12/31/07 AIM deposit	Accountant-Client
Internal Routing Sheet/Filing Instructions			01/31/08	2007 forms 1099 and 1096	Accountant-Client
Letter	Jeffrey S. Kahn, Esq.	Te Bernstein AIM	11/27/07	AIM Retirement Plan	Accountant-Client Attorney-Client

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
Letter	Jeffrey S. Kahn, Esq.	Te Bernstein AIM	12/17/07	AIM Cash Balance Plan	Accountant-Client
Reconciliation				2007 AIM Payroll reconciliation	Accountant-Client
Research			2007	selling commissions	Accountant-Client
Draft Letter	Goldstein Lewin & Co.	AIM	03/07/08	2007 tangible return	Accountant-Client
Draft Report				2007 AIM tangible return workpapers Draft Transaction Report	Accountant-Client
Email	Jocelyn Johnson	Traci Kratish, Esq. cc Maryanne Hayes	02/20/08 9:18 am	2007 workpapers 1099 and 1096	Accountant-Client Attorney-Client
Email	Maryanne Hayes	Anthony Messuri	02/20/08 9:29 am	2007 workpapers 1099 and 1096	Accountant-Client
Email	Anthony Messuri	Donald Chinick	02/21/08 8:21 pm	2007 workpapers 1099 and 1096	Accountant-Client
Email	Maryanne Hayes	Anthony Messuri	02/20/08 2:51 pm	Levental vendor report	Accountant-Client
Email	Anthony Messuri	Maryanne Hayes	02/22/08 9:19 am	Levental vendor report	Accountant-Client

000549

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
Email	Maryanne Hayes	Anthony Messuri	02/22/08 9:42 am	Levental vendor report	Accountant-Client
Email	Anthony Messuri	Donald Chinick	02/22/08 9:51 am	Levental vendor report	Accountant-Client
Routing Sheet	Anthony Messuri	John Sethman	01/27/09	2008 4th qtr add'l wage with attahcments	Accountant-Client
Email	Diana Banks	Anthony Messuri cc John Sethman	04/02/09 4:31 pm	2008 AIM 941 4th qtr notice	Accountant-Client
Email	Diana Banks	Anthony Messuri cc John Sethman	04/02/09 4:34 pm	2008 AIM 941 4th qtr notice	Accountant-Client
Email	Anthony Messuri	Diana Banks cc John Sethman	04/02/09 5:03 pm	2008 AIM 941 4th qtr notice	Accountant-Client
Routing Sheet/Filing Instructions	L. DeRosa	John Sethman	01/31/09	2008 1096 and 1099s	Accountant-Client
Email	Jocelyn Johnson	Anthony Messuri	09/11/09 4:30 pm	2008 email from client IRS Notice	Accountant-Client

000550

PRIVILEGE LOG					
TYPE OF DOCUMENT	**AUTHOR**	**RECIPIENTS**	**DATE**	**SUBJECT MATTER**	**PRIVILEGE**
Email	Anthony Messuri	Jocelyn Johnson	09/11/09 4:50 pm	2008 email from client IRS Notice	Accountant-Client
Draft Letter	Goldstein Lewin & Co.	AIM	03/12/09	2008 AIM tangible return	Accountant-Client
Email	Jocelyn Johnson	John Sethman	08/26/08 4:58 pm	Arbitrage Contributions for 2007 to Cash Balance Plan and Retirement Plan with attachment	Accountant-Client
Email	Douglas Beckendorf	Jocelyn Johnson cc Neil Useden	08/26/08 4:54 pm	Arbitrage Contributions for 2007 to Cash Balance Plan and Retirement Plan	Accountant-Client
Email	Jocelyn Johnson	Douglas Beckendorf cc: Neil Useden John Sethman	08/26/08 4:10 pm	Arbitrage Contributions for 2007 to Cash Balance Plan and Retirement Plan	Accountant-Client
Email	Douglas Beckendorf	Jocelyn Johnson	08/26/08 1:59 pm	Arbitrage Contributions for 2007 to Cash Balance Plan and Retirement Plan	Accountant-Client

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

FILED
14 APR 25 AM 9:46
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 2

ORDER SETTING SPECIAL SET HEARING

The following matter has been specially set for hearing before Judge Peter D. Blanc in Courtroom 11-A of the Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401:

DATE: **MAY 5, 2014**

TIME: **9:30 A.M.**

MATTER: **[PLAINTIFF'S] MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND FOR IN CAMERA INSPECTION**

THIS MOTION IS SPECIALLY SET AND CANNOT BE CANCELED OR RESET EXCEPT BY COURT ORDER.

It is the intent of this Court to dispose of the subject matter of the specially set motion on the date and time appearing above. Accordingly, counsel must either: (1) be present personally or by telephone conference call at the hearing (telephone appearance must be approved in advance); or (2) submit an agreed order disposing of the motion.

All memoranda, not to exceed ten (10) double spaced pages, with case authority shall be delivered directly to my office no later than seven (7) days in advance of the hearing and should designate the date and time of the hearing which they reference. Arguments shall be limited to a maximum of fifteen (15) minutes per side or less as the Court deems appropriate.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, on this 24 day of April, 2014.

PETER D. BLANC, Circuit Judge

Copies furnished by e-service

Copies Furnished:
Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401 at arose@pm-law.com and mchandler@pm-law.com;
Steven Lessne, Esq., GRAY ROBINSON, P.A., 225 N.E. Mizner Boulevard, Suite 500, Boca Raton, FL 33432 at steven.lessne@gray-robinson.com;
Benjamin P. Brown, Esq., Matwiczyk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401 at bbrown@matbrolaw.com;
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3695 W. Boynton Beach Blvd., Suite #9, Boynton Beach, FL 33436 at pfeaman@feamanlaw.com

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355 4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

"Si usted es una persona minusválida que necesita algún acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida 33401; teléfono número (561) 355-4380, por lo menos 7 días antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente después de recibir esta notificación si el tiempo antes de la comparecencia que se ha

programado es menos de 7 días; si usted tiene discapacitación del oído o de la voz, llame al 711."

"Si ou se yon moun ki enfim ki bezwen akomodasyon pou w ka patisipe nan pwosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kèk èd. Tanpri kontakte Germaine English, kòòdonatè pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan 205 North Dixie Highway, West Palm Beach, Florida 33401; telefòn li se (561) 355 4380 nan 7 jou anvan dat ou gen randevou pou parèt nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si lè ou gen pou w parèt nan tribinal la mwens ke 7 jou; si ou gen pwoblèm pou w tande oubyen pale, rele 711."

Filing # 13088223 Electronically Filed 04/30/2014 09:39:28 AM

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO. **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

NOTICE OF CHANGE OF ADDRESS

PLEASE TAKE NOTICE that the undersigned counsel has moved his office and the new office address is 3695 West Boynton Beach Blvd., Suite 9, Boynton Beach, FL 33436. Telephone number, facsimile number, and email addresses remain the same.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; and at courtfilings@pankauskilawfirm.com to John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach,

FL 33401; and bbrown@matbrolaw.com to Benjamin P. Brown, Esq., Matwiczyk & Brown, LLP, 625 N. Flagler Drive, Suite 401, West Palm Beach, FL 33401, on this 30th day of April, 2014.

PETER M. FEAMAN, P.A.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
Service: service@feamanlaw.com
mkoskey@feamanlaw.com

By: Peter Feaman
Peter M. Feaman
Florida Bar No. 0260347

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

FILED
14 MAY -5 AM 11:36
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL

ORDER ON PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND FOR IN CAMERA INSPECTION

THIS MATTER came before this Court on Thursday, March 13, 2014, upon the Plaintiff's Motion to Compel Production of Documents and For In Camera Inspection, and the Court, having heard argument of counsel, and considered the evidence, it is

ORDERED AND ADJUDGED that:

1. Plaintiff's Motion to Compel Production of Documents and For In Camera Inspection is hereby ~~GRANTED~~. DENIED w/out Prejudice.

2. _____

DONE and ORDERED in West Palm Beach, Palm Beach County, Florida, this 5 day of May, 2014.

PETER D. BLANC, CIRCUIT COURT JUDGE

Copies to:
Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, #600, West Palm Beach, FL 33401;
Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 Boynton Beach Blvd., Boynton Bch, FL33436
Benjamin Brown, Esq., Matwiczyk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401
Steven Lessne, Esq., GRAY ROBINSON, P.A., 225 N.E. Mizner Boulevard, Suite 500, Boca Raton, FL 33432

Filing # 14010149 Electronically Filed 05/22/2014 05:23:33 PM

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

MOTION TO COMPEL PRODUCTION OF DOCUMENTS
FROM DEFENDANT ARBITRAGE INTERNATIONAL MANAGEMENT, LLC

COMES NOW Plaintiff, William Stansbury ("Plaintiff"), by and through his undersigned counsel, and moves this Court to compel Defendant, ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, ("Arbitrage") to produce the documents requested by Plaintiff in his Second Request for Production of Documents propounded January 20, 2014. More specifically, Plaintiff states:

1. On January 20, 2014, Plaintiff, through counsel, served a Second Request for Production of Documents on Arbitrage (The "Second Document Request"). A copy of the Second Document Request is attached hereto as Exhibit "A." Arbitrage was the employer of Plaintiff. Upon information and belief, Arbitrage is the sole shareholder of Defendant LIC HOLDINGS, INC.

2. Defendant's counsel, Alan Rose, and Plaintiff's counsel discussed the specific requests by telephone on April 9, 2014. Since that discussion, Arbitrage has yet to produce the requested documents.

3. Plaintiff is entitled to obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action. See Fla. R. Civ. P. 1.280(b)(1). The documents sought are clearly relevant to the subject matter of the pending action. Indeed, the documents requested will also likely lead to the discovery of admissible evidence, making them plainly "relevant" under Florida law. Id.

4. Financial information is discoverable when the materials sought would appear to be relevant to the subject matter of the pending action. Friedman v. Heart Institute of Port St. Lucie, 863 So. 2d 189 (Fla. 2003). In Board of Trustees of the Internal Improvement Trust v. American Educational Enterprises, LLC, 99 So. 3d 450 (Fla. 2012) (attached hereto as Exhibit "B"), the Florida Supreme Court held that financial information was relevant and discoverable where, in a contract action, the Plaintiff also alleged negligent misrepresentation, fraud in the inducement, unjust enrichment, and reformation of the contract.

5. Likewise, in the case at hand, the financial information sought is relevant and discoverable in Plaintiff's action involving breach of contract, fraudulent inducement, and misrepresentations. Indeed, Plaintiff claims that he was fraudulently induced into surrendering his 10% stock interest in Arbitrage. Plaintiff alleges that Defendants told him the Company's accountant determined Plaintiff would incur phantom income on his shares and the only way to avoid payment of tax on the income would be to surrender his stock, which he did. Plaintiff now believes and alleges that such representations were false and were intended to wrongfully induce Plaintiff into surrendering his equity interest in Arbitrage.

6. Plaintiff has also alleged that he was fraudulently induced into remaining in his employment relationship with Arbitrage by virtue of representations by the Defendants that none of the Principals of Arbitrage (Plaintiff; Defendant Simon Bernstein; and Defendant Ted Bernstein) would be paid any compensation for commissions received for 2008 policies until the year's end. The purported reason for this was to enhance the appearance of the company's financial statements so as to make the company more attractive to potential lenders. Plaintiff remained any employee for 3 more years, until 2012. Plaintiff received little or no compensation during this time. During this time period, Defendants made additional fraudulent misrepresentations to Plaintiff. Despite their representations to Plaintiff, Simon Bernstein and Ted Bernstein siphoned money from Arbitrage and Defendant LIC for their personal benefit, to the detriment of Plaintiff.

7. A review of the descriptions of the documents set forth in the Second Document Request demonstrates that the requested items are relevant to Plaintiff's claim that he was fraudulently induced to surrender his shares of stock in Arbitrage and that he was fraudulently induced by Defendants into continuing his employment relationship with Arbitrage with his compensation deferred.

8. The financial documents requested are also relevant and discoverable because they could reasonably be used by the Plaintiff to challenge any attempt by the Defendants to assert that the amount due and owing to the Plaintiff should be reduced. See, Board of Trustees of the Internal Improvement Trust, 99 So. 3d 450, 458-459 (Fla. 2012) (financial information sought was discoverable because it could reasonably be used to challenge any attempt by the defendant to assert that the purchase price should be reduced because of alleged losses).

9. Additionally, a review of the descriptions of the documents set forth in the Second Document Request does not suggest that any of them are protected from discovery by the attorney–client, work product or any other privilege.

WHEREFORE, Plaintiff requests this Honorable Court enter an Order compelling Defendant, ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, to deliver to the Plaintiff the documents requested in his Second Request for Production of Documents to Arbitrage International Management, LLC, for his costs herein expended, including reasonable attorney fees, and such other relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; at steven.lessne@gray-robinson.com, Steven Lessne, Esq., GRAY ROBINSON, P.A., 225 N.E. Mizner Boulevard, Suite 500, Boca Raton, FL 33432; and at bbrown@matbrolaw.com to Benjamin P. Brown, Esq., Matwiczyk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401, on this 22 day of May, 2014.

PETER M. FEAMAN, P.A.
3695 Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
e-service: service@feamanlaw.com
mkoskey@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No.: 0260347

9338750

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

PLAINTIFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT ARBITRAGE INTERNATIONAL MANAGEMENT, LLC

Plaintiff, WILLIAM E. STANSBURY ("STANSBURY"), through undersigned counsel, pursuant to Fla. R. Civ. P. 1.350, hereby propounds the attached Second Request for Production of Documents upon Defendant, ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC, requiring said Defendant to produce copies of the materials and items described on the attached list at, or by mailing a copy to Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, on or before thirty (30) days after service of this Request for Production of Documents.

resp. due 2/19/14

Preliminary Statement

As used in this Discovery request, the following terms will have the following meanings:

EXHIBIT A

"Plaintiff," "WILLIAM STANSBURY," or "STANSBURY" means the Plaintiff, and includes any person or entity acting on his behalf.

"Defendant," "ARBITRAGE," "you," or "your" means Defendant, ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC, and includes any person or entity acting on behalf of such party, including, but not limited to, attorneys and their associates and employees, investigators, agents, employees, representatives, or others who are in possession of or who may have obtained information for or on its behalf.

"Defendants" means the Defendants to this action, to wit: TED S. BERNSTEIN, SIMON BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC, including any person or entity acting on behalf of such party or parties, including, but not limited to, attorneys and their associates and employees, investigators, agents, employees, representatives, or others who are in possession of or who may have obtained information for or on their behalf.

"LIC" means ARBITRAGE INTERNATIONAL MARKETING, INC. D/B/A LIFE INSURANCE CONCEPTS (FL)

"LIC HOLDINGS" means LIC HOLDINGS, INC.

The terms "all records," "all documents," "all documentation," and "all communications" mean every record, document, or communication as defined herein known to you and every such record, document, or communication which can be located or discovered by reasonably diligent efforts.

The term "communication" shall mean every manner or means of disclosure, transfer or exchange, and every disclosure, transfer or exchange of information whether orally or face-to-face or by telephone, letter, mail, personal delivery, facsimile transmission, electronic mail, (e-mail) document or otherwise.

The term "document," "documents," "documentation," "record," and "records" shall mean all written, typed, printed, reported, recorded or graphic matter, and all photographic matters or sound reproduction tapes records, or other devices, however produced, reproduced, or stored, now or formerly within your actual or constructive possession, custody or control. "Document" or "documents" shall include, but are not limited to, all telegrams, telexes, cables, telephone records, telephone bills, memoranda (circulated and uncirculated), market studies, correspondence, reports, studies, compilations of data, filings, files, internal policies or rules or regulations, minutes, agenda, requests, records, charts, lists, analyses, graphs, diagrams, schematics, blueprints, specifications, worksheets, change orders, drawings, cost estimates, books, expense reports, notebooks, notes, diaries, appointment books, calendars, recordings, transcriptions, computerized data in any media, including but not limited to: discs, CD-ROMs, or e-mails; file cards, computer printouts, microfilm, microfiche, videotapes, media articles or reports, accounts, books and records, ledgers, journals and other financial records, audits, instructions, questionnaires, profit and loss statements, financial statements, annual reports, state

and federal tax returns, checkbooks, canceled checks, billings, contracts or agreements or releases, and any drafts, copies, or reproductions of the foregoing; and any copy of the foregoing upon which any notations in any form have been made which do not appear on the originals; and any copy of the foregoing upon which any language, notation or comments, in any form, which appear on the original or any other copy have been deleted, highlighted, altered or edited.

The term "communication" and "communications, as used herein, shall include any utterance heard or overheard, whether in person, by telephone, radio or otherwise, statement, dialogue, discussion, conversation or agreement, as well as every document and every other mode of intentionally conveying meaning.

"Identify," identity" or "identification," when referring to a person, shall mean that you shall state the person's (a) full name, (b) current or last known business address and telephone number, (c) current or last known residential address and telephone number, (d) current or last known employer and employer's address, (e) current or last known occupation or position title.

"Identify," "identity" or "identification," when used in reference to a document, documents, documentation, record, and/or records means to state the date, author (or originator), title, type (or subject matter) and custodian of the document, or other sufficient description of it in order to identify it for production in this suit, and each and every word contained in that document. If any document identified is no longer in your care, custody or control, state the disposition of such document. If a privilege is claimed with respect to any document, state the nature of the privilege claimed, and identify each person who has received the documents or a copy of it. Attachment of a true, correct copy of any document to your answers to these discovery requests shall constitute sufficient identification of any document.

"Person" or "individual" means any natural person, individual, proprietorship, partnership, corporation, association, joint proprietorship, joint venture, firm, other business enterprise, governmental body, or other entity.

A communication or document "relating" to any given subject means any communication or document that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

Unless otherwise stated, the documents requested shall be for the past ten (10) years.

Instructions

If any Request for Production is objected to on the grounds of privilege or otherwise, set forth fully each objection, stating the facts upon which you rely as the basis for the objection, and describe:

The nature of the document or communication not produced or disclosed;

The name and title of the author;

The name and title of each person to whom the document or communication was addressed, including all people to whom a copy was sent;

The date;

The number of pages;

A description of the subject matter sufficient, without waiving the claimed privilege or protection, to allow the requesting party to assess the applicability of the privilege or protection;

The privilege or protection claimed;

The paragraph(s) of this Request for Production to which the document or communication is responsive; and

The location of the original and each copy of the document or communication as of the date of the response to this Request for Production.

If you claim that any document requests is subject to privilege, please provide all documents responsive to the Request to the extent not privileged and comply with Instruction No. 1 as to the remainder of the Request.

If documents responsive to any of the Requests have been destroyed or discarded, identify the document as follows:

The date of the document;

The author or maker of the document;

The person to whom and from whom the document was sent;

The subject matter of the document;

The date on which the document was destroyed or discarded;

The reason for the destruction or discard; and

The person authorizing and/or carrying out said destruction or discard.

When producing the documents, please keep all documents segregated by the file in which the documents are contained and indicate the name of the file in which the documents are contained and name of the documents being produced. In the event such files or documents have been removed for the purposes of this action or other purpose, please state the name and address of the person who removed the file, the title of the file and each sub-file, if any, maintained within the file, and the present location of the file.

As used herein the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall include each of the other genders.

All documents produced shall be originals unless otherwise indicated. If your "original" is a photocopy (or other copy), then the photocopy you have should be produced as your original. You should produce the original documents in the form, order and manner in which they are maintained in your files or the files of other persons under your control. In this connection, and for purposes of illustration, documents are to be produced in the file folder and file cartons in which they have been maintained or stored, clipped, stapled, or otherwise arranged in the same form and manner as they were found. In the alternative, you should segregate all documents according to the specifications of this Request and shall organize and label each group of documents with the appropriate specifications prior to production. If any document is responsive to more than one specification of this Request, it should be labeled to reflect each specification to which it is responsive.

This Request for Production calls for production of all responsive documents in the possession, custody, or control of you, your agents, or representatives without regard to physical location of said documents. Control means in your possession, custody or control, or under your direction, and included in the possession, custody, or control of those under the direction of you and your employees, subordinates, counsel, accountant, consultant, expert, parent or affiliated corporation, and any person purporting to act on your behalf.

Please mark each document to indicate the paragraph to which the document corresponds. In the event you do not have "possession, custody or control" of any of the documents requested, state this fact, specifying the paragraph concerned. Additionally, if you do not have "possession, custody, or control" of any of the documents requested, but you know that they are in the possession or custody of other parties, give a brief description of the document(s), and the name and address of the party thought to be in possession thereof.

In producing copies of any documents, produce copies of both the front and back of each document, where the backside contains writing, printing, stamping, or notations.

DOCUMENTS TO BE PRODUCED

1. Cash for Operating Accounts Reports and/or any and all other similar reports that detail the cash payments made by ARBITRAGE for the calendar years 2007, 2009, 2010 and 2012.

2. Balance Sheets, Profit and Loss Statements and Commission Earned Reports for the calendar years 2007, 2009, 2010, 2011 and 2012.

3. All written contracts, agreements, or memoranda of understanding by and between ARBITRAGE and Arbitrage International Marketing, Inc. d/b/a Life Insurance Concepts ("LIC") relating to the provision of management services by ARBITRAGE to LIC and for which LIC paid management fees to ARBITRAGE.

4. All written contracts, agreements, or memoranda of understanding by and between ARBITRAGE and LIC relating to the provision of management services by LIC to ARBITRAGE and for which ARBITRAGE paid management fees to LIC.

5. All written contracts, agreements, or memoranda of understanding by and between ARBITRAGE AND LIC HOLDINGS, INC. ("LIC HOLDINGS') relating to the provision of management services by LIC HOLDINGS to ARBITRAGE and for which ARBITRAGE paid management fees to LIC HOLDINGS.

6. All written contracts, agreements, or memoranda of understanding by and between ARBITRAGE AND LIC HOLDINGS, INC. ("LIC HOLDINGS') relating to the provision of management services by ARBITRAGE to LIC HOLDINGS and for which LIC HOLDINGS paid management fees to ARBITRAGE.

7. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by ARBITRAGE to Ted Bernstein.

8. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by ARBITRAGE to LIC the proceeds of which LIC, in turn, then loaned to Ted Bernstein.

9. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by LIC to ARBITRAGE the proceeds of which ARBITRAGE, in turn, then loaned to Ted Bernstein.

10. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by ARBITRAGE to LIC HOLDINGS the proceeds of which LIC HOLDINGS, in turn, then loaned to Ted Bernstein.

11. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by ARBITRAGE to Simon Bernstein.

12. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by ARBITRAGE to LIC the proceeds of which LIC, in turn, then loaned to Simon Bernstein.

13. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by LIC to ARBITRAGE the proceeds of which ARBITRAGE, in turn, then loaned to Simon Bernstein.

14. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by ARBITRAGE to LIC HOLDINGS the proceeds of which LIC HOLDINGS, in turn, then loaned to Simon Bernstein.

15. Copies of all checks written by ARBITRAGE to Ted Bernstein in 2007, 2008, 2009, 2010, 2011 and 2012.

16. Copies of all checks written by ARBITRAGE to Simon Bernstein in 2007, 2008, 2009, 2010, 2011 and 2012.

17. ARBITRAGE Check Detail for calendar years 2007, 2009, 2011 and 2012.

18. Form W-2 statements issued to Simon Bernstein, Ted Bernstein and William Stansbury for the years 2007, 2008, 2009, 2011 and 2012.

19. All documents that set forth or contain a listing of the salaries paid or to be paid to Ted Bernstein, Simon Bernstein, and William Stansbury for the years 2007, 2008, 2009, 2010, 2011 and 2012.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives of the Estate of Simon Bernstein* and *Bernstein Family Realty,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 29th day of January, 2014.

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(Cite as: 99 So.3d 450)

H

Supreme Court of Florida.
BOARD OF TRUSTEES OF the INTERNAL IMPROVEMENT TRUST FUND, Petitioner,
v.
AMERICAN EDUCATIONAL ENTERPRISES, LLC, Respondent.

No. SC10–2251.
Sept. 27, 2012.

Background: Purchaser of state-owned real property brought action against Board of Trustees of the Internal Improvement Trust Fund (board), alleging negligent misrepresentation, fraud in the inducement, and unjust enrichment and seeking reformation of purchase contract. The Circuit Court, Miami-Dade County, Jerald Bagley, J., entered order compelling purchaser's production of requested financial information. Purchaser sought certiorari relief. The District Court of Appeal, Third District, 45 So.3d 941,Lagoa, J., granted certiorari and quashed discover order as overboard. Board sought review.

Holdings: The Supreme Court, Lewis, J., held that:
(1) overbreadth is not a proper basis for certiorari review of discovery orders; disapproving *Redland Company, Inc. v. Atlantic Civil, Inc.*, 961 So.2d 1004; *Stihl Southeast, Inc. v. Green Thumb Lawn & Garden Center Newco, Inc.*, 974 So.2d 1200;
(2) financial documents sought from purchaser, in form of auditor reports, balance sheets, income statements, cash flows, federal tax returns, budgets, and other financial reports, were discoverable by board.

Decision of District Court of Appeal quashed.

Canady, J., concurred in the result.

West Headnotes

|1| Certiorari 73 ⚿5(1)

73 Certiorari
73I Nature and Grounds
73k5 Existence of Remedy by Appeal or Writ of Error
73k5(1) k. In general. Most Cited Cases

Certiorari 73 ⚿16

73 Certiorari
73I Nature and Grounds
73k11 Decisions and Proceedings of Courts, Judges, and Judicial Officers
73k16 k. Finality of determination. Most Cited Cases

A party petitioning for certiorari review by district court of appeal of a non-final order for which no interlocutory appeal is provided by rule of appellate procedure must demonstrate that the contested order constitutes (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case, (3) that cannot be corrected on postjudgment appeal. West's F.S.A. Const. Art. 5, § 4(b)(3); West's F.S.A. R.App.P.Rule 9.130(a)(4).

|2| Certiorari 73 ⚿5(1)

73 Certiorari
73I Nature and Grounds
73k5 Existence of Remedy by Appeal or Writ of Error
73k5(1) k. In general. Most Cited Cases

EXHIBIT B

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Common-law certiorari may be invoked only when a party will suffer irreparable harm that cannot be remedied on direct appeal. West's F.S.A. Const. Art. 5, § 4(b)(3).

[3] Certiorari 73 ⚿17

73 Certiorari
73I Nature and Grounds
73k11 Decisions and Proceedings of Courts, Judges, and Judicial Officers
73k17 k. Particular proceedings in civil actions. Most Cited Cases

Overbreadth is not a proper basis for certiorari review of discovery orders; disapproving *Redland Company, Inc. v. Atlantic Civil, Inc.*, 961 So.2d 1004; *Stihl Southeast, Inc. v. Green Thumb Lawn & Garden Center Newco, Inc.*, 974 So.2d 1200. West's F.S.A. Const. Art. 5, § 4(b)(3).

[4] Certiorari 73 ⚿17

73 Certiorari
73I Nature and Grounds
73k11 Decisions and Proceedings of Courts, Judges, and Judicial Officers
73k17 k. Particular proceedings in civil actions. Most Cited Cases

Certiorari jurisdiction does not lie to review every erroneous discovery order. West's F.S.A. Const. Art. 5, § 4(b)(3).

[5] Pretrial Procedure 307A ⚿36.1

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak36 Particular Subjects of Disclosure
307Ak36.1 k. In general. Most Cited Cases

Generally, private individual financial information is not discoverable when there is no financial issue pending in the case to which the discovery applies.

[6] Pretrial Procedure 307A ⚿36.1

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak36 Particular Subjects of Disclosure
307Ak36.1 k. In general. Most Cited Cases

Where financial materials sought by a party would appear to be relevant to the subject matter of the pending action, the information is fully discoverable.

[7] Pretrial Procedure 307A ⚿31

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak31 k. Relevancy and materiality. Most Cited Cases

The concept of relevancy has a much wider application in the discovery context than in the context of admissible evidence at trial.

[8] Pretrial Procedure 307A ⚿375

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(E) Production of Documents and Things and Entry on Land
307AII(E)3 Particular Documents or Things
307Ak375 k. Business and financial

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records and reports. Most Cited Cases

Financial documents sought from purchaser of state-owned real property, in form of auditor reports, balance sheets, income statements, cash flows, federal tax returns, budgets, and other financial reports from 2001 to 2008, were discoverable by Board of Trustees of the Internal Improvement Trust Fund (board) in action against board arising from 2001 purchase in which purchaser alleged negligent misrepresentation, fraud in the inducement, and unjust enrichment and sought reformation of the purchase contract; those documents could lead to evidence to resolve underlying action based upon the parties' contentions regarding value of property as compared to the purchase price.

[9] Pretrial Procedure 307A 41

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak41 k. Objections and protective orders. Most Cited Cases

Rules of discovery provide sufficient means to limit the use and dissemination of discoverable information via protective orders, and it is the responsibility of the trial court to decide whether to employ those means.

***452** Paul Morris of the Law Offices of Paul Morris, P.A., Miami, FL, and Richard Alan Alayon of Alayon & Associates, P.A., Coral Gables, FL, for Petitioner.

Elio F. Martinez, Jr., Barbara Viniegra and Scott Allen Burr of Concepcion, Martinez & Bellido, Coral Gables, FL, for Respondent.

LEWIS, J.

The Board of Trustees of the Internal Improvement Trust Fund seeks review of the decision of the Third District Court of Appeal in *American Educational Enterprises, LLC v. Board of Trustees of the Internal Improvement Trust Fund,* 45 So.3d 941 (Fla. 3d DCA 2010) (*AEE*), on the basis that it expressly and directly conflicts with decisions of this Court and other district courts of appeal with regard to the proper standard for common law certiorari relief. We have jurisdiction. *See* art. V, § 3(b)(3), Fla. Const.

FACTS

The Board of Trustees of the Internal Improvement Trust Fund (the Board) is the Florida entity responsible for the disposition of state-owned property. *See* § 253.03, Fla. Stat. (2011).[FN1] American Educational Enterprises, LLC (American) is the assignee of Florida National College's (FNC) right, title, and interest to and under a contract for the sale and purchase of state-owned property. This dispute arises from a discovery ruling in litigation concerning the purchase by American of certain state-owned real property from the Board.

> FN1. Although the Board is the entity responsible for the disposition of the property at issue, the Florida Department of Environmental Protection (the FDEP) performs all duties involved in the disposition and sale of state property. *See* § 253.002, Fla. Stat. (2011) (stating that the FDEP "shall perform all staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees of the Internal Improvement Trust Fund"). References to the Board also extend to the FDEP.

In 1994, the State of Florida purchased the property at issue for $3,750,000 for use by the Department of Corrections. The property consisted of two lots with a building on one that was referred to as Glenbeigh Hospital, a treatment facility for substance abuse offenders. On April 18, 2001, the Board sent a bidding package to prospective purchasers, including FNC,

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regarding the sale of the property. Each bidding package disclosed that the property was being sold "as is" and at a minimum price of $3,750,000. In addition to the minimum price, the bidding package included information as to the tax-assessed value of the property ($4,642,063), its need for repairs, the buyer's responsibility for financing, that a site inspection would be arranged upon request, and that a buyer "should independently verify all facts related to th[e] property." On April 23, 2001, FNC submitted a bid of $4,025,000 as well as an earnest money deposit of $402,500. The Board accepted the bid and deposit from FNC, and the parties executed a purchase and sale contract for the amount of the bid.

To complete the purchase of the property, FNC sought financing from Citibank, which obtained an appraisal of the property. The appraisal obtained by Citibank concluded that the market value of the property was only $2,850,000. FNC also received a 1999 appraisal of the property that valued it at $3,275,000. The Board had not included the 1999 appraisal in the bidding package. FNC requested that the contract be modified to reflect the lower ***453** appraisal value as the purchase price. The Board declined to renegotiate and stated that FNC would forfeit its earnest money deposit if it did not close on the property. On June 30, 2001, FNC closed on the sale of the property.

Thereafter, FNC assigned its rights under the contract to American. American, in turn, filed an action against the Board, claiming negligent misrepresentation, fraud in the inducement, unjust enrichment, and reformation of the contract. The Board filed an answer, asserted twenty-two affirmative defenses and a counterclaim for fraud in the inducement, and demanded attorneys' fees. The Board contended that FNC misrepresented its position after the Board refused to reduce the purchase price prior to closing.

During discovery, the Board obtained financial documents that FNC had submitted to Citibank to obtain financing for the property. The documents covered the years 1998–2004, and specifically included FNC's independent auditor's reports, balance sheets, income statements, statements of cash flow, tax returns, and underlying information for its 2001 through 2008 budgets, in addition to American's balance sheets, income statements, statements of cash flow, and tax returns. The Board and American entered into a Stipulated Confidentiality Agreement (the Agreement) that governed this information. The trial court approved the Agreement which was not limited to any specific time frame. The Agreement provided, in relevant part, that the financial information disclosed to the Board and provided by Citibank would be treated as confidential.

Relevant to this case, in March 2009, the Board propounded to American a request for the production of documents (the Request) seeking, in pertinent part, the following items:

1. FNC's independent auditor's reports for 2005–2007;

2. FNC's balance sheets, income statements and statements of cash flow for 2006 and 2007;

3. FNC's federal tax returns for 2005–2007;

4. Budgets prepared by FNC for 2001–2008;

5. American's balance sheets, income statements, and statements of cash flows for 2006 and 2007;

6. American's tax returns for 2001, 2002, and 2005–2007; and

7. All financial reports filed with the Department of Education for Title IV programs.

American objected to the request as overbroad,

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unduly burdensome, irrelevant to the asserted claims, and not reasonably calculated to lead to admissible evidence. The Board, in turn, moved to compel American to provide the requested documents. Along with its motion, the Board provided an affidavit from an expert appraiser who opined that the requested information was necessary to defend the claims of economic damages asserted by American. American, in response, contended that the request violated its privacy rights because it was only seeking the difference between the amount paid for the property and its value. Following a hearing, the trial court granted the Board's motion to compel production and ordered American to produce items 1–7 of the Request.

American petitioned the Third District Court of Appeal for a writ of certiorari in which it requested that the court quash the order compelling production. The Third District quashed the order and held that certiorari relief was merited because the order of the trial court compelling production was *overbroad. See* ***454***AEE,* 45 So.3d at 946. The Third District specified that three elements caused the order to be overbroad: (1) it compelled disclosure of corporate financial documents that did not fall within the relevant time frame; (2) it required the disclosure of corporate financial documents without regard to the issues involved in the case; and (3) the Board's defense to American's claim to reform the contract did not support discovery of corporate financial documents far removed from the time of the purchase of the property. *See id.* at 944–46.

The Board petitioned this Court to review the decision below on the basis that the Third District's reliance on overbreadth did not satisfy the standard for certiorari relief and was in express and direct conflict with the decisions of this Court in *Allstate Insurance Company v. Boecher,* 733 So.2d 993 (Fla.1999) and *Martin Johnson, Inc. v. Savage,* 509 So.2d 1097 (Fla.1987), *superceded by statute on other grounds,* § 768.72, Fla. Stat. (1989).

ANALYSIS

When determining whether an appellate court has properly invoked its certiorari jurisdiction to review a non-final order, this Court has explained that the following judicial policy informs the analysis:

> "[C]ommon law certiorari is an *extraordinary remedy* and should not be used to circumvent the interlocutory appeal rule which authorizes appeal from only a few types of non-final orders." *Martin–Johnson, Inc. v. Savage,* 509 So.2d 1097, 1098 (Fla.1987); *see also Belair v. Drew,* 770 So.2d 1164, 1166 (Fla.2000); *Jaye v. Royal Saxon, Inc.,* 720 So.2d 214, 214–15 (Fla.1998).... "A non-final order for which no appeal is provided by Rule 9.130 is reviewable by petition for certiorari only in limited circumstances." *Martin–Johnson, Inc.,* 509 So.2d at 1099; *see also Brooks v. Owens,* 97 So.2d 693, 695 (Fla.1957).... Limited certiorari review is based upon the rationale that "piecemeal review of nonfinal trial court orders will impede the orderly administration of justice and serve only to delay and harass." *Jaye,* 720 So.2d at 215.
>
> *Reeves v. Fleetwood Homes of Fla., Inc.,* 889 So.2d 812, 822 (Fla.2004) (emphasis supplied); *see also Custer Med. Ctr. v. United Auto. Ins. Co.,* 62 So.3d 1086, 1092 (Fla.2010).

Here, we address whether the Third District erroneously granted a petition for a writ of certiorari and quashed a discovery order that compelled the production of financial information on the basis of overbreadth. We conclude that the Third District erred and applied an incorrect standard for certiorari, and we therefore quash the decision below.

[1] The Florida Constitution provides the district courts of appeal with the discretionary jurisdiction to issue, inter alia, writs of certiorari. *See* art. V, § 4(b)(3), Fla. Const. Florida Rule of Appellate Procedure 9.130 authorizes the district courts to consider

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interlocutory appeals of certain non-final orders in specific circumstances. *See* Fla. R.App. P. 9.130(a)(4). A non-final order for which no appeal is provided by rule 9.130 may be reviewable by petition for a writ of certiorari, but only in very limited circumstances. The petitioning party must demonstrate that the contested order constitutes "(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case[,] (3) that cannot be corrected on postjudgment appeal." *Reeves,* 889 So.2d at 822 (quoting *Bd. of Regents v. Snyder,* 826 So.2d 382, 387 (Fla. 2d DCA 2002)); *see also Williams v. Oken,* 62 So.3d 1129, 1132 (Fla.2011); *Brooks,* 97 So.2d at 695. A finding that the petitioning party has "suffered an irreparable ***455** harm that cannot be remedied on direct appeal" is a "condition precedent to invoking a district court's certiorari jurisdiction." *Jaye,* 720 So.2d at 215; *see Williams,* 62 So.3d at 1132 ("The last two elements are jurisdictional and must be analyzed before the court may even consider the first element."); *Martin–Johnson, Inc.,* 509 So.2d at 1099; *McDonald v. Johnson,* 83 So.3d 889, 891 (Fla. 2nd DCA 2012) ("This court considers the second and third prongs first because they are used to determine jurisdiction."); *Killinger v. Guardianship of Grable,* 983 So.2d 30, 32 (Fla. 5th DCA 2008); *Harley Shipbuilding Corp. v. Fast Cats Ferry Serv., LLC,* 820 So.2d 445, 448 (Fla. 2d DCA 2002).

If the party seeking review does not demonstrate that it will suffer material injury of an irreparable nature, then an appellate court may not grant certiorari relief from a non-appealable non-final order. *See Capital One, N.A. v. Forbes,* 34 So.3d 209, 212 (Fla. 2d DCA 2010). Similarly, if the alleged harm can be remedied on appeal, the harm is not considered irreparable, and thus certiorari relief is not merited. *See Pepsi Bottling Grp., Inc. v. Underwood,* 8 So.3d 1260, 1262 (Fla. 1st DCA 2009).

[2] In *Martin–Johnson, Inc.,* this Court expressed an unwillingness to "creat[e] a new category of non-final orders reviewable on interlocutory appeal." 509 So.2d at 1099; *id.* at 1100 ("Even when the order departs from the essential requirements of the law, there are strong reasons militating against certiorari review."). *See also Topp Telecom, Inc. v. Atkins,* 763 So.2d 1197, 1200 (Fla. 4th DCA 2000) (quoting *Haines City Cmty. Dev. v. Heggs,* 658 So.2d 523, 531 (Fla.1995) (noting that "[a]n erroneous order compelling discovery when the cost and effort to do so is burdensome but not destructive is simply not 'sufficiently egregious or fundamental to merit the extra review and safeguard provided by certiorari,' " and thus declining to grant certiorari review of the disputed order)). Time and again, Florida courts have reiterated that certiorari relief is an "extremely rare" remedy that will be provided in "very few cases." *Martin–Johnson, Inc.,* 509 So.2d at 1098–99 (citing *Taylor v. Bd. of Pub. Instruction of Duval Cnty.,* 131 So.2d 504, 506 (Fla. 1st DCA 1961)); *see also Haridopolos v. Citizens for Strong Schs., Inc.,* 78 So.3d 605, 608 n. 2 (Fla. 1st DCA 2011); *Anderson v. Vander Meiden ex rel. Duggan,* 56 So.3d 830, 832 (Fla. 2d DCA 2011); *Acevedo v. Doctors Hosp., Inc.,* 68 So.3d 949, 951 (Fla. 3d DCA 2011). In *Martin–Johnson, Inc.,* this Court addressed whether the denial of a motion to dismiss or strike a claim for punitive damages constituted irreparable harm such that the appellate court should have granted certiorari relief. *See* 509 So.2d at 1098. Although courts have since retreated from the specific holding of *Martin–Johnson, Inc.* with regard to punitive damage claims in light of the adoption of section 768.72, Florida Statutes (1989), the foundation of the case—that common law certiorari may be invoked only when a party will suffer irreparable harm that cannot be remedied on direct appeal—remains sound law. *See Williams,* 62 So.3d at 1134; *Forbes,* 34 So.3d at 212; *Underwood,* 8 So.3d at 1262; *Hargrett v. Toyota Motor Sales U.S.A., Inc.,* 705 So.2d 1009, 1009 n. 1 (Fla. 4th DCA 1998).

Here, the parties do not dispute the extraordinary nature of certiorari or the standard an appellate court

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must apply when reviewing a petition for a writ of certiorari. Instead, the dispute focuses on whether the Third District applied the correct standard when it evaluated American's petition. American contends that the ***456** opinion of the Third District evidences that the appellate court concluded that American satisfied the standard of irreparable harm ipso facto by analogizing this case to another Third District case, *Redland Company, Inc. v. Atlantic Civil, Inc.*, 961 So.2d 1004 (Fla. 3d DCA 2007). The Board, however, disagrees, and contends that the decision of the Third District should be quashed because the actual opinion and decision, which does not discuss irreparable harm, demonstrates that the court did not apply the correct standard.

[3] In *Redland*, the Third District granted a petition for writ of certiorari to quash an order that compelled production of corporate financial documents. *See* 961 So.2d at 1005. The *Redland* court explained that it granted the petition because the trial court order "depart[ed] from the essential requirements of the law by requiring *overbroad* discovery that [would] cause material injury to Redland and leave them with no adequate remedy on appeal." *Id.* at 1006 (emphasis supplied). The *Redland* court noted that "[a]lthough not every erroneous discovery order creates certiorari jurisdiction, certiorari is the proper remedy for *overbroad* discovery orders 'because once discovery is wrongfully granted, the complaining party is beyond relief.' " *Id.* (quoting *Caterpillar Indus., Inc. v. Keskes*, 639 So.2d 1129, 1129 n. 1 (Fla. 5th DCA 1994) (emphasis supplied)). In *Redland*, the Third District held the order was overbroad because it required the production of documents spanning an "unreasonably broad" time frame "without regard to the issues framed by the alleged breaches" of the agreement. *See id.* at 1006–07. In so holding, the *Redland* opinion replaced the requirement that a reviewing court determines whether a proposed order will cause material harm of an irreparable nature to the party petitioning for certiorari relief with simply allowing the petitioning party to establish that the proposed order was *overbroad*. This different standard, however, is one that this Court has previously confronted and expressly rejected. Consequently, we expressly disapprove *Redland* here as well. Overbreadth is not a proper basis for certiorari review of discovery orders.

[4] This Court and other district courts of appeal have restated with frequency that overbreadth is *not sufficient*, nor is it a basis, for certiorari relief. "Certiorari jurisdiction does not lie to review every erroneous discovery order," *see Katzman v. Rediron Fabrication, Inc.*, 76 So.3d 1060, 1062 (Fla. 4th DCA 2011) (citing *Allstate Ins. Co. v. Langston*, 655 So.2d 91, 94 (Fla.1995)), and overbreadth alone is not a basis on which such jurisdiction will be granted. In *Katzman*, the Fourth District added that appellate courts should not provide certiorari review for orders that deny "a party's over-breadth or burdensomeness objections to discovery." *See* 76 So.3d at 1062; *see also Megaflight, Inc. v. Lamb*, 749 So.2d 594, 595 (Fla. 5th DCA 2000) ("[W]e agree with those who suggest that erroneous orders that require overbroad discovery of nonprivileged documents should be subjected to certiorari review more cautiously than erroneous orders requiring discovery of confidential or privileged matters."). Similarly, in *Killinger*, 983 So.2d at 32, the Fifth District commented that "[w]hile certiorari may be used to review pre-trial orders compelling discovery, it is generally not appropriate simply based on an argument that the discovery request is overbroad, irrelevant, or burdensome." *See also Topp Telecom*, 763 So.2d at 1200 ("It seems clear to us that the mere fact of unwarranted effort and expense is not, by itself, synonymous with a 'departure from the *essential* requirements of law' [e.s.] for which immediate review is necessary.").

***457** In *Allstate Insurance Co. v. Langston*, we held that "irrelevant discovery alone is not a basis for granting certiorari," and disapproved other cases to the extent that they could "be interpreted as automatically equating irrelevant discovery requests with irreparable

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harm," even though certiorari may be relied upon at times to limit abusive discovery practices. *See* 655 So.2d at 94–95. In *Langston*, we recognized that although irrelevant materials sought in a discovery request do not necessarily cause irreparable harm, a litigant is not entitled *carte blanche* to irrelevant discovery. *See id.* at 95. Based upon this recognition, we quashed the decision of the Fourth District to the "extent that it permit[ted] discovery even *when it ha[d] been affirmatively established that such discovery [wa]s neither relevant nor [would] lead to the discovery of relevant information." Id.* (emphasis supplied).

In *Langston*, we provided the following insight with regard to when a discovery request may cause material injury, thus satisfying the requirements for certiorari jurisdiction:

> Discovery in civil cases must be relevant to the subject matter of the case and must be admissible or reasonably calculated to lead to admissible evidence. *Brooks*, 97 So.2d at 699; *see also Amente v. Newman*, 653 So.2d 1030 (Fla.1995) (concept of relevancy is broader in discovery context than in trial context, and party may be permitted to discover relevant evidence that would be inadmissible at trial if it may lead to discovery of relevant evidence); *Krypton*, 629 So.2d at 854 ("It is axiomatic that information sought in discovery must relate to the issues involved in the litigation, as framed in all pleadings."); Fla. R. Civ. P. 1.280(b)(1) (discovery must be relevant to the subject matter of the pending action).
>
> This Court has held that review by certiorari is appropriate when a discovery order departs from the essential requirements of law, causing material injury to a petitioner throughout the remainder of the proceedings below and effectively leaving no adequate remedy on appeal. *Martin–Johnson*, 509 So.2d at 1099; *see also Brooks; Kilgore* [*v. Bird*, 149 Fla. 570, 6 So.2d 541 (1942)].
>
> Discovery of certain kinds of information "may reasonably cause material injury of an irreparable nature." *Martin–Johnson*, 509 So.2d at 1100. This includes "cat out of the bag" material that could be used to injure another person or party outside the context of the litigation, and material protected by privilege, trade secrets, work product, or involving a confidential informant may cause such injury if disclosed. *Id.*
>
> 655 So.2d at 94 (footnote omitted).

In keeping with the decisions of this Court and numerous other district courts of appeal addressing the proper standard for certiorari relief, we quash the decision below which held that relief was appropriate solely because the discovery order at issue was overbroad. In holding that "certiorari is the proper remedy for overbroad discovery orders" because overbroad orders leave the complaining party " 'beyond relief,' " *AEE*, 45 So.3d at 944 (quoting *Redland*, 961 So.2d at 1006), the Third District improperly supplanted and expanded the scope of certiorari jurisdiction by replacing the requirement of establishing irreparable harm with a requirement that the requesting party merely demonstrate overbreadth. This is an incorrect and improper alteration of the standard for certiorari jurisdiction. *Overbreadth* is not a basis for this relief.

Discovery of Financial Information

[5][6] Generally, private individual financial information is not discoverable ***458** when there is no financial issue pending in the case to which the discovery applies. *See Friedman v. Heart Inst. of Port St. Lucie*, 863 So.2d 189, 194 (Fla.2003); *Aspex Eyewear, Inc. v. Ross*, 778 So.2d 481, 481–82 (Fla. 4th DCA 2001) ("Ordinarily the financial records of a party are not discoverable unless the documents themselves or the status which they evidence is somehow at issue in the case."). However, "where materials sought by a party 'would appear to be relevant to the subject

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matter of the pending action,' the information is fully discoverable." *See Friedman*, 863 So.2d at 194 (quoting *Epstein v. Epstein*, 519 So.2d 1042, 1043 (Fla. 3d DCA 1988)).

[7] The concept of relevancy has a much wider application in the discovery context than in the context of admissible evidence at trial. *See Amente v. Newman*, 653 So.2d 1030, 1032 (Fla.1995). A party's financial information, if relevant to the disputed issues of the underlying action, is not excepted from discovery under this rule of relevancy, and courts will compel production of financial documents and information if shown to be relevant to a pending action. *See Friedman*, 863 So.2d at 194; *see also Aspex Eyewear*, 778 So.2d at 481–82. The information sought here is relevant and it is discoverable. We note that whether this information may be admissible at trial is an issue that we neither need nor endeavor to address. The value of real estate is approached in many ways including an income approach. Admittedly, the underlying real estate is being used to produce income. The financial information may at the very least lead to admissible evidence.

[8] In the Request, the Board sought various financial documents-- auditor reports, balance sheets, income statements, cash flows, federal tax returns, budgets, and other financial reports -- from American from 2001 to 2008. The disputed real estate purchase closed during the course of 2001. Financial documents from 1998 to 2004 were provided to the Board in previous discovery requests through a third party subpoena. FNC had submitted these documents to Citibank when it sought financing for the real estate purchase.

The Board asserts that it seeks this additional financial information to corroborate its claim that the bid American submitted for the property was calculated based, at least in part, on economic projections regarding the value of the property. More specifically, the Board contends that the information in the Request is relevant because:

> (1) American has invoked the equitable jurisdiction of the trial court by suing the Board for reformation of the contract. The Board alleges that American's bid was the result of a considered business decision. The Board contends that American factored into its valuation of the property its unique, highest, and best use, determining budgets and projected profits expected from locating its business upon this highly visible property with a ready market for students. The financial information ordered disclosed is reasonably calculated to lead to admissible evidence such as the value of the property to American based upon projected profits; expert opinion as to the validity of the budgets used by American at the time of the purchase; American's intention to outbid another prospective purchaser based upon financial projections contained in the financial information ordered disclosed; and an expert valuation of the property employing an income method or other appraisal method which employs all financial information available up to the time of trial.
>
> (2) The financial information at issue is also discoverable because it could reasonably***459** be employed to impeach any attempt by American to claim that it would be inequitable not to reduce the purchase price based upon alleged losses.

Whether this information may be ultimately admitted into evidence need not be resolved here. Rather, we address whether these documents may lead to admissible evidence relevant to resolving the dispute at hand to determine the appropriateness of the trial court's order mandating disclosure. Financial projections and information here are interwoven into an assessment of property value and are discoverable. The financial information sought in the disclosure order may lead to evidence to resolve the underlying action based upon the parties' contentions regarding the value of the property as compared to the purchase price.

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(Cite as: 99 So.3d 450)

[9] The Board has admitted, conceded, and agreed that the requested documents from American remain confidential in this case as is the case with earlier documents. The rules of discovery provide sufficient means to limit the use and dissemination of discoverable information via protective orders, and it is the responsibility of the trial court to decide whether to employ those means in this case. *See Martin-Johnson, Inc.*, 509 So.2d at 1100.

Here, the order compels the production of relevant financial information and does not result in irreparable harm. Thus, discovery is permissible and certiorari relief by the Third District was not merited.

CONCLUSION

The basis stated for certiorari relief in the decision below is incorrect and in express conflict with numerous Florida decisions. Consequently, we quash the decision of the Third District in *AEE*. We disapprove of other decisions that have provided certiorari relief on the basis of overbreadth including, but not limited to, *Stihl Southeast, Inc. v. Green Thumb Lawn & Garden Center Newco, Inc.*, 974 So.2d 1200 (Fla. 5th DCA 2008); *Caterpillar Industrial, Inc. v. Keskes*, 639 So.2d 1129 (Fla. 5th DCA 1994); *First City Developments of Florida v. Hallmark of Hollywood Condominium Assoc., Inc.*, 545 So.2d 502 (Fla. 4th DCA 1989); *Redland Co. v. Atlantic Civil, Inc.*, 961 So.2d 1004 (Fla. 3d DCA 2007); *Royal Caribbean Cruises, Ltd. v. Doe*, 964 So.2d 713 (Fla. 3d DCA 2007); and *Caribbean Security Systems, Inc. v. Security Control Systems, Inc.*, 486 So.2d 654 (Fla. 3d DCA 1986). Furthermore, because the requested information is relevant to the disputed issues, and American has not demonstrated irreparable harm through its disclosure, we conclude that the information is discoverable, and therefore the petition for certiorari relief should have been denied.

It is so ordered.

POLSTON, C.J., and PARIENTE, QUINCE, LABARGA, and PERRY, JJ., concur.
CANADY, J., concurs in result.

Fla.,2012.
Board of Trustees of Internal Improvement Trust Fund v. American Educational Enterprises, LLC
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IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

MOTION TO COMPEL PRODUCTION OF DOCUMENTS FROM DEFENDANT LIC HOLDINGS, INC.

COMES NOW Plaintiff, William Stansbury ("Plaintiff"), through undersigned counsel, and moves this Court to compel Defendant, LIC HOLDINGS, INC., ("LIC") to produce the documents requested by Plaintiff in his Second Request for Production of Documents propounded January 20, 2014. More specifically, Plaintiff states:

1. On January 20, 2014, Plaintiff served a Second Request for Production of Documents on LIC (The "Second Document Request"). A copy of the Second Document Request is attached hereto as Exhibit "A." Defendant Arbitrage International Management, LLC ("Arbitrage") was the "employer" of Plaintiff as it was the entity that issued Plaintiff's W-2 tax statements. However, in practice, Defendants Simon Bernstein, Ted Bernstein and Plaintiff held

themselves out as "working for" LIC, which is, upon information and belief, a wholly-owned subsidiary of Arbitrage. Thus, requests have been propounded on both Arbitrage and LIC.

2. Defendant's counsel, Alan Rose, and Plaintiff's counsel discussed the specific requests by telephone on April 9, 2014. Since that discussion, LIC has yet to produce the requested documents.

3. Plaintiff is entitled to obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action. See Fla. R. Civ. P. 1.280(b)(1). The documents sought are clearly relevant to the subject matter of the pending action. Indeed, the documents requested will also likely lead to the discovery of admissible evidence, making them plainly "relevant" under Florida law. Id.

4. Financial information is discoverable when the materials sought would appear to be relevant to the subject matter of the pending action. Friedman v. Heart Institute of Port St. Lucie, 863 So. 2d 189 (Fla. 2003). In Board of Trustees of the Internal Improvement Trust v. American Educational Enterprises, LLC, 99 So. 3d 450 (Fla. 2012) (attached hereto as Exhibit "B"), the Florida Supreme Court held that financial information was relevant and discoverable where, in a contract action, the Plaintiff also alleged negligent misrepresentation, fraud in the inducement, unjust enrichment, and reformation of the contract.

5. Likewise, in the case at hand, the financial information sought is relevant and discoverable in Plaintiff's action involving breach of contract, fraudulent inducement, and misrepresentations. Plaintiff claims that he was fraudulently induced into surrendering his 10% stock interest in Arbitrage. Plaintiff alleges that Defendants told him that the accountant for Arbitrage and/or LIC determined Plaintiff would incur phantom income on his shares and the only way to avoid payment of tax on the income would be to surrender his stock, which he did.

Plaintiff now believes and alleges that such representations were false and were intended to wrongfully induce Plaintiff into surrendering his equity interest in Arbitrage and/or LIC.

6. At the time the misrepresentations were made, Plaintiff and Defendants Simon and Ted Bernstein were "working for" LIC. The limited documents produced to date indicate that Defendants Simon and Ted Bernstein freely transferred funds between Arbitrage and LIC. Therefore, discovery from both entities is appropriate in this case.

7. Plaintiff has also alleged that he was fraudulently induced into remaining in his employment relationship with Arbitrage and/or LIC by virtue of representations by the Defendants that none of the Principals of Arbitrage and/or LIC (Plaintiff; Defendant Simon Bernstein; and Defendant Ted Bernstein) would be paid any compensation for commissions received for 2008 policies until the year's end. The purported reason for this was to enhance the appearance of the company's financial statements so as to make the company more attractive to potential lenders. Plaintiff remained any employee for 3 more years, until 2012. Plaintiff received little or no compensation during this time. During this time period, Defendants made additional fraudulent misrepresentations to Plaintiff, and siphoned money from Arbitrage and LIC for their personal benefit, to the detriment of Plaintiff.

8. A review of the descriptions of the documents set forth in the Second Document Request demonstrates that the requested items are relevant to Plaintiff's claim that he was fraudulently induced to surrender his shares of stock in Arbitrage and that he was fraudulently induced by Defendants into continuing his employment relationship with Arbitrage and/or LIC with his compensation deferred.

9. The financial documents requested are also relevant and discoverable because they could reasonably be used by the Plaintiff to challenge any attempt by the Defendants to

assert that the amount due and owing to the Plaintiff should be reduced. See, Board of Trustees of the Internal Improvement Trust, 99 So. 3d 450, 458-459 (Fla. 2012) (financial information sought was discoverable because it could reasonably be used to challenge any attempt by the defendant to assert that the purchase price should be reduced because of alleged losses).

10. Additionally, a review of the descriptions of the documents set forth in the Second Document Request does not suggest that any of them are protected from discovery by the attorney–client, work product or any other privilege.

WHEREFORE, Plaintiff requests this Honorable Court enter an Order compelling Defendant, LIC HOLDINGS, INC., to deliver to the Plaintiff the documents requested in his Second Request for Production of Documents to LIC HOLDINGS, INC., for his costs expended, including reasonable attorney fees, and such other relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; at steven.lessne@gray-robinson.com, Steven Lessne, Esq., GRAY ROBINSON, P.A., 225 N.E. Mizner Boulevard, Suite 500, Boca Raton, FL 33432; and at bbrown@matbrolaw.com to Benjamin P. Brown, Esq., Matwiczyk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401, on this 22 day of May, 2014.

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By: _____
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Florida Bar No.: 0260347

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IN THE CIRCUIT COURT OF THE

15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

PLAINTIFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT LIC HOLDINGS, INC.

Plaintiff, WILLIAM E. STANSBURY ("STANSBURY"), through undersigned counsel, pursuant to Fla. R. Civ. P. 1.350, hereby propounds the attached Second Request for Production of Documents upon Defendant, LIC HOLDINGS, INC., requiring said Defendant to produce copies of the materials and items described on the attached list at, or by mailing a copy to Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, on or before thirty (30) days after service of this Request for Production of Documents.

Resp. due 2/19/14

Preliminary Statement

As used in this Discovery request, the following terms will have the following meanings:

"Plaintiff," "WILLIAM STANSBURY," or "STANSBURY" means the Plaintiff, and includes any person or entity acting on his behalf.

EXHIBIT A

"Defendant," "LIC HOLDINGS" "you," or "your" means Defendant, LIC HOLDINGS, INC., and includes any person or entity acting on behalf of such party, including, but not limited to, attorneys and their associates and employees, investigators, agents, employees, representatives, or others who are in possession of or who may have obtained information for or on its behalf.

"Defendants" means the Defendants to this action, to wit: TED S. BERNSTEIN, SIMON BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC, including any person or entity acting on behalf of such party or parties, including, but not limited to, attorneys and their associates and employees, investigators, agents, employees, representatives, or others who are in possession of or who may have obtained information for or on their behalf.

"LIC" means ARBITRAGE INTERNATIONAL MARKETING, INC. D/B/A LIFE INSURANCE CONCEPTS (FL)

"LIC HOLDINGS" means LIC HOLDINGS, INC.

The terms "all records," "all documents," "all documentation," and "all communications" mean every record, document, or communication as defined herein known to you and every such record, document, or communication which can be located or discovered by reasonably diligent efforts.

The term "communication" shall mean every manner or means of disclosure, transfer or exchange, and every disclosure, transfer or exchange of information whether orally or face-to-face or by telephone, letter, mail, personal delivery, facsimile transmission, electronic mail, (e-mail) document or otherwise.

The term "document," "documents," "documentation," "record," and "records" shall mean all written, typed, printed, reported, recorded or graphic matter, and all photographic matters or sound reproduction tapes records, or other devices, however produced, reproduced, or stored, now or formerly within your actual or constructive possession, custody or control. "Document" or "documents" shall include, but are not limited to, all telegrams, telexes, cables, telephone records, telephone bills, memoranda (circulated and uncirculated), market studies, correspondence, reports, studies, compilations of data, filings, files, internal policies or rules or regulations, minutes, agenda, requests, records, charts, lists, analyses, graphs, diagrams, schematics, blueprints, specifications, worksheets, change orders, drawings, cost estimates, books, expense reports, notebooks, notes, diaries, appointment books, calendars, recordings, transcriptions, computerized data in any media, including but not limited to: discs, CD-ROMs, or e-mails; file cards, computer printouts, microfilm, microfiche, videotapes, media articles or reports, accounts, books and records, ledgers, journals and other financial records, audits, instructions, questionnaires, profit and loss statements, financial statements, annual reports, state and federal tax returns, checkbooks, canceled checks, billings, contracts or agreements or releases, and any drafts, copies, or reproductions of the foregoing; and any copy of the foregoing upon which any notations in any form have been made which do not appear on the originals; and

any copy of the foregoing upon which any language, notation or comments, in any form, which appear on the original or any other copy have been deleted, highlighted, altered or edited.

The term "communication" and "communications, as used herein, shall include any utterance heard or overheard, whether in person, by telephone, radio or otherwise, statement, dialogue, discussion, conversation or agreement, as well as every document and every other mode of intentionally conveying meaning.

"Identify," identity" or "identification," when referring to a person, shall mean that you shall state the person's (a) full name, (b) current or last known business address and telephone number, (c) current or last known residential address and telephone number, (d) current or last known employer and employer's address, (e) current or last known occupation or position title.

"Identify," "identity" or "identification," when used in reference to a document, documents, documentation, record, and/or records means to state the date, author (or originator), title, type (or subject matter) and custodian of the document, or other sufficient description of it in order to identify it for production in this suit, and each and every word contained in that document. If any document identified is no longer in your care, custody or control, state the disposition of such document. If a privilege is claimed with respect to any document, state the nature of the privilege claimed, and identify each person who has received the documents or a copy of it. Attachment of a true, correct copy of any document to your answers to these discovery requests shall constitute sufficient identification of any document.

"Person" or "individual" means any natural person, individual, proprietorship, partnership, corporation, association, joint proprietorship, joint venture, firm, other business enterprise, governmental body, or other entity.

A communication or document "relating" to any given subject means any communication or document that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

Unless otherwise stated, the documents requested shall be for the past ten (10) years.

Instructions

If any Request for Production is objected to on the grounds of privilege or otherwise, set forth fully each objection, stating the facts upon which you rely as the basis for the objection, and describe:

The nature of the document or communication not produced or disclosed;

The name and title of the author;

The name and title of each person to whom the document or communication was addressed, including all people to whom a copy was sent;

The date;

The number of pages;

A description of the subject matter sufficient, without waiving the claimed privilege or protection, to allow the requesting party to assess the applicability of the privilege or protection;

The privilege or protection claimed;

The paragraph(s) of this Request for Production to which the document or communication is responsive; and

The location of the original and each copy of the document or communication as of the date of the response to this Request for Production.

If you claim that any document requests is subject to privilege, please provide all documents responsive to the Request to the extent not privileged and comply with Instruction No. 1 as to the remainder of the Request.

If documents responsive to any of the Requests have been destroyed or discarded, identify the document as follows:

The date of the document;

The author or maker of the document;

The person to whom and from whom the document was sent;

The subject matter of the document;

The date on which the document was destroyed or discarded;

The reason for the destruction or discard; and

The person authorizing and/or carrying out said destruction or discard.

When producing the documents, please keep all documents segregated by the file in which the documents are contained and indicate the name of the file in which the documents are contained and name of the documents being produced. In the event such files or documents have been removed for the purposes of this action or other purpose, please state the name and address of the person who removed the file, the title of the file and each sub-file, if any, maintained within the file, and the present location of the file.

As used herein the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall include each of the other genders.

All documents produced shall be originals unless otherwise indicated. If your "original" is a photocopy (or other copy), then the photocopy you have should be produced as your original. You should produce the original documents in the form, order and manner in which they are maintained in your files or the files of other persons under your control. In this connection, and for purposes of illustration, documents are to be produced in the file folder and file cartons in which they have been maintained or stored, clipped, stapled, or otherwise arranged in the same form and manner as they were found. In the alternative, you should segregate all documents according to the specifications of this Request and shall organize and label each group of documents with the appropriate specifications prior to production. If any document is responsive to more than one specification of this Request, it should be labeled to reflect each specification to which it is responsive.

This Request for Production calls for production of all responsive documents in the possession, custody, or control of you, your agents, or representatives without regard to physical location of said documents. Control means in your possession, custody or control, or under your direction, and included in the possession, custody, or control of those under the direction of you and your employees, subordinates, counsel, accountant, consultant, expert, parent or affiliated corporation, and any person purporting to act on your behalf.

Please mark each document to indicate the paragraph to which the document corresponds. In the event you do not have "possession, custody or control" of any of the documents requested, state this fact, specifying the paragraph concerned. Additionally, if you do not have "possession, custody, or control" of any of the documents requested, but you know that they are in the possession or custody of other parties, give a brief description of the document(s), and the name and address of the party thought to be in possession thereof.

In producing copies of any documents, produce copies of both the front and back of each document, where the backside contains writing, printing, stamping, or notations.

DOCUMENTS TO BE PRODUCED

1. Cash for Operating Accounts Reports and/or any and all other similar reports that detail the cash payments made by ARBITRAGE for the calendar years 2007, 2009, 2010 and 2012.

2. Balance Sheets, Profit and Loss Statements and Commission Earned Reports for the calendar years 2007, 2009, 2010, 2011 and 2012.

3. All written contracts, agreements, or memoranda of understanding by and between LIC HOLDINGS and Arbitrage International Marketing, Inc. d/b/a Life Insurance Concepts ("LIC") relating to the provision of management services by LIC HOLDINGS to LIC and for which LIC paid management fees to LIC HOLDINGS.

4. All written contracts, agreements, or memoranda of understanding by and between LIC HOLDINGS and LIC relating to the provision of management services by LIC to LIC HOLDINGS and for which LIC HOLDINGS paid management fees to LIC.

5. All written contracts, agreements, or memoranda of understanding by and between LIC HOLDINGS and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC ("ARBITRAGE") relating to the provision of management services by LIC HOLDINGS to ARBITRAGE and for which ARBITRAGE paid management fees to LIC HOLDINGS.

6. All written contracts, agreements, or memoranda of understanding by and between LIC HOLDINGS and ARBITRAGE relating to the provision of management services by ARBITRAGE to LIC HOLDINGS and for which LIC HOLDINGS paid management fees to ARBITRAGE.

7. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by LIC HOLDINGS to Ted Bernstein.

8. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by LIC HOLDINGS to LIC the proceeds of which LIC, in turn, then loaned to Ted Bernstein.

9. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by LIC to LIC HOLDINGS the proceeds of which LIC HOLDINGS, in turn, then loaned to Ted Bernstein.

10. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by LIC HOLDINGS to ARBITRAGE the proceeds of which ARBITRAGE, in turn, then loaned to Ted Bernstein.

11. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by LIC HOLDINGS to Simon Bernstein.

12. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by LIC HOLDINGS to LIC the proceeds of which LIC, in turn, then loaned to Simon Bernstein.

13. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by LIC to LIC HOLDINGS the proceeds of which LIC HOLDINGS, in turn, then loaned to Simon Bernstein.

14. All loan agreements, promissory notes, mortgages, security agreements or other similar documents that evidence any loans made by LIC HOLDINGS to ARBITRAGE the proceeds of which ARBITRAGE, in turn, then loaned to Simon Bernstein.

15. Copies of all checks written by ARBITRAGE to Ted Bernstein in 2007, 2008, 2009, 2010, 2011 and 2012.

16. Copies of all checks written by ARBITRAGE to Simon Bernstein in 2007, 2008, 2009, 2010, 2011 and 2012.

17. LIC HOLDINGS Check Detail for calendar years 2007, 2009, 2011 and 2012.

18. Form W-2 statements issued to Simon Bernstein, Ted Bernstein and William Stansbury for the years 2007, 2008, 2009, 2011 and 2012.

19. All documents that set forth or contain a listing of the salaries paid or to be paid to Ted Bernstein, Simon Bernstein, and William Stansbury for the years 2007, 2008, 2009, 2010, 2011 and 2012.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives of the Estate of Simon Bernstein* and *Bernstein Family Realty,* 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 20th day of January, 2014.

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99 So.3d 450, 37 Fla. L. Weekly S589
(Cite as: 99 So.3d 450)

H

Supreme Court of Florida.
BOARD OF TRUSTEES OF the INTERNAL IMPROVEMENT TRUST FUND, Petitioner,
v.
AMERICAN EDUCATIONAL ENTERPRISES, LLC, Respondent.

No. SC10–2251.
Sept. 27, 2012.

Background: Purchaser of state-owned real property brought action against Board of Trustees of the Internal Improvement Trust Fund (board), alleging negligent misrepresentation, fraud in the inducement, and unjust enrichment and seeking reformation of purchase contract. The Circuit Court, Miami-Dade County, Jerald Bagley, J., entered order compelling purchaser's production of requested financial information. Purchaser sought certiorari relief. The District Court of Appeal, Third District, 45 So.3d 941,Lagoa, J., granted certiorari and quashed discover order as overboard. Board sought review.

Holdings: The Supreme Court, Lewis, J., held that:
(1) overbreadth is not a proper basis for certiorari review of discovery orders; disapproving *Redland Company, Inc. v. Atlantic Civil, Inc.*, 961 So.2d 1004; *Stihl Southeast, Inc. v. Green Thumb Lawn & Garden Center Newco, Inc.*, 974 So.2d 1200;
(2) financial documents sought from purchaser, in form of auditor reports, balance sheets, income statements, cash flows, federal tax returns, budgets, and other financial reports, were discoverable by board.

Decision of District Court of Appeal quashed.

Canady, J., concurred in the result.

West Headnotes

|1| Certiorari 73 ⚿5(1)

73 Certiorari
73I Nature and Grounds
73k5 Existence of Remedy by Appeal or Writ of Error
73k5(1) k. In general. Most Cited Cases

Certiorari 73 ⚿16

73 Certiorari
73I Nature and Grounds
73k11 Decisions and Proceedings of Courts, Judges, and Judicial Officers
73k16 k. Finality of determination. Most Cited Cases

A party petitioning for certiorari review by district court of appeal of a non-final order for which no interlocutory appeal is provided by rule of appellate procedure must demonstrate that the contested order constitutes (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case, (3) that cannot be corrected on postjudgment appeal. West's F.S.A. Const. Art. 5, § 4(b)(3); West's F.S.A. R.App.P.Rule 9.130(a)(4).

|2| Certiorari 73 ⚿5(1)

73 Certiorari
73I Nature and Grounds
73k5 Existence of Remedy by Appeal or Writ of Error
73k5(1) k. In general. Most Cited Cases

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EXHIBIT B

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Common-law certiorari may be invoked only when a party will suffer irreparable harm that cannot be remedied on direct appeal. West's F.S.A. Const. Art. 5, § 4(b)(3).

[3] Certiorari 73 ⚿17

73 Certiorari
731 Nature and Grounds
73k11 Decisions and Proceedings of Courts, Judges, and Judicial Officers
73k17 k. Particular proceedings in civil actions. Most Cited Cases

Overbreadth is not a proper basis for certiorari review of discovery orders; disapproving *Redland Company, Inc. v. Atlantic Civil, Inc.*, 961 So.2d 1004; *Stihl Southeast, Inc. v. Green Thumb Lawn & Garden Center Newco, Inc.*, 974 So.2d 1200. West's F.S.A. Const. Art. 5, § 4(b)(3).

[4] Certiorari 73 ⚿17

73 Certiorari
731 Nature and Grounds
73k11 Decisions and Proceedings of Courts, Judges, and Judicial Officers
73k17 k. Particular proceedings in civil actions. Most Cited Cases

Certiorari jurisdiction does not lie to review every erroneous discovery order. West's F.S.A. Const. Art. 5, § 4(b)(3).

[5] Pretrial Procedure 307A ⚿36.1

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak36 Particular Subjects of Disclosure
307Ak36.1 k. In general. Most Cited Cases

Generally, private individual financial information is not discoverable when there is no financial issue pending in the case to which the discovery applies.

[6] Pretrial Procedure 307A ⚿36.1

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak36 Particular Subjects of Disclosure
307Ak36.1 k. In general. Most Cited Cases

Where financial materials sought by a party would appear to be relevant to the subject matter of the pending action, the information is fully discoverable.

[7] Pretrial Procedure 307A ⚿31

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak31 k. Relevancy and materiality. Most Cited Cases

The concept of relevancy has a much wider application in the discovery context than in the context of admissible evidence at trial.

[8] Pretrial Procedure 307A ⚿375

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(E) Production of Documents and Things and Entry on Land
307AII(E)3 Particular Documents or Things
307Ak375 k. Business and financial

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records and reports. Most Cited Cases

Financial documents sought from purchaser of state-owned real property, in form of auditor reports, balance sheets, income statements, cash flows, federal tax returns, budgets, and other financial reports from 2001 to 2008, were discoverable by Board of Trustees of the Internal Improvement Trust Fund (board) in action against board arising from 2001 purchase in which purchaser alleged negligent misrepresentation, fraud in the inducement, and unjust enrichment and sought reformation of the purchase contract; those documents could lead to evidence to resolve underlying action based upon the parties' contentions regarding value of property as compared to the purchase price.

|9| Pretrial Procedure 307A ⚿41

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak41 k. Objections and protective orders. Most Cited Cases

Rules of discovery provide sufficient means to limit the use and dissemination of discoverable information via protective orders, and it is the responsibility of the trial court to decide whether to employ those means.

***452** Paul Morris of the Law Offices of Paul Morris, P.A., Miami, FL, and Richard Alan Alayon of Alayon & Associates, P.A., Coral Gables, FL, for Petitioner.

Elio F. Martinez, Jr., Barbara Viniegra and Scott Allen Burr of Concepcion, Martinez & Bellido, Coral Gables, FL, for Respondent.

LEWIS, J.

The Board of Trustees of the Internal Improvement Trust Fund seeks review of the decision of the Third District Court of Appeal in *American Educational Enterprises, LLC v. Board of Trustees of the Internal Improvement Trust Fund,* 45 So.3d 941 (Fla. 3d DCA 2010) (*AEE*), on the basis that it expressly and directly conflicts with decisions of this Court and other district courts of appeal with regard to the proper standard for common law certiorari relief. We have jurisdiction. *See* art. V, § 3(b)(3), Fla. Const.

FACTS

The Board of Trustees of the Internal Improvement Trust Fund (the Board) is the Florida entity responsible for the disposition of state-owned property. *See* § 253.03, Fla. Stat. (2011).[FN1] American Educational Enterprises, LLC (American) is the assignee of Florida National College's (FNC) right, title, and interest to and under a contract for the sale and purchase of state-owned property. This dispute arises from a discovery ruling in litigation concerning the purchase by American of certain state-owned real property from the Board.

> FN1. Although the Board is the entity responsible for the disposition of the property at issue, the Florida Department of Environmental Protection (the FDEP) performs all duties involved in the disposition and sale of state property. *See* § 253.002, Fla. Stat. (2011) (stating that the FDEP "shall perform all staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees of the Internal Improvement Trust Fund"). References to the Board also extend to the FDEP.

In 1994, the State of Florida purchased the property at issue for $3,750,000 for use by the Department of Corrections. The property consisted of two lots with a building on one that was referred to as Glenbeigh Hospital, a treatment facility for substance abuse offenders. On April 18, 2001, the Board sent a bidding package to prospective purchasers, including FNC,

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regarding the sale of the property. Each bidding package disclosed that the property was being sold "as is" and at a minimum price of $3,750,000. In addition to the minimum price, the bidding package included information as to the tax-assessed value of the property ($4,642,063), its need for repairs, the buyer's responsibility for financing, that a site inspection would be arranged upon request, and that a buyer "should independently verify all facts related to th[e] property." On April 23, 2001, FNC submitted a bid of $4,025,000 as well as an earnest money deposit of $402,500. The Board accepted the bid and deposit from FNC, and the parties executed a purchase and sale contract for the amount of the bid.

To complete the purchase of the property, FNC sought financing from Citibank, which obtained an appraisal of the property. The appraisal obtained by Citibank concluded that the market value of the property was only $2,850,000. FNC also received a 1999 appraisal of the property that valued it at $3,275,000. The Board had not included the 1999 appraisal in the bidding package. FNC requested that the contract be modified to reflect the lower ***453** appraisal value as the purchase price. The Board declined to renegotiate and stated that FNC would forfeit its earnest money deposit if it did not close on the property. On June 30, 2001, FNC closed on the sale of the property.

Thereafter, FNC assigned its rights under the contract to American. American, in turn, filed an action against the Board, claiming negligent misrepresentation, fraud in the inducement, unjust enrichment, and reformation of the contract. The Board filed an answer, asserted twenty-two affirmative defenses and a counterclaim for fraud in the inducement, and demanded attorneys' fees. The Board contended that FNC misrepresented its position after the Board refused to reduce the purchase price prior to closing.

During discovery, the Board obtained financial documents that FNC had submitted to Citibank to obtain financing for the property. The documents covered the years 1998–2004, and specifically included FNC's independent auditor's reports, balance sheets, income statements, statements of cash flow, tax returns, and underlying information for its 2001 through 2008 budgets, in addition to American's balance sheets, income statements, statements of cash flow, and tax returns. The Board and American entered into a Stipulated Confidentiality Agreement (the Agreement) that governed this information. The trial court approved the Agreement which was not limited to any specific time frame. The Agreement provided, in relevant part, that the financial information disclosed to the Board and provided by Citibank would be treated as confidential.

Relevant to this case, in March 2009, the Board propounded to American a request for the production of documents (the Request) seeking, in pertinent part, the following items:

1. FNC's independent auditor's reports for 2005–2007;

2. FNC's balance sheets, income statements and statements of cash flow for 2006 and 2007;

3. FNC's federal tax returns for 2005–2007;

4. Budgets prepared by FNC for 2001–2008;

5. American's balance sheets, income statements, and statements of cash flows for 2006 and 2007;

6. American's tax returns for 2001, 2002, and 2005–2007; and

7. All financial reports filed with the Department of Education for Title IV programs.

American objected to the request as overbroad,

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unduly burdensome, irrelevant to the asserted claims, and not reasonably calculated to lead to admissible evidence. The Board, in turn, moved to compel American to provide the requested documents. Along with its motion, the Board provided an affidavit from an expert appraiser who opined that the requested information was necessary to defend the claims of economic damages asserted by American. American, in response, contended that the request violated its privacy rights because it was only seeking the difference between the amount paid for the property and its value. Following a hearing, the trial court granted the Board's motion to compel production and ordered American to produce items 1–7 of the Request.

American petitioned the Third District Court of Appeal for a writ of certiorari in which it requested that the court quash the order compelling production. The Third District quashed the order and held that certiorari relief was merited because the order of the trial court compelling production was *overbroad. See* ***454** *AEE,* 45 So.3d at 946. The Third District specified that three elements caused the order to be overbroad: (1) it compelled disclosure of corporate financial documents that did not fall within the relevant time frame; (2) it required the disclosure of corporate financial documents without regard to the issues involved in the case; and (3) the Board's defense to American's claim to reform the contract did not support discovery of corporate financial documents far removed from the time of the purchase of the property. *See id.* at 944–46.

The Board petitioned this Court to review the decision below on the basis that the Third District's reliance on overbreadth did not satisfy the standard for certiorari relief and was in express and direct conflict with the decisions of this Court in *Allstate Insurance Company v. Boecher,* 733 So.2d 993 (Fla.1999) and *Martin–Johnson, Inc. v. Savage,* 509 So.2d 1097 (Fla.1987), *superceded by statute on other grounds,* § 768.72, Fla. Stat. (1989).

ANALYSIS

When determining whether an appellate court has properly invoked its certiorari jurisdiction to review a non-final order, this Court has explained that the following judicial policy informs the analysis:

> "[C]ommon law certiorari is an *extraordinary remedy* and should not be used to circumvent the interlocutory appeal rule which authorizes appeal from only a few types of non-final orders." *Martin–Johnson, Inc. v. Savage,* 509 So.2d 1097, 1098 (Fla.1987); *see also Belair v. Drew,* 770 So.2d 1164, 1166 (Fla.2000); *Jaye v. Royal Saxon, Inc.,* 720 So.2d 214, 214–15 (Fla.1998).... "A non-final order for which no appeal is provided by Rule 9.130 is reviewable by petition for certiorari only in limited circumstances." *Martin–Johnson, Inc.,* 509 So.2d at 1099; *see also Brooks v. Owens,* 97 So.2d 693, 695 (Fla.1957).... Limited certiorari review is based upon the rationale that "piecemeal review of nonfinal trial court orders will impede the orderly administration of justice and serve only to delay and harass." *Jaye,* 720 So.2d at 215.
>
> *Reeves v. Fleetwood Homes of Fla., Inc.,* 889 So.2d 812, 822 (Fla.2004) (emphasis supplied); *see also Custer Med. Ctr. v. United Auto. Ins. Co.,* 62 So.3d 1086, 1092 (Fla.2010).

Here, we address whether the Third District erroneously granted a petition for a writ of certiorari and quashed a discovery order that compelled the production of financial information on the basis of overbreadth. We conclude that the Third District erred and applied an incorrect standard for certiorari, and we therefore quash the decision below.

[1] The Florida Constitution provides the district courts of appeal with the discretionary jurisdiction to issue, inter alia, writs of certiorari. *See* art. V, § 4(b)(3), Fla. Const. Florida Rule of Appellate Procedure 9.130 authorizes the district courts to consider

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interlocutory appeals of certain non-final orders in specific circumstances. *See* Fla. R.App. P. 9.130(a)(4). A non-final order for which no appeal is provided by rule 9.130 may be reviewable by petition for a writ of certiorari, but only in very limited circumstances. The petitioning party must demonstrate that the contested order constitutes "(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case[,] (3) that cannot be corrected on postjudgment appeal." *Reeves,* 889 So.2d at 822 (quoting *Bd. of Regents v. Snyder,* 826 So.2d 382, 387 (Fla. 2d DCA 2002)); *see also Williams v. Oken,* 62 So.3d 1129, 1132 (Fla.2011); *Brooks,* 97 So.2d at 695. A finding that the petitioning party has "suffered an irreparable ***455** harm that cannot be remedied on direct appeal" is a "condition precedent to invoking a district court's certiorari jurisdiction." *Jaye,* 720 So.2d at 215; *see Williams,* 62 So.3d at 1132 ("The last two elements are jurisdictional and must be analyzed before the court may even consider the first element."); *Martin–Johnson, Inc.,* 509 So.2d at 1099; *McDonald v. Johnson,* 83 So.3d 889, 891 (Fla. 2nd DCA 2012) ("This court considers the second and third prongs first because they are used to determine jurisdiction."); *Killinger v. Guardianship of Grable,* 983 So.2d 30, 32 (Fla. 5th DCA 2008); *Harley Shipbuilding Corp. v. Fast Cats Ferry Serv., LLC,* 820 So.2d 445, 448 (Fla. 2d DCA 2002).

If the party seeking review does not demonstrate that it will suffer material injury of an irreparable nature, then an appellate court may not grant certiorari relief from a non-appealable non-final order. *See Capital One, N.A. v. Forbes,* 34 So.3d 209, 212 (Fla. 2d DCA 2010). Similarly, if the alleged harm can be remedied on appeal, the harm is not considered irreparable, and thus certiorari relief is not merited. *See Pepsi Bottling Grp., Inc. v. Underwood,* 8 So.3d 1260, 1262 (Fla. 1st DCA 2009).

[2] In *Martin–Johnson, Inc.,* this Court expressed an unwillingness to "creat[e] a new category of non-final orders reviewable on interlocutory appeal." 509 So.2d at 1099; *id.* at 1100 ("Even when the order departs from the essential requirements of the law, there are strong reasons militating against certiorari review."). *See also Topp Telecom, Inc. v. Atkins,* 763 So.2d 1197, 1200 (Fla. 4th DCA 2000) (quoting *Haines City Cmty. Dev. v. Heggs,* 658 So.2d 523, 531 (Fla.1995) (noting that "[a]n erroneous order compelling discovery when the cost and effort to do so is burdensome but not destructive is simply not 'sufficiently egregious or fundamental to merit the extra review and safeguard provided by certiorari,' " and thus declining to grant certiorari review of the disputed order)). Time and again, Florida courts have reiterated that certiorari relief is an "extremely rare" remedy that will be provided in "very few cases." *Martin–Johnson, Inc.,* 509 So.2d at 1098–99 (citing *Taylor v. Bd. of Pub. Instruction of Duval Cnty.,* 131 So.2d 504, 506 (Fla. 1st DCA 1961)); *see also Haridopolos v. Citizens for Strong Schs., Inc.,* 78 So.3d 605, 608 n. 2 (Fla. 1st DCA 2011); *Anderson v. Vander Meiden ex rel. Duggan,* 56 So.3d 830, 832 (Fla. 2d DCA 2011); *Acevedo v. Doctors Hosp., Inc.,* 68 So.3d 949, 951 (Fla. 3d DCA 2011). In *Martin–Johnson, Inc.,* this Court addressed whether the denial of a motion to dismiss or strike a claim for punitive damages constituted irreparable harm such that the appellate court should have granted certiorari relief. *See* 509 So.2d at 1098. Although courts have since retreated from the specific holding of *Martin–Johnson, Inc.* with regard to punitive damage claims in light of the adoption of section 768.72, Florida Statutes (1989), the foundation of the case—that common law certiorari may be invoked only when a party will suffer irreparable harm that cannot be remedied on direct appeal—remains sound law. *See Williams,* 62 So.3d at 1134; *Forbes,* 34 So.3d at 212; *Underwood,* 8 So.3d at 1262; *Hargrett v. Toyota Motor Sales U.S.A., Inc.,* 705 So.2d 1009, 1009 n. 1 (Fla. 4th DCA 1998).

Here, the parties do not dispute the extraordinary nature of certiorari or the standard an appellate court

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must apply when reviewing a petition for a writ of certiorari. Instead, the dispute focuses on whether the Third District applied the correct standard when it evaluated American's petition. American contends that the ***456** opinion of the Third District evidences that the appellate court concluded that American satisfied the standard of irreparable harm ipso facto by analogizing this case to another Third District case, *Redland Company, Inc. v. Atlantic Civil, Inc.*, 961 So.2d 1004 (Fla. 3d DCA 2007). The Board, however, disagrees, and contends that the decision of the Third District should be quashed because the actual opinion and decision, which does not discuss irreparable harm, demonstrates that the court did not apply the correct standard.

[3] In *Redland*, the Third District granted a petition for writ of certiorari to quash an order that compelled production of corporate financial documents. *See* 961 So.2d at 1005. The *Redland* court explained that it granted the petition because the trial court order "depart[ed] from the essential requirements of the law by requiring *overbroad* discovery that [would] cause material injury to Redland and leave them with no adequate remedy on appeal." *Id.* at 1006 (emphasis supplied). The *Redland* court noted that "[a]lthough not every erroneous discovery order creates certiorari jurisdiction, certiorari is the proper remedy for *overbroad* discovery orders 'because once discovery is wrongfully granted, the complaining party is beyond relief.' " *Id.* (quoting *Caterpillar Indus., Inc. v. Keskes*, 639 So.2d 1129, 1129 n. 1 (Fla. 5th DCA 1994) (emphasis supplied)). In *Redland*, the Third District held the order was overbroad because it required the production of documents spanning an "unreasonably broad" time frame "without regard to the issues framed by the alleged breaches" of the agreement. *See id.* at 1006–07. In so holding, the *Redland* opinion replaced the requirement that a reviewing court determines whether a proposed order will cause material harm of an irreparable nature to the party petitioning for certiorari relief with simply allowing the petitioning party to establish that the proposed order was *overbroad*. This different standard, however, is one that this Court has previously confronted and expressly rejected. Consequently, we expressly disapprove *Redland* here as well. Overbreadth is not a proper basis for certiorari review of discovery orders.

[4] This Court and other district courts of appeal have restated with frequency that overbreadth is *not sufficient*, nor is it a basis, for certiorari relief. "Certiorari jurisdiction does not lie to review every erroneous discovery order," *see Katzman v. Rediron Fabrication, Inc.*, 76 So.3d 1060, 1062 (Fla. 4th DCA 2011) (citing *Allstate Ins. Co. v. Langston*, 655 So.2d 91, 94 (Fla.1995)), and overbreadth alone is not a basis on which such jurisdiction will be granted. In *Katzman*, the Fourth District added that appellate courts should not provide certiorari review for orders that deny "a party's over-breadth or burdensomeness objections to discovery." *See* 76 So.3d at 1062; *see also Megaflight, Inc. v. Lamb*, 749 So.2d 594, 595 (Fla. 5th DCA 2000) ("[W]e agree with those who suggest that erroneous orders that require overbroad discovery of nonprivileged documents should be subjected to certiorari review more cautiously than erroneous orders requiring discovery of confidential or privileged matters."). Similarly, in *Killinger*, 983 So.2d at 32, the Fifth District commented that "[w]hile certiorari may be used to review pre-trial orders compelling discovery, it is generally not appropriate simply based on an argument that the discovery request is overbroad, irrelevant, or burdensome." *See also Topp Telecom*, 763 So.2d at 1200 ("It seems clear to us that the mere fact of unwarranted effort and expense is not, by itself, synonymous with a 'departure from the *essential* requirements of law' [e.s.] for which immediate review is necessary.").

***457** In *Allstate Insurance Co. v. Langston*, we held that "irrelevant discovery alone is not a basis for granting certiorari," and disapproved other cases to the extent that they could "be interpreted as automatically equating irrelevant discovery requests with irreparable

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harm," even though certiorari may be relied upon at times to limit abusive discovery practices. *See* 655 So.2d at 94–95. In *Langston,* we recognized that although irrelevant materials sought in a discovery request do not necessarily cause irreparable harm, a litigant is not entitled *carte blanche* to irrelevant discovery. *See id.* at 95. Based upon this recognition, we quashed the decision of the Fourth District to the "extent that it permit[ted] discovery even *when it ha[d] been affirmatively established that such discovery [wa]s neither relevant nor [would] lead to the discovery of relevant information." Id.* (emphasis supplied).

In *Langston,* we provided the following insight with regard to when a discovery request may cause material injury, thus satisfying the requirements for certiorari jurisdiction:

> Discovery in civil cases must be relevant to the subject matter of the case and must be admissible or reasonably calculated to lead to admissible evidence. *Brooks,* 97 So.2d at 699; *see also Amente v. Newman,* 653 So.2d 1030 (Fla.1995) (concept of relevancy is broader in discovery context than in trial context, and party may be permitted to discover relevant evidence that would be inadmissible at trial if it may lead to discovery of relevant evidence); *Krypton,* 629 So.2d at 854 ("It is axiomatic that information sought in discovery must relate to the issues involved in the litigation, as framed in all pleadings."); Fla. R. Civ. P. 1.280(b)(1) (discovery must be relevant to the subject matter of the pending action).
>
> This Court has held that review by certiorari is appropriate when a discovery order departs from the essential requirements of law, causing material injury to a petitioner throughout the remainder of the proceedings below and effectively leaving no adequate remedy on appeal. *Martin–Johnson,* 509 So.2d at 1099; *see also Brooks; Kilgore* [*v. Bird,* 149 Fla. 570, 6 So.2d 541 (1942)].
>
> Discovery of certain kinds of information "may reasonably cause material injury of an irreparable nature." *Martin–Johnson,* 509 So.2d at 1100. This includes "cat out of the bag" material that could be used to injure another person or party outside the context of the litigation, and material protected by privilege, trade secrets, work product, or involving a confidential informant may cause such injury if disclosed. *Id.*
>
> 655 So.2d at 94 (footnote omitted).

In keeping with the decisions of this Court and numerous other district courts of appeal addressing the proper standard for certiorari relief, we quash the decision below which held that relief was appropriate solely because the discovery order at issue was overbroad. In holding that "certiorari is the proper remedy for overbroad discovery orders" because overbroad orders leave the complaining party " 'beyond relief,' " *AEE,* 45 So.3d at 944 (quoting *Redland,* 961 So.2d at 1006), the Third District improperly supplanted and expanded the scope of certiorari jurisdiction by replacing the requirement of establishing irreparable harm with a requirement that the requesting party merely demonstrate overbreadth. This is an incorrect and improper alteration of the standard for certiorari jurisdiction. *Overbreadth* is not a basis for this relief.

Discovery of Financial Information

[5][6] Generally, private individual financial information is not discoverable ***458** when there is no financial issue pending in the case to which the discovery applies. *See Friedman v. Heart Inst. of Port St. Lucie,* 863 So.2d 189, 194 (Fla.2003); *Aspex Eyewear, Inc. v. Ross,* 778 So.2d 481, 481–82 (Fla. 4th DCA 2001) ("Ordinarily the financial records of a party are not discoverable unless the documents themselves or the status which they evidence is somehow at issue in the case."). However, "where materials sought by a party 'would appear to be relevant to the subject

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99 So.3d 450, 37 Fla. L. Weekly S589
(Cite as: 99 So.3d 450)

matter of the pending action,' the information is fully discoverable." *See Friedman,* 863 So.2d at 194 (quoting *Epstein v. Epstein,* 519 So.2d 1042, 1043 (Fla. 3d DCA 1988)).

[7] The concept of relevancy has a much wider application in the discovery context than in the context of admissible evidence at trial. *See Amente v. Newman,* 653 So.2d 1030, 1032 (Fla.1995). A party's financial information, if relevant to the disputed issues of the underlying action, is not excepted from discovery under this rule of relevancy, and courts will compel production of financial documents and information if shown to be relevant to a pending action. *See Friedman,* 863 So.2d at 194; *see also Aspex Eyewear,* 778 So.2d at 481–82. The information sought here is relevant and it is discoverable. We note that whether this information may be admissible at trial is an issue that we neither need nor endeavor to address. The value of real estate is approached in many ways including an income approach. Admittedly, the underlying real estate is being used to produce income. The financial information may at the very least lead to admissible evidence.

[8] In the Request, the Board sought various financial documents—auditor reports, balance sheets, income statements, cash flows, federal tax returns, budgets, and other financial reports—from American from 2001 to 2008. The disputed real estate purchase closed during the course of 2001. Financial documents from 1998 to 2004 were provided to the Board in previous discovery requests through a third party subpoena. FNC had submitted these documents to Citibank when it sought financing for the real estate purchase.

The Board asserts that it seeks this additional financial information to corroborate its claim that the bid American submitted for the property was calculated based, at least in part, on economic projections regarding the value of the property. More specifically, the Board contends that the information in the Request is relevant because:

> (1) American has invoked the equitable jurisdiction of the trial court by suing the Board for reformation of the contract. The Board alleges that American's bid was the result of a considered business decision. The Board contends that American factored into its valuation of the property its unique, highest, and best use, determining budgets and projected profits expected from locating its business upon this highly visible property with a ready market for students. The financial information ordered disclosed is reasonably calculated to lead to admissible evidence such as the value of the property to American based upon projected profits; expert opinion as to the validity of the budgets used by American at the time of the purchase; American's intention to outbid another prospective purchaser based upon financial projections contained in the financial information ordered disclosed; and an expert valuation of the property employing an income method or other appraisal method which employs all financial information available up to the time of trial.
>
> (2) The financial information at issue is also discoverable because it could reasonably***459** be employed to impeach any attempt by American to claim that it would be inequitable not to reduce the purchase price based upon alleged losses.

Whether this information may be ultimately admitted into evidence need not be resolved here. Rather, we address whether these documents may lead to admissible evidence relevant to resolving the dispute at hand to determine the appropriateness of the trial court's order mandating disclosure. Financial projections and information here are interwoven into an assessment of property value and are discoverable. The financial information sought in the disclosure order may lead to evidence to resolve the underlying action based upon the parties' contentions regarding the value of the property as compared to the purchase price.

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99 So.3d 450, 37 Fla. L. Weekly S589
(Cite as: 99 So.3d 450)

[9] The Board has admitted, conceded, and agreed that the requested documents from American remain confidential in this case as is the case with earlier documents. The rules of discovery provide sufficient means to limit the use and dissemination of discoverable information via protective orders, and it is the responsibility of the trial court to decide whether to employ those means in this case. *See Martin–Johnson, Inc.*, 509 So.2d at 1100.

Here, the order compels the production of relevant financial information and does not result in irreparable harm. Thus, discovery is permissible and certiorari relief by the Third District was not merited.

CONCLUSION

The basis stated for certiorari relief in the decision below is incorrect and in express conflict with numerous Florida decisions. Consequently, we quash the decision of the Third District in *AEE.* We disapprove of other decisions that have provided certiorari relief on the basis of overbreadth including, but not limited to, *Stihl Southeast, Inc. v. Green Thumb Lawn & Garden Center Newco, Inc.*, 974 So.2d 1200 (Fla. 5th DCA 2008); *Caterpillar Industrial, Inc. v. Keskes*, 639 So.2d 1129 (Fla. 5th DCA 1994); *First City Developments of Florida v. Hallmark of Hollywood Condominium Assoc., Inc.*, 545 So.2d 502 (Fla. 4th DCA 1989); *Redland Co. v. Atlantic Civil, Inc.*, 961 So.2d 1004 (Fla. 3d DCA 2007); *Royal Caribbean Cruises, Ltd. v. Doe*, 964 So.2d 713 (Fla. 3d DCA 2007); and *Caribbean Security Systems, Inc. v. Security Control Systems, Inc.*, 486 So.2d 654 (Fla. 3d DCA 1986). Furthermore, because the requested information is relevant to the disputed issues, and American has not demonstrated irreparable harm through its disclosure, we conclude that the information is discoverable, and therefore the petition for certiorari relief should have been denied.

It is so ordered.

POLSTON, C.J., and PARIENTE, QUINCE, LABARGA, and PERRY, JJ., concur.
CANADY, J., concurs in result.

Fla.,2012.
Board of Trustees of Internal Improvement Trust Fund v. American Educational Enterprises, LLC
99 So.3d 450, 37 Fla. L. Weekly S589

END OF DOCUMENT

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO. **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

NOTICE OF MEDIATION

YOU ARE HEREBY NOTIFIED that a Mediation Conference in the above matter will take place on the date, time and place below:

DATE: **Friday, June 9, 2014**

TIME: **9:30 a.m.**

MEDIATOR: **Brian F. Spector, Esq.**

PLACE: **Law Offices of**
PAGE MRACHEK FITZGERALD
ROSE KONOPKA THOMAS & WEISS, P.A.
505 South Flagler Drive
Suite 600
West Palm Beach, Florida 33401

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; at bbrown@matbrolaw.com to Benjamin P. Brown, Esq., Matwiczyk & Brown, LLP, 625 N. Flagler Drive, Suite 401, West Palm Beach, FL 33401; and at brian@bspector.com to Brian F. Spector, Esq., *Mediator*, Brian F. Spector, LLC, Miami, Florida 33256-6206 on this 4th day of June, 2014.

PETER M. FEAMAN, P.A.
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mkoskey@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No. 0260347

Filing # 14458089 Electronically Filed 06/05/2014 10:30:55 AM

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO. **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

CORRECTED NOTICE OF MEDIATION
(re: day of mediation)

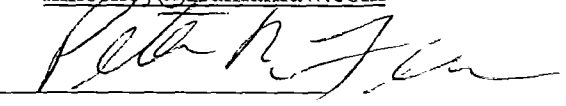
YOU ARE HEREBY NOTIFIED that a Mediation Conference in the above matter will take place on the date, time and place below:

DATE:	**Monday, June 9, 2014**
TIME:	**9:30 a.m.**
MEDIATOR:	**Brian F. Spector, Esq.**
PLACE:	**Law Offices of** **PAGE MRACHEK FITZGERALD** **ROSE KONOPKA THOMAS & WEISS, P.A.** **505 South Flagler Drive** **Suite 600** **West Palm Beach, Florida 33401**

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; at bbrown@matbrolaw.com to Benjamin P. Brown, Esq., Matwiczyk & Brown, LLP, 625 N. Flagler Drive, Suite 401, West Palm Beach, FL 33401; and at brian@bspector.com to Brian F. Spector, Esq., *Mediator*, Brian F. Spector, LLC, Miami, Florida 33256-6206 on this 5th day of June, 2014.

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mkoskey@feamanlaw.com

By: 

Peter M. Feaman
Florida Bar No. 0260347

Filing # 14805637 Electronically Filed 06/13/2014 03:39:16 PM

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

CASE NO: 50 2012 CA 013933 MB AA

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants. /

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

PLAINTIFF'S NOTICE OF DROPPING TED S. BERNSTEIN AND THE SHIRLEY BERNSTEIN TRUST AS PARTIES

Plaintiff, William E. Stansbury, pursuant to Rules 1.250 and 1.420 of the Florida Rules of Civil Procedure, and by Agreement, hereby gives Notice of Dropping certain Parties, with prejudice and states:

1. Rule 1.250 provides that "parties may be dropped by an adverse party in the manner provided for voluntary dismissal in rule 1.420(a)(1)."

2. By Agreement of the Parties, Plaintiff, William E. Stansbury, hereby drops the following parties as defendants in this case:

a. Defendant, Ted S. Bernstein ("Ted"), individually; and

b. The Shirley Bernstein Trust Agreement Dated May 20, 2008 (the "Shirley Trust").

3. All claims in this action against Ted and the Shirley Trust are dismissed with prejudice, with the agreement that all parties subject to this Notice will bear his or its own costs and attorneys' fees.

Peter M. Feaman

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust,* 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; and at courtfilings@pankauskilawfirm.com to John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401; and bbrown@matbrolaw.com to Benjamin P. Brown, Esq., Matwiczyk & Brown, LLP, 625 N. Flagler Drive, Suite 401, West Palm Beach, FL 33401, on this 13 day of June, 2014.

PETER M. FEAMAN, P.A.
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By: _____
Peter M. Feaman
Florida Bar No. 0260347

Filing # 15024312 Electronically Filed 06/19/2014 03:57:59 PM

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

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

CASE NO: 50 2012 CA 013933 MB AA

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

STIPULATION FOR DROPPING PARTIES AND DISMISSAL WITH PREJUDICE OF CERTAIN CLAIMS AND COUNTERCLAIMS

Plaintiff, William E. Stansbury, and Defendants, LIC Holdings, Inc. ("LIC") and Arbitrage International Management, LLC f/k/a Arbitrage International Holdings, LLC ("Arbitrage"), pursuant to Rules 1.250 and 1.420 of the Florida Rules of Civil Procedure, hereby stipulate to drop certain parties and to the dismissal with prejudice of certain claims and counterclaims, and state:

1. Plaintiff hereby dismisses all claims against LIC and Arbitrage with prejudice, with each party to this Stipulation bearing his or its own costs and attorneys' fees.

2. Arbitrage hereby dismisses all counterclaims against Plaintiff with prejudice, with each party to this Stipulation bearing his or its own costs and attorneys' fees.

3. Plaintiff, LIC and Arbitrage hereby stipulate to the dropping of LIC and Arbitrage as parties to this case.

4. All claims by Plaintiff against The Estate of Simon L. Bernstein and Bernstein Family Realty, LLC, are hereby expressly reserved and shall not be dismissed by the Court's order entered based upon this Stipulation.

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mkoskey@feamanlaw.com
Counsel for Plaintiff, William Stansbury

By: *s/ Peter M. Feaman*
Peter M. Feaman
Florida Bar No. 260347

MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
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Telephone: (561) 655-2250
Facsimile: (561) 655-5537
Email: arose@mrachek-law.com; mchandler@mrachek-law.com
Counsel for Defendants, Ted S. Bernstein; LIC Holdings, Inc.; Arbitrage International Management, LLC; and Shirley Bernstein Trust

By: s/ *Alan B. Rose*
Alan B. Rose
Florida Bar No. 961825

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to the Service List set forth below by: ■ E-mail Electronic Transmission; ☐ Facsimile; ☐ U.S. Mail; ☐ Overnight Delivery; ☐ Hand-delivery, this 19th day of June, 2014.

PETER M. FEAMAN, P.A.
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SERVICE LIST

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N. Patrick Hely, Esq.
Mrachek, Fitzgerald, Rose, Konopka,
Thomas & Weiss, P.A.
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Counsel for Ted S. Bernstein; LIC Holdings, Inc.; Arbitrage International Management, LLC; and Shirley Bernstein Trust

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Curator for the Estate of Simon Bernstein

Steven Lessne, Esq.
GrayRobinson, P.A.
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lori.politis@gray-robinson.com; anne.morinelli@gray-robinson.com
Counsel for Bernstein Family Realty, LLC

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: **50 2012 CA 013933 MB AA**

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

FILED
14 JUN 23 AM 11:38
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 2

ORDER OF DISMISSAL WITH PREJUDICE
OF CERTAIN PARTIES AND CLAIMS

THIS CAUSE came before this Honorable Court upon the agreement of Plaintiff William E. Stansbury and Defendants Ted S. Bernstein, individually, LIC Holdings, Inc., Arbitrage International Management, LLC, f/k/a Arbitrage International Holdings, LLC and the Shirley Bernstein Trust Agreement dated May 20, 2008, and the Court having reviewed the file and being otherwise duly advised in the premises, it is hereby

ORDERED and ADJUDGED that:

1. The Plaintiff has filed a Notice dropping Ted S. Bernstein as a party and dismissing all claims against him with prejudice. Accordingly, the Plaintiff's claims against Ted S. Bernstein, individually, are dismissed with prejudice and he is dropped as a party to this action, with each party identified in this ¶1 to bear its own attorney fees and costs as to these claims and parties.

2. The Plaintiff has filed a Notice dropping The Shirley Bernstein Trust Agreement dated May 20, 2008 (the "Shirley Trust") and dismissing all claims against it with prejudice. Accordingly, the Plaintiff's claims against the Shirley Trust are dismissed with prejudice and it is dropped as a party to this action, with each party identified in this ¶2 to bear its own attorney fees and costs as to these claims and parties.

3. The Plaintiff and Defendants, LIC Holdings, Inc. ("LIC") and Arbitrage International Management, LLC, f/k/a Arbitrage International Holdings, LLC ("Arbitrage"), have filed a Stipulation for Dropping Parties and Dismissal With Prejudice of Certain Claims and Counterclaims. Accordingly, all claims by Plaintiff against LIC and Arbitrage are dismissed with prejudice, and Arbitrage's counterclaims against Plaintiff are dismissed with prejudice, with each party identified in this ¶3 to bear its own attorney fees and costs as to these claims and parties.

4. This Order shall have no effect on the Plaintiff's claims against the remaining parties, Estate of Simon Bernstein ("Simon's Estate") and Bernstein Family Realty, LLC ("BFR"). Plaintiff has expressly reserved all such claims against Simon's Estate and BFR and such claims are not dismissed by this Order.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida on this 23 day of June, 2014.

HONORABLE PETER BLANC
Circuit Judge

Copies to:
Alan Rose, Esq., Page Mrachek, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; e-mail: arose@pm-law.com;
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3695 W. Boynton Beach Blvd., Suite #9, Boynton Beach, FL; e-mail: pfeaman@feamanlaw.com;
Benjamin Brown, Esq., Matwiczyk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401; e-mail: bbrown@matbrolaw.com;
Steven Lessne, Esq., GRAY ROBINSON, P.A., 225 N.E. Mizner Boulevard, Suite 500, Boca Raton, FL 33432; e-mail: steven.lessne@gray-robinson.com.

Copies furnished by e-service 2

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

IN RE:
WILLIAM E. STANSBURY,
Plaintiff,
v.

CASE NO. 502012CA013933MBAA

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

CURATOR'S MOTION TO STAY PROCEEDINGS

COMES NOW, Curator, Benjamin P. Brown ("Curator"), by and through undersigned counsel, files this Motion to Stay Proceedings, and states as follows:

1. On February 25, 2014, in probate court in Case No. 5021012CP004391, *In Re: Estate of Simon L. Bernstein*, (Palm Beach County Probate Division) (the "Probate Court") entered an Order on "Interested Person" William Stansbury's Motion for the Appointment of a Curator or Successor Personal Representative ("Order Appointing Curator"), appointing Benjamin P. Brown as Curator of the Estate of Simon L. Bernstein ("Estate"). On March 11, 2014, this Court entered Letters of Curatorship in Favor of Benjamin Brown ("Letters"). A copy of the Letters is attached hereto as Exhibit A.

2. The Letters authorize the Curator to appear on behalf of the Estate in this case for the stated purposes.

3. Co-Defendant, Ted Bernstein ("Ted"), is the son of the decedent.

4. In this case, Ted, along with other Co-Defendants represented by the same counsel, has defended against all of the Plaintiff's allegations and claims. The Curator did not retain counsel in order to avoid having the Estate incur the expense of legal work that was likely to be duplicative of the work being performed by Ted's counsel.

5. However, on June 23, 2014, this Court entered an Order, attached hereto as Exhibit B, dismissing Ted and the other Co-Defendants in this case, except for the Estate and Bernstein Family Realty, LLC.

6. As a result, the Estate will need to retain counsel in this case.

7. On July 11 and 16, 2014, the Probate Court will conduct hearings during which the Probate Court has indicated that a Successor Personal Representative will be appointed. The Probate Court has further indicated that the Successor Personal Representative, rather than the Curator, should defend the claims Plaintiff has made against the Estate.

8. A short stay will permit the appointment of a Successor Personal Representative and allow the Successor Personal Representative to retain counsel to defend against the claims Plaintiff has made against the Estate.

9. There are currently no hearings or depositions set, no pending discovery, and no unheard motions in this case. This case is not set for trial.

10. Accordingly, it would be in the interest of judicial economy to stay this proceeding until appointment of a Successor Personal Representative. *See, REWJB Gas Invs. v. Land O'Sun Realty, Ltd.,* 643 So. 2d 1107, 1108 (Fla. 4th DCA 1994) ("The granting of a stay of proceedings by a trial court, pending the outcome of an action in another court, is in the broad discretion of the trial court.").

WHEREFORE, the Curator requests stay of this proceeding for a period extending twenty (20) days after appointment of a Successor Personal Representative for the Estate by the Probate Court, and for such further relief as the Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail upon the parties listed on the attached service list, on this 25 day of June, 2014.

MATWICZYK & BROWN LLP
Attorney for Curator
625 N. Flagler Drive, Suite 401
West Palm Beach, FL 33401
Telephone: (561) 651-4004
Fax: (561) 651-4003

By: _____
Benjamin P. Brown
Florida Bar No. 841552

SERVICE LIST

Estate of Simon L. Bernstein

Palm Beach County Case No. 502012CP004391XXXXSB

Max Friedstein 2142 Churchill Lane Highland Park, IL 6003	Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 arose@pm-law.com	John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 john@Pankauskilawfirm.com	Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 6003 Lisa@friedsteins.com lisa.friedstein@gmail.com
Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com	Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway Suite 200 Boca Raton, Florida 33432 ijb@ijblegal.com	Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians 210 I Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com	Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 iviewit@iviewit.tv
Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com	Peter Feaman, Esquire Peter M. Feaman, P.A. 3615 Boynton Beach Blvd. Boynton Beach, FL 33436 pfeaman@feamanlaw.com	Eliot Bernstein 2753 NW 34th Street Boca Raton, FL 33434 iviewit@iviewit.tv	John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 john@jmorrisseylaw.com
Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com lisa.friedstein@gmail.com	William H. Glasko, Esq. Golden Cowan, P.A. 1734 South Dixie Highway Palmetto Bay, FL 33157 bill@palmettobaylaw.com		

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

PROBATE DIV.
CASE NO.: 50 2012 CP 004391 XXXX SB

IN RE: ESTATE OF SIMON L. BERNSTEIN,
Deceased.
_____/

LETTERS OF CURATORSHIP IN FAVOR OF BENJAMIN BROWN

WHEREAS, Co-Personal Representatives of the Estate of Simon L. Bernstein were permitted to resign by Order of this Court on February 18, 2014. A copy of the Order is attached hereto as Exhibit "A"; and

WHEREAS, this Court found it necessary for the appointment of a Curator and appointed Benjamin Brown, Esq. as Curator of this Estate on February 25, 2014. A copy of the Order is attached hereto as Exhibit "B"; and

WHEREAS Benjamin Brown as Curator appointed by Order of this Court has performed all acts prerequisite to the issuance of Letters of Curatorship as a legally qualified Curator of the Estate of Simon L. Bernstein;

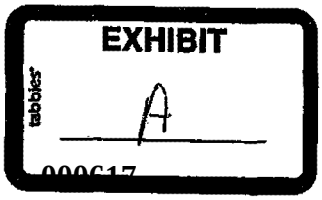
NOW, THEREFORE, I the undersigned Circuit Judge do grant Benjamin Brown (hereinafter Curator), the Curatorship of the Estate of Simon L. Bernstein with the following powers:

(a) To collect and preserve assets of the Estate;

(b) To administer the assets of the Estate;

(c) To evaluate all discovery requests related to the Decedent for the purposes of asserting objections and privileges on behalf of the Estate, if necessary;

(d) To appear on behalf of the Estate in the following two cases: Case No. 502012CA013933 (Circuit Court, Palm Beach County, FL) and Case No. 13CV3643 (U.S. Dist. Ct. Northern Dist.,



Illinois),

Further, pursuant to Fla. Stat. §733.603, Curator shall proceed expeditiously with the duties described herein and except as otherwise specified by the Florida Probate Code, or ordered by the Court, shall do so without adjudication, Order or direction of the Court. The Curator may invoke the jurisdiction of this Court to resolve questions concerning the Estate or its administration.

DONE AND ORDERED in Chambers at Delray Beach, Palm Beach County, Florida, this _____ day of March, 2014.

SIGNED & DATED
MAR 11 2014
JUDGE MARTIN H. COLIN

Martin Colin, Circuit Judge

Copies furnished to:

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

John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, courtfilings@pankauskilawfirm.com;

Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, service@feamanlaw.com;

Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, *iviewit@iviewit.tv*;

William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com.

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF SIMON L. BERNSTEIN, PROBATE DIVISION

Deceased. CASE NO. 502012CP004391XXXXSB

/

ELIOT IVAN BERNSTEIN, PRO SE DIVISION: IV (COLIN)

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.

/

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 for 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.

EXHIBIT "A"

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

Alan B. Rose, Esq. (E-mail)
Page Mrachek Fitzgerald Rose Konopka & Dow PA
505 S Flagler Dr Ste 600
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2753 NW 34th Street
Boca Raton, Florida 33434

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

Pamela Beth Simon (U.S. Mail)
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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

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

PROBATE DIV.

CASE NO.: 50 2012 CP 004391 XXXX SB

IN RE: ESTATE OF SIMON L. BERNSTEIN,
Deceased.
_____/

ORDER ON "INTERESTED PERSON" WILLIAM STANSBURY'S MOTION FOR THE APPOINTMENT OF A CURATOR OR SUCCESSOR PERSONAL REPRESENTATIVE

THIS CAUSE came on to be heard by this Honorable Court on Wednesday, February 19, 2014, on the Motion of William Stansbury, as an "Interested Person" in the Estate, For the Appointment of a Curator or Successor Personal Representative, and the Court having received evidence, reviewed the file, heard argument of counsel, and being otherwise duly advised in the premises, it is

ORDERED and ADJUDGED:

1. The Motion of William Stansbury is hereby granted.

2. The Court hereby appoints Benjamin Brown, Esq., Matwiczyk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401 as Curator of this Estate pursuant to §733.501 Fla. Stat. (2013) and Florida Probate Rule 5.122(a).

3. Reasonable fees for the Curator are capped at $350.00 per hour.

EXHIBIT "B"

2/25/14

4. Fee payments will be made in $5,000.00 increments. Any fee requests in excess of that amount for any given period will require a court hearing.

5. In accordance with §733.501(2) Fla. Stat. (2013), bond is hereby set in the amount of $ none.

DONE and ORDERED in West Palm Beach, Palm Beach County, Florida on this ___ day of February, 2014.

SIGNED & DATED

MARTIN COLIN
Circuit Court Judge FEB 25 2014

JUDGE MARTIN H. COLIN

Copies to:

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

John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, courtfilings@pankauskilawfirm.com;

Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, service@feamanlaw.com;

Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, *iviewit@iviewit.tv;*

William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com.

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

WILLIAM E. STANSBURY,
Plaintiff,

v.

CASE NO: **50 2012 CA 013933 MB AA**

TED S. BERNSTEIN; DONALD TESCHER and
ROBERT SPALLINA, as co-personal representatives
of the ESTATE OF SIMON L. BERNSTEIN and
as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT
dated May 20, 2008; LIC HOLDINGS, INC.;
ARBITRAGE INTERNATIONAL MANAGEMENT, LLC,
f/k/a ARBITRAGE INTERNATIONAL
HOLDINGS, LLC; BERNSTEIN FAMILY
REALTY, LLC,
Defendants.
_____/

ORDER OF DISMISSAL WITH PREJUDICE
OF CERTAIN PARTIES AND CLAIMS

THIS CAUSE came before this Honorable Court upon the agreement of Plaintiff William E. Stansbury and Defendants Ted S. Bernstein, individually, LIC Holdings, Inc., Arbitrage International Management, LLC, f/k/a Arbitrage International Holdings, LLC and the Shirley Bernstein Trust Agreement dated May 20, 2008, and the Court having reviewed the file and being otherwise duly advised in the premises, it is hereby

ORDERED and ADJUDGED that:

1. The Plaintiff has filed a Notice dropping Ted S. Bernstein as a party and dismissing all claims against him with prejudice. Accordingly, the Plaintiff's claims against Ted S. Bernstein, individually, are dismissed with prejudice and he is dropped as a party to this action, with each party identified in this ¶1 to bear its own attorney fees and costs as to these claims and parties.

EXHIBIT
tabbies
B

2. The Plaintiff has filed a Notice dropping The Shirley Bernstein Trust Agreement dated May 20, 2008 (the "Shirley Trust") and dismissing all claims against it with prejudice. Accordingly, the Plaintiff's claims against the Shirley Trust are dismissed with prejudice and it is dropped as a party to this action, with each party identified in this ¶2 to bear its own attorney fees and costs as to these claims and parties.

3. The Plaintiff and Defendants, LIC Holdings, Inc. ("LIC") and Arbitrage International Management, LLC, f/k/a Arbitrage International Holdings, LLC ("Arbitrage"), have filed a Stipulation for Dropping Parties and Dismissal With Prejudice of Certain Claims and Counterclaims. Accordingly, all claims by Plaintiff against LIC and Arbitrage are dismissed with prejudice, and Arbitrage's counterclaims against Plaintiff are dismissed with prejudice, with each party identified in this ¶3 to bear its own attorney fees and costs as to these claims and parties.

4. This Order shall have no effect on the Plaintiff's claims against the remaining parties, Estate of Simon Bernstein ("Simon's Estate") and Bernstein Family Realty, LLC ("BFR"). Plaintiff has expressly reserved all such claims against Simon's Estate and BFR and such claims are not dismissed by this Order.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida on this 23 day of June, 2014.

HONORABLE PETER BLANC
Circuit Judge

Copies to:
Alan Rose, Esq., Page Mrachek, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; e-mail: arose@pm-law.com;
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3695 W. Boynton Beach Blvd., Suite #9, Boynton Beach, FL; e-mail: pfeaman@feamanlaw.com;
Benjamin Brown, Esq., Matwiczyk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401; e-mail: bbrown@matbrolaw.com;
Steven Lessne, Esq., GRAY ROBINSON, P.A., 225 N.E. Mizner Boulevard, Suite 500, Boca Raton, FL 33432; e-mail: steven.lessne@gray-robinson.com.

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

CASE NO. 502012CA013933XXXXMB
Division AA

WILLIAM E. STANSBURY,

Plaintiff,

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN and as Co-Trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT Dated May 20, 1988; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

NOTICE OF CHANGE OF LAW FIRM, ADDRESS AND E-MAIL DESIGNATION FOR STEVEN A. LESSNE, ESQ. (COUNSEL FOR DEFENDANT, BERNSTEIN FAMILY REALTY, LLC)

Steven A. Lessne, counsel for Defendant, Bernstein Family Realty, LLC, hereby notifies the Court and all parties that he is no longer associated with the law firm of GrayRobinson, P.A., and is now associated with the law firm of Gunster, Yoakley & Stewart, P.A. Mr. Lessne certifies that his above-identified client has elected to have him continue his representation of his client at the Gunster law firm. Mr. Lessne's new contact information and e-mail designations are as follows:

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. 2/5/2015 3:43:35 PM ***

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

All motions, pleadings, orders and papers in this case should be served on Steven A. Lessne at the above address.

Dated this 5th day of February, 2015.

GUNSTER, YOAKLEY & STEWART, P.A.
Counsel for Bernstein Family Realty, LLC
777 South Flagler Drive, Suite 500 East
West Palm Beach, FL 33401
Telephone: (561) 650-0545
Facsimile: (561) 655-5677

By: */s/Steven A. Lessne*
Steven A. Lessne, Esq.
Florida Bar No. 107514
slessne@gunster.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document is being served on all persons on the below service list on this 5th day of February, 2015, via an automatic email generated by the Florida Courts E-Filing Portal.

By: */s/Steven A. Lessne*
Steven A. Lessne

SERVICE LIST

Peter M. Feaman, Esq.
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3625 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
Email: pfeaman@feamanlaw.com
Counsel for Plaintiff, William E. Stansbury

Donald R. Tescher, Esq.
Robert L. Spallina, Esq.
Tescher & Spallina, P.A.
Wells Fargo Plaza
925 South Federal Highway, Suite 500
Boca Raton, FL 33432
Phone: 561-997-7008
Fax: 561-997-7308
Email: dtescher@teacherspallina.com
Email: rspallina@tescherspallina.com
Co-Personal Representatives of the
Estate of Simon L. Bernstein and as Co-Trustees
of the Shirley Bernstein Trust Agreement

Alan B. Rose, Esq.
Mrachek Fitzgerald Rose Konopka Thomas Weiss
505 S. Flagler Drive, Suite 600
West Palm Beach, FL 33401-5495
Tel: 561-655-2250
Fax: 561-655-5537
Email: arose@mrachek-law.com
Counsel for Defendants, Ted Bernstein, LIC Holdings, Inc.
and Arbitrage International Management, LLC

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

CASE NO. 502012CA013933XXXXMB AA

WILLIAM E. STANSBURY,

Plaintiff,

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINIA, as co-personal representatives Of the ESTATE OF SIMON L. BERNSTEIN and as Co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LLC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC.

Defendants.
_____/

PROPOSAL FOR SETTLEMENT

COMES NOW Brian M. O'Connell, as successor personal representative of the Estate of Simon L. Bernstein, by and through his undersigned counsel and, pursuant to Rule 1.442, F.R.Civ.P. and §768.79 F.S. makes this Proposal/Offer of Settlement saying that:

1. The party making this Proposal/Offer of Settlement is Brian M. O'Connell, as successor personal representative of the Estate of Simon L. Bernstein and the Estate of Simon L. Bernstein.

2. The party to whom this Proposal/Offer of Settlement is made is William E. Stansbury.

3. This Proposal/Offer of Settlement is made under the provisions of Rule 1.442, F.R.Civ.P. and §768.79 F.S. and is made to resolve all claims made by or which could have been

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made by William E. Stansbury in the above-styled action, Case No. 50 2012 CA 013933 MB AA, in the Circuit Court the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

4. It shall be a condition of this Proposal/Offer of Settlement that if it is accepted, William E. Stansbury shall dismiss the above-referenced civil action with prejudice within 10 days of receipt of payment of the settlement sum that is set forth in paragraph 5 below.

5. The sum offered to resolve all claims made by William E. Stansbury in the above-referenced action is $50,000.00.

a. The non-monetary term of this Proposal is that, within in 10 days of receipt of payment of the settlement sum, William E. Stansbury shall dismiss the above-referenced civil action with prejudice.

6. Because there is no prayer for recovery of punitive damages made in the above-referenced action, the provision for resolution of a punitive damage claim is made in this Proposal/Offer of Settlement.

7. The Settlement sum set forth in paragraph 5, above, includes any and all claims for damages, costs and attorney's fees made by William E. Stansbury in the above-referenced action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by Electronic Mail to Alan Rose, Esq., 505 S. Flagler Drive, Suite 600, West Palm Beach, FL 33401; arose@pm-law.com; Peter M. Feaman, Esq., 3695 W. Boynton Beach Blvd., Suite #9, Boynton

Beach, FL 33436; pfeaman@feamanlaw.com;; Steven Lessne, Esq., 225 N.E. Mizner Blvd., Suite 500, Boca Raton, FL 33432; stevenlessne@gray-robinson.com on this 6th day of April, 2016.

CIKLIN LUBITZ & O'CONNELL
515 North Flagler Drive, 20th Floor
West Palm Beach, FL 33401
561-832-5900, fax 561-833-4209
Primary: service@ciklinlubitz.com
Secondary: swatts@ciklinlubitz.com
Counsel for E/O Simon L. Bernstein

BRIAN B. JOSLYN
Florida Bar No. 332496

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO.:502012CA013933XXXXMB
DIVISION: AA

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

PLAINTIFF'S MOTION TO COMPEL RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT

COMES NOW, Plaintiff, WILLIAM E. STANSBURY (hereinafter "Plaintiff"), by and through undersigned counsel, and moves this Court to compel Defendant, the ESTATE OF SIMON L. BERNSTEIN, to respond to the Request for Production served on March 16, 2016, and as grounds therefor states:

1. On March 16, 2016, Plaintiff filed his Request for Production of Documents. A copy of the Request for Production of Documents is attached hereto as **Exhibit "1."**

2. More than 30 days have elapsed since the service of the Request for Production and Defendant, the Estate of Simon L. Bernstein has failed to respond in any fashion.

WHEREFORE Plaintiff, WILLIAM E. STANSBURY, requests this Honorable Court enter an Order compelling the Defendant, the ESTATE OF SIMON L. BERNSTEIN, to respond to the

FILED: PALM BEACH COUNTY, FL, SHARON R. BOCK, CLERK, 05/02/2016 04:30:29 PM

Request for Production of Documents attached hereto as **Exhibit "1"** within 10 days, together with such other and further relief as this Court deems just and proper, including the award of reasonable attorneys' fees incurred necessitated by the bringing of this Motion.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been furnished via e-mail service through the Florida E-portal system to: *boconnell@ciklinlubitz.com*, Brian M. O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 No. Flagler Drive, 20th Floor, West Palm Beach, FL 33401, *Personal Representative of the Estate of Simon Bernstein;* and *slessne@gunster.com*, Steven Lessne, Esq., Gunster Yoakley & Stewart, P.A., 777 South Flagler Drive, Suite 500 E, West Palm Beach, FL 33401 on this 2 day of May, 2016.

PETER M. FEAMAN, P.A.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
Service: service@feamanlaw.com
mkoskey@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No. 0260347

Filing # 39090179 E-Filed 03/16/2016 01:51:06 PM

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

WILLIAM E. STANSBURY,
Plaintiff,

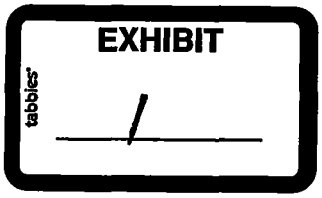
CASE NO.:502012CA013933XXXXMB
DIVISION: AA

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

REQUEST FOR PRODUCTION TO DEFENDANTS

Pursuant to Rule 1.350, Florida Rules of Civil Procedure, Plaintiff, WILLIAM STANSBURY, requests the Defendants, TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008 (hereinafter "Defendants"), produce for inspection and copying by the undersigned attorney all documents described below. Petitioner requests that the production occur within the time frame provided by law.



INSTRUCTIONS AND DEFINITIONS

A. The term "You" as used herein shall mean a Defendant or Defendants as applicable, any successor entity, and any agent, partner, attorney, representative, or other person acting or purporting to act on the Defendants behalf.

B. As used herein, the term "Relevant Time Period" shall mean and refer to the time period from September 13, 2012, to the date of your final response to this discovery request. The use of this term shall not be construed to mean that relevant events might not have occurred outside that time frame.

C. As used herein, the term "document" or "documentation" is used in the broadest sense and includes all attachments and means any medium upon which intelligence or information can be recorded or retrieved, and includes, without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, periodical, letter, memorandum (including any memorandum or report of a meeting or conversation), invoice, bill, order, form, receipt, email, financial statement, accounting entry, diary, calendar, telex, telegram, cable, report, record, contract, agreement, study, handwritten note, draft, working paper, chart, paper, print, laboratory record, drawing, sketch, graph, index, list, tape, photograph, microfilm, data sheet or data processing card, or any other written, recorded, transcribed, punched tape, filmed, or graphic matter, however produced or reproduced, which is in your possession, custody, control, or otherwise accessible to you, or which was, but is no longer in your possession, custody or control.

D. The term "exercise control" means that You can act directly or indirectly to control the disposition of money or other property in the account. Indirect control includes, without limitation, the use of nominees, agents, powers of attorney, protectors, advisors, trusts, letter of

wishes, by-laws, letters of direction, or any device whatsoever.

E. The term "affiliate" describes any type of inter-company relationship where one company owns a portion of the other company's stock, shares, or membership interests or where a third party has the power to control both you and another company.

F. If production is withheld pursuant to a claim of privilege, please provide the following identifying information in your privilege log:

(1) date of creation of withheld document;

(2) author of withheld document;

(3) addressee to whom withheld document is intended to be directed;

(4) brief description of the subject matter and form of the withheld document and attachments, including number of pages;

(5) statement of the basis upon which the privilege is claimed; and

(6) the numbers of each specific request to which the document or thing would be responsive.

G. If there is any document or other tangible item described by this request which is no longer in your possession, custody or control, or is no longer in existence or accessible to You, please indicate:

(1) the date and nature of the disposition of such document or other tangible item, including, but not limited to whether such: (a) is missing or lost, (b) has been destroyed or (c) has been transferred to another person;

(2) the circumstances surrounding such disposition, including any authorization therefor; and

(3) where applicable, the person currently in possession, custody or control of such document or item.

REQUEST TO PRODUCE

1. All documents pertaining to IRS Form 56 and the IRS Estate Tax Identification Number during the Relevant Time Period.

2. All documents evidencing or relating to all Inventories prepared or filed with the Probate Court during the Relevant Time Period.

3. All documents evidencing or relating to the Simon L. Bernstein Trust Agreement dated July 25, 2012.

4. All documents related to banking transactions and/or transfers of funds during the Relevant Time Period with regard to Simon L. Bernstein and/or the Estate of Simon L. Bernstein between bank accounts, financial accounts, and other accounts, including, but not limited to: open or closed checking accounts, copies of signature cards, bank statements, copies of credit and debit memos (in English), account applications, wire transfer authorizations and confirmations, deposit slips and deposited items, cancelled checks, check registers, promissory notes, certificates of deposit, letters of credit, cashier's checks, money orders, all correspondence/emails (in English), documents showing disbursement of the loan proceeds, and documents showing officer authority to bind entities by contract.

5. All documents which evidence or relate to tangible personal property, interest in tangible personal property, or property of every kind, including but not limited to personal effects, jewelry, collections, household furnishings and equipment, automobiles and other non-business tangible property owned by Simon L. Bernstein and/or the Estate of Simon L. Bernstein, either individually or with any other person, entity, or trust, during the Relevant Time Period.

6. All documents evidencing or relating to Simon L. Bernstein and/or the Estate of Simon L. Bernstein's ownership interest in any business, corporation, limited liability company,

or partnership. Include, without limitation, shareholder's agreements, operating agreements, articles of incorporation, capital contributions, schedules of officers' and directors' compensation, sources of income, shareholders, and/or owners, including but not limited to dividends, distributions, draws, stock agreements, and list of shareholders showing amount of stock owned during the Relevant Time Period.

7. All documents evidencing or relating to Simon L. Bernstein and/or the Estate of Simon L. Bernstein's business records and financial affairs during the Relevant Time Period. Include, without limitation, financial statements, general ledgers, tax returns, accounts payable, accounts receivable, promissory note, balance sheets, loans, lines of credits, debt (secured or unsecured), documents evidencing monthly and annual income, loan applications, bank statements, allowance for bad debts, other investments, all assets and related contra assets, retained earnings, income statement, inventory, appraisals, contingent liabilities or off balance sheet financing, letters of credit, documents prepared by a Certified Public Accountant, schedule of revenue, copies of budgets, budget projections, credit applications, details of transactions to related parties, copies of any business plans, minutes, leases, loans, offers to lease or purchase property, contracts, reports issued by any government agencies, attorney's invoices/billing statements, disposition of property, and details of transactions in the company's equity interests.

8. All documents evidencing or relating to transfers of assets, made during the Relevant Time Period, directly or indirectly, to any business entity in which Simon L. Bernstein is or has been an owner, officer, or member.

9. All copies of tax returns, gift tax returns, sales and use tax returns, and/or intangible tax returns, filed by the Estate of Simon L. Bernstein during the Relevant Time Period,

either individually or jointly with or on behalf of any other person, entity, or trust, with the federal, state or municipal governments.

10. All documents relating to or evidencing any tax refunds due to the Estate of Simon L. Bernstein during the Relevant Time Period, from any governmental unit, either individually or jointly with any other person, entity, or trust.

11. All documents that show Simon L. Bernstein and/or the Estate of Simon L. Bernstein's assets, liabilities, income and expenses including all pensions, life insurance, retirement accounts, social security, bank accounts, investment accounts, monthly statements, check registers, deposit slips, probate assets, real estate, personal property, multi-account property, jointly owned property, trust accounts, trust funds, trust property and amounts owing to the Estate of Simon L. Bernstein during the Relevant Time Period.

12. All documents of Simon L. Bernstein and the Estate of Simon L. Bernstein concerning the Estate, gift, and trust plans, including all Wills, Codicils, Trusts, Trust Amendments, powers of attorney, life insurance policies, beneficiary designation forms, and any other documents involving probate and/or non-probate property.

13. A list of all cash and personal property removed from Simon L. Bernstein and/or the Estate of Simon L. Bernstein's real property and/or home at any time.

14. All documents evidencing, referring or relating to any and all requests made by Simon L. Bernstein to anyone for advice in connection with any of his financial matters, taxation matters, estate planning, gifting planning, and/or trust planning.

15. All documents evidencing, referring or relating to any communications of any kind, written or oral, between or among any of the Interested Persons during the Relevant Time Period.

16. All non-privileged documents sent to or received by Simon L. Bernstein and/or the Estate of Simon L. Bernstein from any attorney at law, paralegal, legal secretary, attorney in fact, legal provider of any kind or description, investment advisor, banker or financial planners.

17. All documents the Personal Representative has reviewed and/or received pursuant to non-party discovery or through formal or informal requests, written or verbal, concerning any issue in this case.

18. All documents evidencing, referring or relating to any services rendered by any person or company for or on behalf of Simon L. Bernstein within the last ten (10) years of his life.

19. The Personal Representative's files kept on behalf of the Estate of Simon L. Bernstein, his trust, the trustee(s), his Estate, the executor(s), any other fiduciary acting on his behalf, his attorney in fact, his financial advisors, or any other person associated with Simon L. Bernstein, including all documents, estate planning documents, financial documents, accountings, tax returns, communications, time sheets, billing records, invoices and notes.

20. The Personal Representative's file for any other member of Simon L. Bernstein's family to the third degree of kinship.

21. All documents the Personal Representative intends to introduce at any hearing or trial in this case, whether or not in your possession, and whether or not you presently have an original or copy.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been furnished via e-mail service through the Florida E-portal system to *boconnell@ciklinlubitz.com*, Brian M. O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 No. Flagler Drive, 20th Floor, West Palm Beach, FL 33401, *Personal Representative of the Estate of Simon Bernstein;* and *slessne@gunster.com*, Steven Lessne, Esq., Gunster Yoakley & Stewart, P.A., 777 South Flagler Drive, Suite 500 E, West Palm Beach, FL 33401 on this 10 day of March, 2016.

PETER M. FEAMAN, P.A.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
Service: service@feamanlaw.com
mkoskey@feamanlaw.com

By: Peter M. Feaman

Peter M. Feaman
Florida Bar No. 0260347

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO.: 502012CA013933XXXXMB
DIVISION: AA

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINA, as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN and as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LIC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/

PLAINTIFF'S MOTION TO COMPEL DEPOSITION OF THEODORE ("TED") BERNSTEIN

COMES NOW, Plaintiff, WILLIAM E. STANSBURY (hereinafter "Plaintiff"), by and through undersigned counsel, and moves this Court to enter an Order compelling the scheduling of the deposition of THEODORE ("TED") BERNSTEIN (hereinafter "Ted Bernstein"), and as grounds therefor would show unto the Court as follows:

1. Ted Bernstein was a Defendant in this action. Ted Bernstein is a relevant and material witness to this action which remains pending against the ESTATE OF SIMON L. BERNSTEIN.

2. Plaintiff has settled with Ted Bernstein, but the action remains pending as to the ESTATE OF SIMON L. BERNSTEIN.

FILED: PALM BEACH COUNTY, FL, SHARON R. BOCK, CLERK, 05/16/2016 04:27:12 PM

3. Plaintiff has been attempting to schedule a date and time for Ted Bernstein's deposition, but has been unable to do so.

WHEREFORE, Plaintiff, WILLIAM E. STANSBURY, requests this Honorable Court enter an Order compelling the scheduling of the deposition of Theodore (Ted) Bernstein within 30 days of the date of the order, and such other and further relief as deemed just and proper under the circumstances.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been furnished via e-mail service through the Florida E-portal system to: *boconnell@ciklinlubitz.com*, Brian M. O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 No. Flagler Drive, 20th Floor, West Palm Beach, FL 33401, *Personal Representative of the Estate of Simon Bernstein; slessne@gunster.com*, Steven Lessne, Esq., Gunster Yoakley & Stewart, P.A., 777 South Flagler Drive, Suite 500 E, West Palm Beach, FL 33401; and arose@pm-law.com, Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 16th day of May, 2016.

PETER M. FEAMAN, P.A.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
Service: service@feamanlaw.com
mkoskey@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No. 0260347

IN RE: ESTATE OF SHIRLEY BERNSTEIN,
Deceased.
_____/
IN RE: ESTATE OF SIMON L. BERNSTEIN,
Deceased.
_____/
WILLIAM E. STANSBURY,
Plaintiff,
vs.
ESTATE OF SIMON L. BERNSTEIN; and BERNSTEIN FAMILY REALTY, LLC,
Defendants.
_____/
TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust Agreement Dated May 20, 2008, as amended,
Plaintiff,
vs.
ALEXANDRA BERNSTEIN, et al
Defendants.
_____/

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

CASE NO.:502011CP000653XXXXSB IY

CASE NO.: 502012CP004391XXXXNB IH

CASE NO.: 502012CA013933XXXX MB AA

CASE NO.: 502014CP003698XXXXNB IJ

NOTICE OF MEDIATION

Alan B. Rose, Esquire
505 S. Flagler Dr., Suite 600
West Palm Beach, Florida 33401
(561) 355-6991
arose@mrachek-law.com
mchandler@mrachek-law.com
Attorney for Ted S. Bernstein

Donald R. Tescher, Esquire
925 S. Federal Highway,Suite 500
Boca Raton, Florida 33432
Phone: (561) 997-7008
Dtescher@tescherlaw.com
ddustin@tescherlaw.com
Former PR of the Estate of Simon L. Bernstein

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, Florida 33434
iviewit@iviewit.tv **Pro Se**

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

Robert Spallina, Esquire
rspallina@comcast.net
Former PR of the Estate of Simon L. Bernstein

Brian M. O'Connell, Esquire
Ashley Crispin Ackal, Esquire
Ciklin Lubitz & O'Connell
515 N. Flagler Drive., 20th Floor
West Palm Beach, Florida 33401 service@ciklinlubitz.com
probateservice@ciklinlubitz.com

John P. Morrissey, Esquire
330 Clematis Street., Suite 213
West Palm Beach, Florida 33401
john@jmorrisseylaw.com **Attorney for Molly Simon**

Peter Feaman, Esquire
3695 Boynton Beach Blvd.,Suite 9
Boynton Beach, Florida 33436
pfeaman@feamanlaw.com **Attorney for William Stansbury**

Gary R. Shendell, Esquire
Kenneth S. Pollock, Esquire
Matthew A. Tornincasa, Esquire
2700 N. Military Trail, suite 150
Boca Raton, Florida 33431
Phone (561) 241-2323 Fax: (561) 241-2330
gary@shendellpollock.com estella@shendellpollock.com
grs@shendellpollock.com ken@shendellpollock.com
britt@shendellpollock.com grs@shendellpollock.com
matt@shendellpollock.com robyne@shendellpollock.com
grs@shendellpollock.com **Attorney for Tescher and Spallina**

Pamela Beth Simon
950 N. Michigan Ave., Apt. 2603
Chicago, IL 60611
psimon@stpcorp.com **Beneficiary**

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**

Diana LewisGuardian Ad Litem for
Joshua, Jacob and Daniel Bernstein, Minors
ADR & Mediation Services, LLC
2765 Tecumseh Drive
West Palm Beach, Florida 33409
(561) 758-3017 dzlewis@aol.com

FILED: PALM BEACH COUNTY, FL, SHARON R. BOCK, CLERK, 06/22/2016 11:02:53 AM

YOU ARE HEREBY NOTIFIED, pursuant to the agreement of the parties, that a confidential Mediation Conference subject to the provisions of Florida Statutes Chapter 44 shall be held in this case as follows:

MEDIATOR:	**RONALD ALVAREZ**
LOCATION:	**Brian M. O'Connell, Esquire** **Ciklin Lubitz & O'Connell** **515 N. Flagler Drive, 20th Floor** **West Palm Beach, Florida 33401**
DATE:	**MONDAY, JULY 25, 2016**
TIME:	**10:00 AM - 5:00 PM**
PARTIES ARE ENCOURAGED TO SUBMIT WRITTEN MEDIATION SUMMARIES TO:	**ron@matrixmediation.com**

PRE PAYMENT REQUIRED

A Full Day Seven Hours (7) has been reserved for this case.

PLEASE REVIEW AND SIGN ATTACHED MEDIATION ENGAGEMENT CONFIRMATION
RESERVED HOURS, RATES AND POLICY

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance, please contact Krista Garber, ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida, 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this order; if you are hearing or voice impaired, call 1-800-955-8771.I HEREBY CERTIFY that a true and correct copy of the foregoing was provided via facsimile or email to the above-named addressees this 21st of June, 2016

DP

MATRIX MEDIATION

BY: _____

Rodney G. Romano, Esquire
Florida Bar No.: 0559482
1655 Palm Beach Lakes Boulevard
Suite 700, The Forum
West Palm Beach, Florida 33401
Phone: (561) 340-3500 Fax: (561) 584-7792

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: 502012CA013933XXXXMB
DIVISION: AA

v.

ESTATE OF SIMON L. BERNSTEIN; and
BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

PLAINTIFF'S MOTION FOR CASE MANAGEMENT CONFERENCE TO SCHEDULE DEPOSITIONS

COMES NOW, Plaintiff, WILLIAM STANSBURY, by and through his undersigned attorney and files this Motion for Case Management Conference to Schedule Depositions, and states as follows:

1. Plaintiff has made numerous attempts with opposing counsel and the Personal Representative of Defendant, ESTATE OF SIMON L. BERNSTEIN, Brian M. O'Connell, Esq. to schedule depositions in the above-styled case.

2. Mr. O'Connell filed his Notice of Unavailability essentially making him unavailable to attend depositions until November, 2016. *See*, Brian M. O'Connell's Notice of Unavailability, attached hereto as **Exhibit "A."**

3. Further, attached hereto as **Exhibit "B,"** is a 2016 calendar which depicts the unavailability of Mr. O'Connor.

4. This case was filed in 2012 and Plaintiff seeks to re-schedule the depositions of the following:

A. Donald R. Tescher (one day minimum required)
B. Robert L. Spallina (one day minimum required)
C. Gerald R. Lewin, CPA (one day minimum required)

FILED: PALM BEACH COUNTY, FL, SHARON R. BOCK, CLERK, 07/08/2016 03:32:31 PM

5. It would prejudice the Plaintiff if the depositions of the above-listed deponents are allowed to be postponed to November, 2016.

WHEREFORE, Plaintiff, WILLIAM STANSBURY, requests this Honorable Court schedule a Case Management Conference to set by court order the above-listed deponents for a time certain at the earliest available dates/times for the taking of their deposition, and such other and further relief as deemed just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been furnished via e-mail service through the Florida E-portal system to: *boconnell@ciklinlubitz.com*, Brian M. O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 No. Flagler Drive, 20th Floor, West Palm Beach, FL 33401, *Defendant, Estate of Simon Bernstein, by Serving its Personal Representative, Brian M. O'Connell, Esq.; slessne@gunster.com,* Steven Lessne, Esq., Gunster Yoakley & Stewart, P.A., 777 South Flagler Drive, Suite 500 E, West Palm Beach, FL 33401, *Counsel for Defendant, Bernstein Family Realty, LLC,* on this 8th day of July, 2016.

PETER M. FEAMAN, P.A.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
Service: service@feamanlaw.com
mkoskey@feamanlaw.com

By: Peter M. Feaman
Peter M. Feaman
Florida Bar No. 0260347

Filing # 43592333 E-Filed 07/06/2016 12:17:42 PM

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

CASE NO. 502012CA013933XXXXMB AA

WILLIAM E. STANSBURY,

Plaintiff,

v.

TED S. BERNSTEIN; DONALD TESCHER and ROBERT SPALLINIA, as co-personal representatives Of the ESTATE OF SIMON L. BERNSTEIN and as Co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008; LLC HOLDINGS, INC.; ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC; BERNSTEIN FAMILY REALTY, LLC.

Defendants.

_____/

BRIAN M. O'CONNELL'S NOTICE OF UNAVAILABILITY

PLEASE TAKE NOTICE of unavailability of counsel as follows:

July 7, 2016 through July 8, 2016
July 13, 2016 through July 15, 2016
July 18, 2016 through July 22, 2016
July 26, 2016 through August 12, 2016
August 16, 2016 through August 23, 2016
August 25, 2016
September 6, 2016 through September 19, 2016
September 23, 2016
October 7, 2016 through October 14, 2016
October 19, 2016 through October 21, 2016
October 28, 2016
October 31, 2016
November 10, 2016

and respectfully requests that no hearings, depositions, court appearances or mediations be scheduled during these times; no motions, requests to produce, interrogatories or other pleadings

EXHIBIT
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A

to be filed which require a timely response during this time; and that all pending matters remain in status quo, during these periods of time.

The filing and service of this notice shall constitute an application and request for continuance, extension of time and/or protective order as appropriately required for the above-reasons.

PLEASE GOVERN YOURSELF ACCORDINGLY.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by Electronic Mail to ***Peter M. Feaman, Esq.***, 3695 W. Boynton Beach Blvd., Suite #9, Boynton Beach, FL 33436 (service@feamanlaw.com, mkosky@feamanlaw.com), ***Steven Lessne, Esq.***, 777 S. Flagler Drive, #500, West Palm Beach, FL 33401 (slessne@gunster.com, lvanegas@gunster.com, eservice@gunster.com) on this 6th day of July, 2016.

BRIAN M. O'CONNELL/Florida Bar No. 308471
ASHLEY CRISPIN ACKAL/Florida Bar No. 37495
JOIELLE A. FOGLIETTA/Florida Bar No. 94238
Ciklin Lubitz & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
Telephone: 561-832-5900/Facsimile: 561-833-4209
Service@ciklinlubitz.com
probateservice@ciklinlubitz.com

2016

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EXHIBIT

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B

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

CIRCUIT CIVIL DIVISION AA
CASE NO. 50-2012CA013933XXXX-MB

WILLIAM STANSBURY
Plaintiff,
v.
ESTATE OF SIMON L. BERNSTEIN and
BERNSTEIN FAMILY REALTY, LLC.
Defendant(s).
_____/

ORDER ON PLAINTIFF'S MOTION FOR CASE MANAGEMENT CONFERENCE

THIS MATTER came before the Court upon receipt of Plaintiff, William Stansbury's Motion for Case Management Conference to Schedule Depositions. Plaintiff indicates that he has been frustrated in his attempts to reschedule depositions due to the long standing unavailability of counsel for the Defendant, Estate of Simon L. Bernstein. Plaintiff asks for a Case Management Conference for the purpose of establishing dates/times for the taking of these depositions.

Based on the foregoing, it is hereby

ORDERED AND ADJUDGED counsel for the Plaintiff and Defendant shall confer in person or by telephone in an attempt to resolve this matter without further court intervention. In the event such attempt proves to be unsuccessful, Plaintiff may set the matter down on the court's Uniform Motion Calendar for resolution. **See Circuit Civil "AA" Divisional Instructions for the Fifteenth Circuit for instructions on scheduling UMC hearings and setting online.**

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 12th day of July, 2016.

RICHARD L. OFTEDAL, Circuit Judge

FILED: PALM BEACH COUNTY, FL, SHARON R. BOCK, CLERK, 07/13/2016 08:53:36 AM

Copies furnished via email to:

Brian M. O'Connell, Esq. – Email boconnell@ciklinlubitz.com

Steven Lessne, Esq. – Email: slessne@gunster.com

Peter M. Feaman, Esq. – Email: service@feamanlaw.com: mkoskey@feamanlaw.com

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO.: 502012CA013933XXXXMB
DIVISION: AA

v.

ESTATE OF SIMON L. BERNSTEIN;
and BERNSTEIN FAMILY
REALTY, LLC,
Defendants.
_____/

PLAINTIFF'S NOTICE TO CLERK OF CLARIFICATION OF REMAINING DEFENDANTS: ESTATE OF SIMON L. BERNSTEIN AND BERNSTEIN FAMILY REALTY, LLC

COMES NOW, Plaintiff, WILLIAM E. STANSBURY (hereinafter "Plaintiff"), by and through undersigned counsel, and files this Notice of Clarification with the Clerk, and states as follows:

1. On July 30, 2012, when this lawsuit was filed, Simon Bernstein was alive.

2. On September 13, 2012, Simon L. Bernstein died.

3. After the "Suggestion of Death" was filed, Donald Tescher and Robert Spallina were substituted in as the real parties in interest as Co-Personal Representatives of the ESTATE OF SIMON L. BERNSTEIN. Donald Tescher and Robert Spallina resigned as Personal Representatives pursuant to court order on February 18, 2014.

4. BRIAN M. O'CONNELL, ESQ., is the Successor Personal Representative to the ESTATE OF SIMON L. BERNSTEIN and BRIAN M. O'CONNELL, ESQ. As Successor Personal Representative, BRIAN M. O'CONNELL, ESQ., should be served with all pleadings, correspondence and any other communication that should be served on the Defendant, ESTATE

FILED: PALM BEACH COUNTY, FL, SHARON R. BOCK, CLERK, 08/12/2016 10:36:11 AM

OF SIMON L. BERNSTEIN at the e-mail address of: service@ciklinlubitz.com and boconnell@ciklinlubitz.com.

5. The proper service on the Defendant, BERNSTEIN FAMILY REALTY, LLC, is its counsel of record, STEVEN LESSNE, ESQ., who should be served with all pleadings, correspondence and any other communication that should be served on the Defendant, BERNSTEIN FAMILY REALTY, LLC at the e-mail address of: slessne@gunster.com.

6. All Defendants except for Defendant, ESTATE OF SIMON L. BERNSTEIN and Defendant, BERNSTEIN FAMILY REALTY, LLC, have been dismissed with prejudice.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been furnished via e-mail service through the Florida E-portal system to: *service@ciklinlubitz.com; boconnell@ciklinlubitz.com*, Brian M. O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 No. Flagler Drive, 20th Floor, West Palm Beach, FL 33401, *Defendant, Estate of Simon Bernstein, by Serving its Personal Representative, Brian M. O'Connell, Esq.; slessne@gunster.com,* Steven Lessne, Esq., Gunster Yoakley & Stewart, P.A., 777 South Flagler Drive, Suite 500 E, West Palm Beach, FL 33401, *Counsel for Defendant, Bernstein Family Realty, LLC,* on this 12 day of August, 2016.

PETER M. FEAMAN, P.A.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
Service: service@feamanlaw.com
mkoskey@feamanlaw.com

By: _____
Peter M. Feaman
Florida Bar No. 0260347

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

CASE NO.: 502012CA013933XXXXMB
DIVISION: AA

WILLIAM E. STANSBURY,

Plaintiff,

v.

ESTATE OF SIMON L. BERNSTEIN, and BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

MOTION TO WITHDRAW AS COUNSEL FOR BERNSTEIN FAMILY REALTY, LLC

Steven A. Lessne, Esq. and the law firm of Gunster, Yoakley & Stewart, P.A. move to withdraw as counsel for Defendant, Bernstein Family Realty, LLC ("BFR"), pursuant to Florida Rule of Judicial Administration 2.505(f)(1), and state:

1. Steven A. Lessne, Esq. and the law firm of Gunster, Yoakley & Stewart, P.A. (collectively, "Gunster") are counsel of record in this action for BFR, having been retained on BFR's behalf by Oppenheimer Trust Company of Delaware ("Oppenheimer"), as then-Manager of BFR.

2. At the time of Gunster's appearance, Oppenheimer was the Manager of BFR and the trustee of three trusts (the "Trusts") which collectively owned 100% of BFR.

3. Pursuant to a Final Judgment entered on June 7, 2016 by the Honorable John L. Phillips in the matter of *Oppenheimer Trust Company of Delaware v. Eliot and Candice Bernstein, in their capacity as parents and natural guardians of Joshua, Jake and Daniel Bernstein, Palm Beach Circuit Court Case No. 502014CP002815XXXXNB (IH)*, the Trusts were

FILED: PALM BEACH COUNTY, FL, SHARON R. BOCK, CLERK, 08/18/2016 10:28:27 AM

terminated and Oppenheimer was ordered to distribute BFR to Eliot and Candice Bernstein, as parents and natural guardians of Joshua, Jake and Daniel Bernstein (collectively, the "Bernsteins"). A copy of the Final Judgment is attached hereto as Exhibit "A."

4. On June 27, 2016, Oppenheimer transferred all right, title and interest in and to BFR to the Bernsteins. *See* Exhibit "B."

5. On July 12, 2016, Oppenheimer resigned as Manager of BFR. *See* Composite Exhibit "C."

6. Upon information and belief, there is currently no Manager acting on behalf of BFR.

7. Gunster's attorney/client relationship in this matter was with Oppenheimer, as then-Manager of BFR, but Oppenheimer no longer has any relationship with BFR or any authority to act on BFR's behalf.

8. Gunster does not have, and never had, an attorney/client relationship with the current owner of BFR (the Bernsteins) and, therefore, seeks to withdraw as counsel for BFR.

9. BFR's address and email address for service of pleadings and correspondence is c/o Eliot and Candice Bernstein, as parents and natural guardians of Joshua, Jake and Daniel Bernstein, 2753 N.W. 34th Street, Boca Raton, FL 33434-3459; iviewit@iviewit.tv, iviewit@gmail.com and tourcandy@gmail.com. The Bernsteins' telephone numbers are 561-245-8588 (office) and 561-866-7628 (cell).

WHEREFORE, Gunster respectfully requests an order granting its Motion to Withdraw, relieving it of further responsibility for BFR in this action, and granting such other relief as is just and proper.

Respectfully submitted,

GUNSTER, YOAKLEY & STEWART, P.A.

By /s/ Steven A. Lessne, Esq.

Steven A. Lessne, Esq.
Florida Bar No.: 107514
777 South Flagler Drive, Suite 500 East
West Palm Beach, FL 33401
Telephone: (561) 650-0545
Facsimile: (561) 655-5677
slessne@gunster.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served by electronic mail this 18th day of August, 2016 upon:

Peter M. Feaman, Esq.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
service@feamanlaw.com
mkoskey@feamanlaw.com

Brian M. O'Connell, Esq.
515 N. Flagler Drive, 20th Floor
West Palm Beach, FL 33401
boconnell@ciklinlubitz.com

Bernstein Family Realty, LLC
c/o Eliot and Candice Bernstein,
as parents and natural guardians of
Joshua, Jake and Daniel Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434
ivewit@ivewit.tv
ivewit@gmail.com
tourcandy@gmail.com

/s/ Steven A. Lessne, Esq.

EXHIBIT A

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

PROBATE DIVISION

CASE NO.: 502014CP002815XXXXNB (IH)

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.
_____/

FINAL JUDGMENT

THIS CAUSE came before the Court upon the Motion For Entry Of Final Judgment (the "Motion") filed by Petitioner, Oppenheimer Trust Company Of Delaware ("Oppenheimer"), in its capacity as the resigned trustee of three irrevocable trusts settled by Simon Bernstein on September 7, 2006 for the benefit of his grandchildren, Joshua, Jake and Daniel Bernstein (the "Grandchildren Trusts"). Having considered the Motion, the May 11, 2016 Report and Recommendation of the grandchildren's Guardian *Ad Litem*, Diana Lewis (the "GAL"), and being otherwise duly advised in the premises, it is hereupon

ORDERED AND ADJUDGED as follows:

1. Final judgment is hereby entered in Oppenheimer's favor as to Count I of its Petition For Instructions, Approval Of Final Accounting, Release And Discharge ("Petition"). The Grandchildren Trusts are hereby terminated and, as proposed by Oppenheimer in its Plan of Distribution of Trust Assets, Oppenheimer shall distribute the liquid assets of the Grandchildren Trusts (approximately $6,500) to the Palm Beach County Tax Collector to partially pay the property taxes due on the real property owned by Bernstein Family Realty, LLC ("BFR"), an asset wholly owned by the Grandchildren Trusts.[1] Oppenheimer shall distribute the remainder of the assets (the Grandchildren Trusts' interests in BFR and LIC Holdings, Inc.) as follows:

to Christ + Candice Bernstein as natural guardians of the children

2. Final judgment is hereby entered in Oppenheimer's favor as to Count II of its Petition. Oppenheimer's accountings, as supplemented and amended, are approved in full. Oppenheimer and its former and current agents, employees and attorneys, together with Oppenheimer's parent and subsidiary companies, and all of their successors and assigns, are hereby released and discharged of all duties, claims, demands and liabilities arising out of or related to the Grandchildren Trusts or their assets.

DONE AND ORDERED in Chambers, Palm Beach County, Florida on 6-7-16, 2016.

Hon. John L. Phillips, Circuit Judge

[1] According to the Palm Beach County Tax Collector's records, BFR owes over $13,000 in property taxes related to the home occupied by the grandchildren, including for a tax certificate sold to satisfy unpaid 2014 property taxes. The assets of the trust are insufficient to pay the property taxes in full.

Copies furnished to:

Oppenheimer Trust Company of Delaware
c/o Steven A. Lessne, Esq.
Gunster, Yoakley & Stewart, P.A.
4855 Technology Way, Suite 630
Boca Raton, FL 33431

Joshua, Jacob (Jake) and Daniel Bernstein
c/o Diana Lewis, their Guardian *Ad Litem*
ADR & Mediation Services, LLC
2765 Tecumseh Drive
West Palm Beach, FL 33409

Eliot Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434

Candice Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434

EXHIBIT B

GUNSTER
FLORIDA'S LAW FIRM FOR BUSINESS

Writer's Direct Dial Number: 561-961-8085
Writer's E-Mail Address: slessne@gunster.com

June 27, 2016

Via E-Mail

Eliot and Candice Bernstein
as the natural guardians of Joshua, Jacob ("Jake") and Daniel Bernstein
2753 N.W. 34th St.
Boca Raton, FL 33434-3459

Re: ***Oppenheimer Trust Company of Delaware v. Bernstein;***
Case No. 502014CP002815XXXXNB

Dear Mr. and Mrs. Bernstein:

As you know, I represent Oppenheimer Trust Company of Delaware, in its capacity as the resigned trustee of the irrevocable trusts settled by Simon Bernstein on September 7, 2006 for the benefit of his grandchildren (your children), Joshua, Jacob ("Jake") and Daniel Bernstein (the "Grandchildren Trusts").

Consistent with the Court's Final Judgment entered in the above-referenced matter, please be advised as follows:

1. The Grandchildren Trusts were terminated on June 7, 2016.

2. All of the Grandchildren Trusts' right, title and interest in and to Bernstein Family Realty, LLC ("BFR") and LIC Holdings, Inc. ("LIC") are hereby transferred to you, as the parents and natural guardians of Joshua, Jake and Daniel. By copy of this letter to counsel for LIC, LIC is hereby notified of the transfer in ownership.

3. Oppenheimer hereby resigns as Manager of BFR. The undersigned counsel (retained by Oppenheimer to represent BFR's interest in the William Stansbury litigation) will be seeking to withdraw as counsel for BFR in that proceeding. As the sole owner of BFR, you have the right and authority to appoint a new Manager for BFR, to retain counsel to represent BFR in the Stansbury litigation, and to appropriately deal with the outstanding property taxes due on your home, which is owned by BFR.

4. After payment of administrative expenses, the remaining liquid assets of the Grandchildren Trusts will be paid to the Palm Beach County Tax Collector in *partial* payment of the property taxes due on the home owned by BFR.

Should you have any questions, please consult with counsel of your choosing.

Sincerely,



Steven A. Lessne

SAL/sh

cc: Alan Rose, Esq., Counsel for LIC Holdings, Inc. (*via email*)

EXHIBIT C

FLORIDA DEPARTMENT OF STATE
Division of Corporations

July 12, 2016

ATTN: JANET CRAIG, SVP
405 SILVERSIDE ROAD, STE 250
WILMINGTON, DE 19809

Re: Document Number: L08000054043

The Resignation/Dissociation of OPPENHEIMER TRUST CO OF DE, a Member/Manager for BERNSTEIN FAMILY REALTY LLC, a Florida Limited Liability Company was filed on July 11, 2016.

Enclosed is the certification requested.

Should you have any questions regarding this matter, please telephone (850) 245-6051, the Registration Filing Section.

Deborah Bruce
Regulatory Specialist II
Division of Corporations

Letter Number: 216A00014511

State of Florida

Department of State

I certify the attached is a true and correct copy of the Resignation/Dissociation of OPPENHEIMER TRUST CO OF DE a Member/Manager, filed on July 11, 2016, for BERNSTEIN FAMILY REALTY LLC, a Florida Limited Liability Company, as shown by the records of this office.

The document number of this limited liability company is L08000054043.

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capital, this the Twelfth day of July, 2016

Ken Detzner
Secretary of State

CR2EO22 (1-11)

FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS

DISSOCIATION OR RESIGNATION OF MEMBER, MANAGER FROM FLORIDA OR FOREIGN LIMITED LIABILITY COMPANY

(Pursuant to 605.0216, Florida Statutes)

1. The name of the limited liability company as it appears on the records of the Florida Department of State is: Bernstein Family Realty LLC.

2. The Florida document/registration number assigned to this limited liability company is: L08000054043.

3. The date this member/manager withdrew/resigned or will withdraw/resign is: per Court Ordered 6/7/16

4. I, Oppenheimer Trust Co of DE, hereby withdraw/resign as a
(Print Name of Person Resigning)

Manager.
(Print Title)

of this limited liability company and affirm the limited liability company has been notified of my resignation in writing.

By: Janet Craig, SVP
Signature of Dissociating Member or Resigning Manager
Janet Craig
Oppenheimer Trust Co. of Delaware

Filing Fee: $25.00 (Required)
Certified Copy: $30.00 (Optional)

FILED
2016 JUL 11 P 4:29
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

CR2E079 (2/14)

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

CASE NO.: 502012CA013933XXXXMB
DIVISION: AA

WILLIAM E. STANSBURY,

Plaintiff,

v.

ESTATE OF SIMON L. BERNSTEIN, and BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

MOTION IN OPPOSITION TO MOTION TO WITHDRAW AS COUNSEL FOR BERNSTEIN FAMILY REALTY, LLC AND STAY PROCEEDINGS FOR MEDICAL UNAVAILABILITY

ELIOT IVAN BERNSTEIN, hereby files this "MOTION IN OPPOSITION TO MOTION TO WITHDRAW AS COUNSEL FOR BERNSTEIN FAMILY REALTY, LLC" and Stay Proceedings - Notice of Medical Unavailability and so states:

1. I am Eliot Bernstein appearing pro se as an interested party and seeking to determine any other and rights I may have in this matter in light of recent changes with Defendant BFR in this case and their counsel Steven Lessne of Gunster law firm.
2. I give this Court notice that due to an injury caused on September 06, 2016 by a vasovagal attack that caused me to faint and fall and his son subsequently trying to do CPR on him, which led to a cracked rib and bruised ribs, I will be heavily medicated for the next 6-9 weeks and extremely limited in mobility.

FILED: PALM BEACH COUNTY, FL, SHARON R. BOCK, CLERK, 09/08/2016 12:36:02 AM

3. I will not be able to attend any hearings during this time and seeks a stay on this case from hearings and responses until such time has elapsed for him to fully recover and cease pain medications.
4. I have been advised to avoid stress during this time as stress is a major contributor to vasovagal attacks and therefore seeks this stay to last until November 01,2016 unless otherwise extended by a further doctor order.

FRAUD ON THE COURT-CONFLICTS OF INTEREST

5. I make a Record to notify Judge Oftedal, now appearing in this case, of widespread fraud on the Court that has been reported both in related cases involving Oppenheimer and the Wills and Trusts and Estates under Case Numbers:

    i. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
    ii. Case # 502015CP001162XXXXNB – Simon Bernstein Trust to Remove Ted Bernstein
        a. OLD CASE # Was Civil but Colin wanted to transfer to him in Probate ? 502014CA014637XXXXMB
    iii. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
    iv. Case # 502014CP003698XXXXNB – Shirley Trust Construction
    v. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
        a. 502010CP003123XXXXSB
        b. 502010CP003125XXXXSB
        c. 502010CP003128XXXXSB
    vi. Case # 502015CP002717XXXX Colin Closed but transferred to Coates Eliot Bernstein v. Simon Estate Case for Claims
    vii. Case # 502014CA014637XXXXMB BERNSTEIN, ELIOT I VS BERNSTEIN, THEODORE S
    viii. Case # 50-2010-CP-003128-XXXX-SB – Joshua Bernstein alleged 2010 Trust Case Colin
    ix. Case # 50-2010-CP-003125-XXXX-SB - – Jacob Jake Bernstein alleged 2010 Trust Case Colin
    x. Case # 50-2010-CP-003123-XXXX-SB– Daniel Danny Bernstein alleged 2010 Trust Case Colin
        a. 4th DCA

xi. 4DCA#: 16-0064
xii. 4DCA#: 15-3849
xiii. 4DCA#: 16-0222
xiv. 4DCA#: 16-2249
    a. Florida Supreme Court
xv. SC16-29
xvi. SC15-1077
xvii. SC04-1078 - Eliot Bernstein v. The Florida Bar et al.

6. BFR, LLC was setup on or around the same time as Trusts that eventually ended up with Oppenheimer as Manager.

7. The reporting of the fraud has not only been made to Judge Martin Colin on the record and by motion in the related cases but also through various filings with former Judge Colin and now Judge Phillips and the 4th District Court of Appeals and various federal authorities. Various frauds on the court and frauds on beneficiaries and interested parties have been admitted to and proven and prosecuted in the Estate and Trust cases committed by Officers of the Court and Court Appointed Officers and Fiduciaries.

Request for Judge Oftedal to Disclose any Conflicts of Interest in finding Fraud and-or misconduct by Judge Martin Colin, Judge Phillips, or any Judge of the 15th Judicial

8. I respectfully request this Court of Judge Oftedal to disclose any conflicts of interest he may have in presiding in this matter and any and all conflicts or biases toward litigants who exercise statutory and Constitutional rights to move to Disqualify a Judge when deemed appropriate, conflicts or biases toward litigants who challenge the actions of a Judge specifically including Judge Martin Colin, Judge John Phillips, Judge Howard Coates and any of the Judges of the 15th Judicial Circuit, all conflicts or biases toward litigants forced to proceed Pro Se, and any and all matters reflecting on the US Constitutional propriety of Judge Oftedal serving in this case.

9. Said disclosures should include but not be limited to any adverse actions against litigants exercising the rights above and any practices of Judge Oftedal in making significant adverse rulings at "UMC" (Uniform Motion Calendar) hearings ***without a Record*** on matters that were proper for a Contested Evidentiary hearing as these types of "sharp practices" have been used in this case and the related cases.
10. In fact, attorney Lessne has improperly scheduled this matter for a "UMC" hearing even after I objected and this matter is proper for an Evidentiary hearing instead after proper Discovery from attorney Lessne and Oppenheimer.
11. In a related case with the Oppenheimer Trust, prior Judge Colin was notified On the Record in prior proceedings on or around June of 2014 that a Petition filed by attorney Robert Spallina on or around June of 2010 involving the underlying transfer of Trusts from the Stanford group to Oppenheimer[1] which purported to have my signature and that of my wife Candice Bernstein and also contained the signature of Robert Spallina was in fact a FRAUD on the Court which was also reported to the Palm Beach County Sheriff's as a criminal matter.
12. Judge Martin Colin is the Judge who purported to issue Orders in 2010 upon the filing of the 2010 fraudulent petition by attorney at law Robert Spallina in that related case.
13. Then, in 2013, further widespread frauds involving the offices of Tescher and Spallina and forgery and fraud of documents in the Estate of Shirley Bernstein were reported to

[1] July 08, 2010 Final Order on Petition to Appoint Successor Trustee and associated papers http://iviewit.tv/Simon%20and%20Shirley%20Estate/20100619AllegedForgedEliotCandicePetitiontoAppointSuccessorTrusteeJoshuaJacobandDaniel.pdf

Judge Colin in an Emergency Motion filed in May of 2013[2] which has never been properly heard, nor the frauds properly addressed in these cases.

14. In the related Oppenheimer case, attorney Lessne claimed in one of the original documents in the case sworn to under his signature as an attorney that one Gerald Lewin was the Trustee of the original Trusts set up by my parents Simon and Shirley Bernstein, which holds ownership interest in BFR and yet this filing by Lessne wholly contradicts the forgery-fraud Petition document filed by attorney Spallina in 2010 which claimed one Traci Kratish as the original Trustee which further wholly contradicts Tax filings associated with the Trusts turned over by a "magical" finding of one attorney Alan Rose for alleged Trustee Ted Bernstein in May 2015.
15. This "magical finding" by attorney Alan Rose allegedly occurred at my parent's Estate home at 7020 Lions Head Lane, Boca Raton, Florida allegedly in May of 2015 ***after PR of the Estate of Simon Bernstein, Brian O'Connell's office had already Inventoried and removed ALL documents and TPP from the home earlier that year.***
16. The Tax document turned over in the magical Alan Rose "discovery" which was allegedly found with "Original" versions of the Trusts from the related Oppenheimer case (or "duplicate" "originals") shows that Stanford was the original Trustee of the Trusts and showed different creation dates of the Trusts than claimed by Lessne or attorney Spallina.
17. Your Honor may wish to be advised that attorney Tescher and Spallina have since entered into Consent Orders with the federal SEC[3], with Spallina admitting to criminal conduct of "Insider Trading" and stealing client's information.

[2] May 06, 2013 Emergency Petition to Freeze Esates
http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.docx

18. Further, that the 7020 Lions Head Lane home of Simon and Shirley Bernstein, where the alleged new documents were found became the scene of a crime again in Feb. of 2016 this year in the day or days before I was going into Federal Court in the Northern District of Illinois exposing further fraud in Florida this time involving a fraudulent shell company used to transfer ownership of the home where the new owner of the home sold through the fraudulent probate process, one Mitchell Huhem, was found at some point in time that week in February at the home in the garage by some unknown person with his head blown clear off allegedly by a shotgun and where the PBSO that has had all these prior crimes and frauds in the Court reported to it for investigation have engaged in substantial delays in turning over information of the alleged "investigation" of the bloody death at Lions Head where contradictions in the facts of what happened turn up with almost each piece of information discovered. The court should also note that defendant Ted Bernstein also alleged his father was murdered in the same home by his girlfriend through a poisoning and where Ted filed a Palm Beach County Sheriff report and opened a Palm Beach County Medical Examiner Autopsy alleging such crime.

19. Further, where attorney Lessne's office did proceed and provide legal guidance to my family at the earlier portion of this case having private consultations with my family to

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[3] September 28, 2015 SEC Press Release Regarding SPALLINA and TESCHER INSIDER TRADING CHARGES, "SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant"
http://www.sec.gov/news/pressrelease/2015-213.html
AND
September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @
http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf
AND
October 01, 2015 SEC Consent Orders Felony Insider Trading SPALLINA signed September 16, 2015 and TESCHER signed June 15, 2014
http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tescher%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf
February 24, 2016 Motion for Injunction Federal Court Judge John Robert Blakey
http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160224%20FINAL%20ESIGNED%20MOTION%20FOR%20INJUNCTION%20ECF%20STAMPED%20COPY%20COMBINED%20FILING.pdf

only then really find that he was not working for the company BFR owned by my minor children at the time through the trusts but was in fact representing the BFR Manager Janet Craig and Oppenheimer.

20. Where there should thus be full Discovery and Depositions of Lessne and Janet Craig and related parties party prior to any removal or release of obligations and a full contested evidentiary hearing scheduled prior to any such determination herein.

Wherefore, Eliot Bernstein seeks a stay of the case for filing responses and attending hearings until November 01, 2016, leave to file notices of Deposition and Discovery, and a full evidentiary hearing held herein and for such other and further relief as may be just and proper.

Respectfully Submitted

DATE: September 07, 2016

By: /S/ Eliot Ivan Bernstein
Pro Se
2753 NW 34th Street
Boca Raton, FL 33434
561.245.8588
iviewit@iviewit.tv

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served by electronic mail this 7th day of September, 2016 upon:

Peter M. Feaman, Esq.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
service@feamanlaw.com
mkoskey@feamanlaw.com

Brian M. O'Connell, Esq.

515 N. Flagler Drive, 20th Floor
West Palm Beach, FL 33401
boconnell@ciklinlubitz.com

Steven A. Lessne, Esq.
Florida Bar No.: 107514
777 South Flagler Drive, Suite 500 East
West Palm Beach, FL 33401
Telephone: (561) 650-0545
Facsimile: (561) 655-5677
slessne@gunster.com

By: /S/ Eliot Ivan Bernstein
Pro Se
2753 NW 34th Street
Boca Raton, FL 33434
561.245.8588
iviewit@iviewit.tv

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

CASE NO.: 502012CA013933XXXXMB
DIVISION: AA

WILLIAM E. STANSBURY,

Plaintiff,

v.

ESTATE OF SIMON L. BERNSTEIN, and BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL FOR BERNSTEIN FAMILY REALTY, LLC

THIS CAUSE having come before this Court on the Motion to Withdraw as Counsel for Bernstein Family Realty, LLC ("BFR") filed by Steven A. Lessne, Esq. and the law firm of Gunster, Yoakley & Stewart, P.A., and being fully advised in the premises, it is hereupon

ORDERED AND ADJUDGED as follows:

1. The Motion to Withdraw is granted.

2. Steven A. Lessne, Esq. and Gunster, Yoakley & Stewart P.A. are relieved of all further responsibility as counsel for BFR in this action.

3. BFR, through its owners, Eliot and Candice Bernstein, as parents and natural guardians of Joshua, Jake and Daniel Bernstein, has thirty (30) days from the date of this Order to have replacement counsel file a notice of appearance on behalf of BFR.

4. Unless and until replacement counsel appears on behalf of BFR, all papers to be served upon BFR shall be served upon its owners, Eliot and Candice Bernstein, as parents and

FILED: PALM BEACH COUNTY, FL, SHARON R. BOCK, CLERK, 09/08/2016 04:24:09 PM

natural guardians of Joshua, Jake and Daniel Bernstein, 2753 N.W. 34th Street, Boca Raton, FL 33434-3459; iviewit@iviewit.tv, iviewit@gmail.com and tourcandy@gmail.com; 561-245-8588 (office) and 561-866-7628 (cell).

DONE AND ORDERED in Chambers, Palm Beach County, Florida this 8th day of September, 2016

RICHARD FTEDAL
Circuit Judge

Copies to:

Peter M. Feaman, Esq.
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Boynton Beach, FL 33436
service@feamanlaw.com
mkoskey@feamanlaw.com

Brian M. O'Connell, Esq.
515 N. Flagler Drive, 20th Floor
West Palm Beach, FL 33401
boconnell@ciklinlubitz.com

Bernstein Family Realty, LLC
c/o Eliot and Candice Bernstein,
as parents and natural guardians of
Joshua, Jake and Daniel Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434
ivewit@ivewit.tv
ivewit@gmail.com
tourcandy@gmail.com

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

CASE NO.:
502012CA013933XXXXMB
DIVISION: AA

WILLIAM E. STANSBURY,

Plaintiff,

V.

ESTATE OF SIMON L. BERNSTEIN, and
BERNSTEIN FAMILY REAL TY, LLC,

Defendants.
_____/

NOTICE OF APPEAL

FILED: PALM BEACH COUNTY, FL, SHARON R. BOCK, CLERK, 09/15/2016 03:37:33 PM

NOTICE IS GIVEN that Eliot Ivan Bernstein, Defendant/Appellant, appeals to the Fourth (4th) District Court of Appeals from the Order of The Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, FL by Judge Richard Oftedal sitting in the Civil Circuit Division dated September 08, 2016 titled "ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL FOR BERNSTEIN FAMILY REALTY, LLC" and hereby appeals from each and every part of said final Order. Eliot also notifies the Court that Bernstein Family Realty LLC is not located at the address in the court record and Eliot and Candice Bernstein have accepted no fiducial or corporate capacity, please forward mail to the last known address at Oppenheimer Trust Company.

Dated: September 15, 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 15th day of September, 2016.

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

SERVICE LIST -

Peter M. Feaman, Esq.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
service@feamanlaw.com
mkoskey@feamanlaw.com
Brian M. O'Connell, Es~
515 N. Flagler Drive, 201 Floor
West Palm Beach, FL 33401
boconnell@ciklinlubitz.com

Bernstein Family Realty, LLC
Oppenheimer Trust Company
C/O Steven Lessne
Counsel for Janet Craig

GUNSTER, YOAKLEY & STEWART, P.A.
Counsel for Oppenheimer Trust Company of Delaware
4855 Technology Way, Suite 630
Boca Raton, FL 33431
Telephone: (561) 961-8085
By: /s/Steven A. Lessne
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Eliot and Candice Bernstein,
as parents and natural guardians of
Joshua, Jake and Daniel Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434
ivewit@ivewit.tv
ivewit@gmail.com
tourcandy@gmail.com

COPIES OF LOWER COURT ORDER DATED SEPTEMBER 08, 2016

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

CASE NO.: 502012CA013933XXXXMB
DIVISION: AA

WILLIAM E. STANSBURY,

Plaintiff,

v.

ESTATE OF SIMON L. BERNSTEIN, and BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL FOR BERNSTEIN FAMILY REALTY, LLC

THIS CAUSE having come before this Court on the Motion to Withdraw as Counsel for Bernstein Family Realty, LLC ("BFR") filed by Steven A. Lessne, Esq. and the law firm of Gunster, Yoakley & Stewart, P.A., and being fully advised in the premises, it is hereupon

ORDERED AND ADJUDGED as follows:

1. The Motion to Withdraw is granted.

2. Steven A. Lessne, Esq. and Gunster, Yoakley & Stewart P.A. are relieved of all further responsibility as counsel for BFR in this action.

3. BFR, through its owners, Eliot and Candice Bernstein, as parents and natural guardians of Joshua, Jake and Daniel Bernstein, has thirty (30) days from the date of this Order to have replacement counsel file a notice of appearance on behalf of BFR.

4. Unless and until replacement counsel appears on behalf of BFR, all papers to be served upon BFR shall be served upon its owners, Eliot and Candice Bernstein, as parents and

natural guardians of Joshua, Jake and Daniel Bernstein, 2753 N.W. 34th Street, Boca Raton, FL 33434-3459; iviewit@iviewit.tv, iviewit@gmail.com and tourcandy@gmail.com; 561-245-8588 (office) and 561-866-7628 (cell).

DONE AND ORDERED in Chambers, Palm Beach County, Florida this 8th day of September, 2016

RICHARD FTEDAL
Circuit Judge

Copies to:

Peter M. Feaman, Esq.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
service@feamanlaw.com
mkoskey@feamanlaw.com

Brian M. O'Connell, Esq.
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West Palm Beach, FL 33401
boconnell@ciklinlubitz.com

Bernstein Family Realty, LLC
c/o Eliot and Candice Bernstein,
as parents and natural guardians of
Joshua, Jake and Daniel Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434
ivewit@ivewit.tv
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 502012CA013933XXXXMB
DIVISION: AA

WILLIAM E. STANSBURY,

Plaintiff,

v.

ESTATE OF SIMON L. BERNSTEIN, and BERNSTEIN FAMILY REALTY, LLC,

Defendants.
_____/

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Filing # 46508662 E-Filed 09/15/2016 03:37:33 PM

RECEIVED, 5/5/2016 7:46 AM, Clerk, Fourth District Court of Appeal

IN THE CIRCUIT/COUNTY COURT OF THE Fifteenth JUDICIAL CIRCUIT
IN AND FOR Palm Beach COUNTY, FLORIDA

Eliot Ivan Bernstein
Plaintiff/Petitioner or In the Interest Of
vs.
Tescher & Spallina, P.A. et al.
Defendant/Respondent

CASE NO. 502014CP003698XXXX

APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS

Notice to Applicant: If you qualify for civil indigence you must enroll in the clerk's office payment plan and pay a one-time administrative fee of $25.00. This fee shall not be charged for Dependency or Chapter 39 Termination of Parental Rights actions.

1. I have 0 dependants. *(Include only those persons you list on your U.S. Income tax return.)*
Are you Married? ✓Yes No Does your Spouse Work?...Yes ✓ No Annual Spouse Income? $0

2. I have a net income of $0 paid weekly every two weeks semi-monthly monthly yearly ✓ other I am working to pay
(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court-ordered payments such as child support.)

3. I have other income paid weekly every two weeks semi-monthly monthly yearly other _____.
(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Second Job Investment Property	Yes $ 0.00	No	Veterans' benefits	Yes $ no	No
Social Security benefits			Workers compensation	Yes $ no	No
For you	Yes $ no	No	Income from absent family members	Yes $ no	No
For child(ren)	Yes $ no	No	Stocks/bonds	Yes $ no	No
Unemployment compensation	Yes $ no	No	Rental income	Yes $ no	No
Union payments	Yes $ no	No	Dividends or interest	Yes $ no	No
Retirement/pensions	Yes $ no	No	Other kinds of income not on the list	Yes $ no	No
Trusts	Yes $ unknown	No	Gifts	Yes $ no	No

I understand that I will be required to make payments for fees and costs to the clerk in accordance with §57.082(5), Florida Statutes, as provided by law, although I may agree to pay more if I choose to do so.

4. I have other assets: *(Circle "yes" and fill in the value of the property, otherwise circle "No")*

Cash	Yes $ no	No	Savings account	Yes $ no	No
Bank account(s)	Yes $ no	No	Stocks/bonds	Yes $ no	No
Certificates of deposit or money market accounts	Yes $ no	No	Homestead Real Property*	Yes $ no	No
Boats*	Yes $ no	No	Motor Vehicle*	Yes $ no	No
			Non-homestead real property/real estate*	Yes $ no	No

*show loans on these assets in paragraph 5

Check one: I ✓ DO DO NOT expect to receive more assets in the near future. The asset is inheritance and patent royalties owed.

5. I have total liabilities and debts of $10,000.00 as follows: Motor Vehicle $0, Home $0, Other Real Property $0, Child Support paid direct $0, Credit Cards $0, Medical Bills $_____, Cost of medicines (monthly) $_____, Other $10,000.

6. I have a private lawyer in this case..... Yes No NO

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s.775.082, F.S. or s. 775.083, F.S. I affirm that the information I have provided on this application is true and accurate to the best of my knowledge.

Signed this 4th day of September, 2014

09/30/1963
Date of Birth

c6956008
Driver's License or ID Number

2753 NW 34th St. Boca Raton Fl 33434
Address, P O Address, Street, City, State, Zip Code

Signature of Applicant for Indigent Status
Print Full Legal Name Eliot Bernstein
Phone Number: 561-245-8588

Kelly Gold Frank
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION # FF 000732
EXP. RES: MAR. 25, 2017
WWW.AARONNOTARY.com

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. 1/5/2016 9:56:37 AM ***

FILED: PALM BEACH COUNTY, FL, SHARON R. BOCK, CLERK, 09/15/2016 03:37:33 PM

CLERK'S DETERMINATION

Based on the information in this Application, I have determined the applicant to be (✓) Indigent ( ) Not Indigent, according to s. 57.082, F.S.

Dated this 6 day of JAN, 20 16

Clerk of the Circuit Court by _____

This form was completed with the assistance of: _____

Clerk/Deputy Clerk/Other authorized person.

APPLICANTS FOUND NOT TO BE INDIGENT MAY SEEK REVIEW BY A JUDGE BY ASKING FOR A HEARING TIME. THERE IS NO FEE FOR THIS REVIEW.

Sign here if you want the judge to review the clerk's decision _____

CERTIFICATE OF CLERK

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

I, SHARON R. BOCK, Clerk of Circuit Court for the County of Palm Beach, State of Florida, do hereby certify that the foregoing pages 1 to 690 inclusive, consists of original papers and proceedings in Civil Action Case Number:

502012CA013933XXXXMB - STANSBURY, WILLIAM E V BERNSTEIN, TED S

4D16-3162 - BERNSTEIN, ELIOT V STANSBURY, WILLIAM E

as appears from the records and files of my office which have been directed to be included in said Record, pursuant to Florida Rules of Appellate Procedure, 9.200(a)(1).

IN WITNESS WHEREOF,
I have hereunto set my hand and affixed the seal of said Court this 25th day of October ,2016 A.D.

SHARON R. BOCK, Clerk of Circuit Court
Palm Beach County, Florida

By:

Catherine Markisen
Deputy Clerk

15th JUDICIAL CIRCUIT COURT · CLERK & COMPTROLLER · PALM BEACH COUNTY, FLORIDA · STATE OF FLORIDA