

CASE NO. 13097087

PALM BEACH COUNTY SHERIFF'S OFFICE
SUPPLEMENT 6 OFFENSE REPORT

PAGE 11
CASE NO. 13097087

DISPOSITION: CLEARED BY ARREST
DIVISION: DETECTIVE

911: IMPRINTE FOR OF
SIGNAL CODE: 53
ZONE: P52 GRID: CRIME CODE: * NON CRIME CODE: OF CODE: 260D 10/29/13 MONDAY
DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1210 A 1235 C 1333
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS
EXCEPTION TYPE:
INCIDENT LOCATION: 17901 S STATE RD 7 APT. NO.:
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0
LOCATION: GOVERNMENT / PUBLIC BUILDING
NO. VICTIMS: 01 NO. ARRESTED: 1 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

ON 10/25/13 KIMBERLY MORAN TURNED HERSELF IN REFERENCE A CAPIAS ISSUED IN
THIS CASE. THIS CASE IS NOW CLEARED BY ARREST.
DETECTIVE RYAN W. MILLER #7704
10/29/13 @ 1505 HRS.
TRANS. VIA EMAIL/COPY/PASTE: 10/30/2013/MDR/#6405

Printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM

CONFIDENTIAL

PALM BEACH COUNTY SHERIFF'S OFFICE
CENTRAL RECORDS
FSS EXEMPTIONS/CONFIDENTIAL

- 119.071(2)(c) Active criminal intelligence/active criminal investigative Information
- 119.071(5)(g)1 Biometric Identification Information (Fingerprints, palm prints, and footprints)
- 119.071(2)(e) Confession
- 119.071(2)(f) Confidential Informants
- 365.171(15) Identity of 911 caller or person requesting emergency service
- 316.066(5)(a) Crash reports are confidential for period of 60 days after the report is filed
- 119.071(2)(d) Surveillance techniques, procedures, and personnel; inventory of law enforcement resources, policies or plans pertaining to mobilization, deployment or tactical operations
- 119.071(2)(h)(1) Identity of victim of sexual battery, lewd and lascivious offense upon a person less than 16 years old, child abuse, sexual offense
- 119.071(2)(l) Assets of crime victim
- 985.04(1) Juvenile offender records
- 119.071(5)(a)(5) Social security numbers held by agency
- 119.0712(2) Personal information contained in a motor vehicle record
- 119.071(5)(b) Bank account #, debit, charge and credit card numbers held by an agency
- 119.071(2)(b) Criminal intelligence/investigative information from a non-Florida criminal justice agency
- 395.3025(7)(a) and/or 456.057(7)(a) Medical information
- 394.4615(7) Mental health information
- 943.053/943.0525 NCIC/FCIC/FBI and in-state FDLE/DOC
- 119.071(4)(c) Undercover personnel
- 119.07(4)(d) Extra fee if request is voluminous or requires extensive personnel, technology
- 119.071(4)(d)(1) Home address, telephone, soc. security #, photos of active/former LE personnel, spouses and children

Other:

Case No:12-121312

Tracking No.: n/a

Clerk Name/ID: Hall/9205

Date: 1/31/2013

Revised 03/04/2011

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1
CASE NO. 12121312 OFFENSE REPORT CASE NO. 12121312
DISPOSITION: ZULU
DIVISION: ROAD PATROL

POLICE SERVICE CALL * * *
SIGNAL CODE: 68 CRIME CODE: NON CRIME CODE: PS CODE: 9568 09/13/12 THURSDAY
ZONE: C21 GRID: DEPUTY I.D.: 8826 NAME: HAUGH VINCENT ASSIST: TIME D 1155 A 1211 C 1522
OCCURRED BETWEEN DATE: 09/12/12 , 0830 HOURS AND DATE: 09/13/12 , 0100 HOURS
EXCEPTION TYPE:
INCIDENT LOCATION: 7020 LIONS HEAD LA APT. NO.:
CITY: BOCA RATON STATE: FL ZIP: 33496

NO. OFFENSES: 00 NO. OFFENDERS: 0K NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0
LOCATION: RESIDENCE - SINGLE FAMILY
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

..
NAME LIST:
ROLE:

OTHER SIMON BERNSTEIN DOB: 12/02/1935
SEX: M RACE: W HT: 506 WT: 180 HR: GRAY EYE: BROWN
RESIDENTIAL ADDRESS: 7020 LIONSHEAD LA BOCA RATON FL 33496 HOME PHONE: 561 000-0000
BUSINESS PHONE: 561 000-0000
OTHER TED BERNSTEIN DOB: 08/27/1959
SEX: M RACE: W HT: 0 WT: 0 HR: UNKNOWN EYE: UNKNOWN
RESIDENTIAL ADDRESS: 12344 MELROSE WY BOCA RATON FL 33428 HOME PHONE: 561 213-2322
BUSINESS PHONE: 561 000-0000
OTHER ELLIOT I BERNSTEIN DOB: 09/30/1963
SEX: M RACE: W HT: 510 WT: 185 HR: BROWN EYE: HAZEL
RESIDENTIAL ADDRESS: 2753 NW 34TH ST BOCA RATON FL 33434 HOME PHONE: 561 886-7627
BUSINESS PHONE: 561 000-0000
OTHER RACHEL WALKER DOB: 03/05/1984
SEX: F RACE: W HT: 508 WT: 130 HR: BLOND EYE: BLUE
RESIDENTIAL ADDRESS: 99 SE MIZNER BD BOCA RATON FL 33434 HOME PHONE: 561 000-0000
BUSINESS PHONE: 561 000-0000
OTHER MARITZ UCCIO DOB: 04/23/1966
SEX: F RACE: W HT: 502 WT: 120 HR: BROWN EYE: BROWN
RESIDENTIAL ADDRESS: 7020 LYONS HEAD LA BOCA RATON FL 33496 HOME PHONE: 561 305-2999
BUSINESS PHONE: 561 000-0000
OTHER LISA FRIEDSTEIN DOB: 03/15/1967
SEX: F RACE: W HT: 501 WT: 120 HR: BROWN EYE: BROWN
RESIDENTIAL ADDRESS: 2142 CHURCHHILL LA HIGHLAND IL 60035 HOME PHONE: 847 877-4633
BUSINESS PHONE: 561 000-0000
..

.....
printed by Employee Id #: 9205 on January 31, 2013 12:03:53PM
.....

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 2
CASE NO. 12121312 OFFENSE REPORT CASE NO. 12121312
DISPOSITION: ZULU

ON 9/13/12 AT 1211 HOURS, I RESPONDED TO 7020 LYONS HEAD LANE, UNINCORPORATED BOCA RATON, FL., AND MET WITH TED BERNSTEIN AND HIS SISTER AND BROTHER, LISA FRIEDSTEIN AND ELLIOT BERNSTEIN, IN REFERENCE TO A POLICE ASSIST. TED ADVISED HIS FATHER, SIMON BERNSTEIN WAS TAKEN TO DELRAY COMMUNITY HOSPITAL AT 1000 HOURS ON 9/12/12 AND PASSED AWAY AT 0100 HOURS ON 9/13/12. HE EXPLAINED WHILE AT THE HOSPITAL HE WAS ADVISED BY SIMON'S CARETAKER, RACHEL WALKER THAT SIMON'S LIVE-IN GIRLFRIEND, MARITZA PUCCIO MIGHT HAVE PROVIDED SIMON WITH A LARGER THEN PRESCRIBED DOSE OF HIS MEDICATION AS WELL AS ONE OF HER PRESCRIBED SLEEPING PILLS, WHICH COULD OF CAUSED HIS DEATH. HE SAID HE VOICED HIS CONCERNS TO THE DOCTORS AT DELRAY COMMUNITY HOSPITAL BUT THEY ADVISED THERE DID NOT APPEAR TO BE ANY SUSPICIOUS CIRCUMSTANCES SURROUNDING SIMON'S DEATH AND THEY WOULD NOT BE CONDUCTING AN AUTOSPY. TED CONTACTED BOTH A PRIVATE COMPANY AND THE PALM BEACH COUNTY MEDICAL EXAMINER'S OFFICE REGARDING HAVING AN AUTOSPY CONDUCTED. BOTH ADVISED HE SHOULD CONTACT THE PALM BEACH COUNTY SHERIFF'S OFFICE.

AFTER SPEAKING WITH TED, I SPOKE WITH RACHEL. RACHEL STARTED BY TELLING ME THAT SIMON SUFFERED FROM SEVERAL AILMENTS TO INCLUDE, AND HE HAD APPROXIMATELY 2 YEARS AGO, WHICH WAS ONE OF SEVERAL SIMON WAS RECENTLY PLACED ON FOR THE, WHICH SHE SAID EFFECTED HIS MENTAL FACULTIES. RACHEL ADVISED WHEN SHE ARRIVED AT SIMON'S HOUSE AT 0830 HOURS ON 9/12/12, SHE FOUND SIMON LYING ON THE COUCH IN THE LIVING ROOM. HE WAS AWAKE AND BREATHING BUT HE HAD A VERY LOW HEART BEAT AND WAS UNAWARE OF HIS SURROUNDINGS. RACHEL SAID SHORTLY AFTER HER ARRIVAL MARITZA RETURNED HOME. THEY HAD A BRIEF ARGUMENT OVER WHETHER OR NOT THEY SHOULD BRING SIMON TO THE HOSPITAL AS RACHEL SAYS MARITZA DID NOT BELIEVE HE NEEDED TO GO TO THE HOSPITAL AT THIS TIME. RACHEL SAID THAT SHE FINALLY TOLD MARITZA THAT SHE WAS GOING TO TAKE HIM TO THE HOSPITAL BY HERSELF. SHE SAID SHE LEFT THE HOUSE APPROXIMATELY 1000 HOURS FOR THE HOSPITAL. RACHEL WENT ONTO TELL ME THAT MARITZA PROVIDED SIMON WITH ONE OF HER PRESCRIBED SLEEPING PILLS ON THE NIGHT OF 9/8/12. SHE ALSO SAID SIMON WAS PRESCRIBED 100 PILLS ON 9/7/12 AND SHE BELIEVE THAT MARITZA WAS PROVIDING SIMON WITH LARGER THEN PRESCRIBED DOSES OF. RACHEL TOLD ME SHE BELIEVED THERE WERE ONLY 30 PILLS LEFT IN THE BOTTLE AT THE TIME OF SIMON'S DEATH. I LATER COUNTED THE BOTTLE OF. THERE WERE 90.5 PILLS IN THE

printed by Employee Id #: 9205 on January 31, 2013 12:03:53PM

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 3
CASE NO. 12121312 OFFENSE REPORT CASE NO. 12121312
DISPOSITION: ZULU

BOTTLE SHOWING THAT SIMON DID NOT TAKE MORE THAN PRESCRIBED.

IT SHOULD ALSO BE NOTED THAT I SPOKE WITH ELLIOT, WHO SAID HE WAS AT DINNER WITH SIMON AND MARITZA ON 9/8/12 AND OBSERVED HIS FATHER TELL MARITZA THAT HE WANTED ONE OF HER SLEEPING PILLS BECAUSE HE COULD NOT SLEEP. ELLIOT SAID THEY HAD A BRIEF ARGUMENT OVER THIS AS MARTIZA REFUSED TO ALLOW SIMON TO TAKE ONE OF HER PILLS INITIALLY. AT THIS TIME SGT. CASTELLI ARRIVED ON SCENE AND WAS ADVISED OF THE CASE.

HE MADE CONTACT WITH VCD AND THE MEDICAL EXAMINER'S OFFICE. HE WAS ADVISED TO HAVE ME CONTACT DELRAY COMMUNITY HOSPITAL TO PUT A HOLD ON SIMON'S BODY FOR FROM THE MEDICAL EXAMINER'S OFFICE WHO WOULD CHECK ON THE SITUATION THE NEXT DAY. I WAS ALSO ADVISED TO EMAIL A COPY OF THE REPORT TO WITH THE MEDICAL EXAMINER'S OFFICE. DELRAY COMMUNITY HOSPITAL WAS CONTACTED AND A HOLD WAS PLACED ON SIMON'S BODY AND WAS EMAILED.

THIS REPORT IS FOR INFORMATION PURPOSES.

D/S HAUGH #8826
TRANS: 9/14/12 DG#4495
DICT: 9/13/12 @ 1700 HRS.

printed by Employee Id #: 9205 on January 31, 2013 12:03:53PM

6903

03/03/14

E000

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1
OFFENSE REPORT CASE NO. 13159967

DISPOSITION: ZULU
DIVISION: ROAD PATROL

CIVIL MATTER CODE: 9566 DATE: 12/23/13 MONDAY
ZONE: C21 GRID: DEPUTY ID.: 5189 ASSIST: TIME D 1624 A 1632 C 1716
OCCURRED BETWEEN DATE: 01/01/10 , 0900 HOURS AND DATE: 12/23/13 , 1600 HOURS
EXCEPTION TYPE:
INCIDENT LOCATION: 2753 NW 34 ST APT. NO.:
CITY: BOCA RATON STATE: FL ZIP: 33496
NO. OFFENSES: 00 NO. OFFENDERS: 00 NO. VEH. STOLEN: 0 NO. PREM. ENTERED: 0
LOCATION: RESIDENCE - SINGLE FAMILY
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

COMPLAINANT ELLIOT I BERNSTEIN DOB: 09/30/1963
SEX: M RACE: W HT: 510 WT: 185 HR: BROWN EYE: HAZEL
RESIDENTIAL ADDRESS: 2753 NW 34TH ST BOCA RATON FL 33434
HOME PHONE: 561 886-7628
BUSINESS PHONE: 561 254-8588

OFFENSE INDICATOR: OFFENSE 1 VICTIM NUMBER: 1
VICTIM TYPE: ADULT
RESIDENCE TYPE: COUNTY RESIDENCE STATUS: FULL YEAR
EXTENT OF INJURY: NONE
INJURY TYPE(1): NOT APPLICABLE
INJURY TYPE(2): NOT APPLICABLE
VICTIM RELATION: UNDETERMINED

ON 12/23/13 THE VICTIM/COMPLAINANT CAME TO THE DISTRICT 7 OFFICE TO FURTHER REPORT A CRIME OF THEFT THAT HAS BEEN OCCURRING FOR A FEW YEARS. THE VICTIM MR. BERNSTEIN STATED THAT HIS FAMILY MEMBERS HAVE TAKEN THOUSANDS OF DOLLARS IN ASSETS, A VEHICLE, JEWELRY, CLOTHING, FURNITURE, AND MANY OTHER ITEMS. THE VICTIM ALSO STATED HE HAS AN ONGOING CASE WITH DET. RYAN MILLER OF THE PALM BEACH COUNTY SHERIFF'S OFFICE, THE CASE NUMBER IS 13-097087. THE VICTIM/COMPLAINANT ALSO GAVE ME A 3 PAGE WRITTEN ,DATED AND SIGNED STATEMENT THAT I WILL FORWARD VIA INTEROFFICE MAIL TO DET. MILLER. HE ALSO ADVISED HE WILL FURTHER CONTACT DET. MILLER REF THIS NEW CASE NUMBER WHICH HE WAS ADVISED TO GET THRU HIS ATTORNEY. IT SEEMS THIS MATTER HAS BEEN IN LITIGATION FOR SOME TIME AND WILL CONTINUE TO BE. I WILL ALSO FORWARD TO DET. MILLER THE LIST OF SUSEPECTS WHICH ALSO WAS QUIT LONG, ALL FAMILY MEMBERS. I ADVISED THE VICTIM I WOULD FORWARD ALL THIS INFO TO DET. RYAN MILLER.

D/S RAINERI 5189. 12/23/13 AT 1735 HRS
TRANS: PAP 7123. 12/27/13

6903

03/03/14

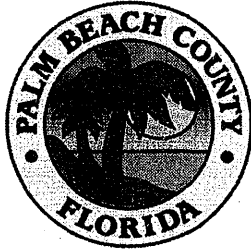
E000

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 2
SUPPLEMENT 1 OFFENSE REPORT CASE NO. 13159967

DISPOSITION: ZULU
DIVISION: DETECTIVE

CIVIL MATTER CODE: 9566 DATE: 01/07/14 MONDAY
ZONE: C21 GRID: DEPUTY ID.: 7704 ASSIST: TIME D 1624 A 1632 C 1716
OCCURRED BETWEEN DATE: 01/01/10 , 0900 HOURS AND DATE: 12/23/13 , 1600 HOURS
EXCEPTION TYPE:
INCIDENT LOCATION: 2753 NW 34 ST APT. NO.:
CITY: BOCA RATON STATE: FL ZIP: 33496
NO. OFFENSES: 00 NO. OFFENDERS: 00 NO. VEH. STOLEN: 0 NO. PREM. ENTERED: 0
LOCATION: RESIDENCE - SINGLE FAMILY
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

I RECEIVED AN INTER-OFFICE PACKET FROM D/S RAINERI REFERENCE THIS CASE.
I HAVE NOT BEEN ASSIGNED THE FOLLOW-UP IN REGARDS TO THIS CASE AND IT HAS NO
BEARING ON 13-097087 WHICH I INVESTIGATED. THE PACKET WAS SENT BACK TO D/S
RAINERI. I ALSO INFORMED BERNSTEIN THAT I WAS NOT ASSIGNED THIS CASE AND HE
WOULD NEED TO FOLLOW UP WITH D/S RAINERI OR DISTRICT 7.
DETECTIVE RYAN W. MILLER #7704
01/07/14 @ 1010 HRS.
TRANS. VIA EMAIL/COPY/PASTE: 01/08/2014/MDR/#6405



OFFICE OF THE DISTRICT MEDICAL EXAMINER
DISTRICT 15 – STATE OF FLORIDA
PALM BEACH COUNTY
3126 GUN CLUB ROAD
WEST PALM BEACH, FLORIDA 33406-3005
(561) 688-4575
(561) 688-4592 FAX

NAME: BERNSTEIN, SIMON

CASE NUMBER: 12-0913

DATE OF DEATH: September 13, 2012

AGE: 76

SEX: M

RACE: W

DATE OF AUTOPSY: September 14, 2012 / 11:00 a.m.

AUTOPSY FINDINGS:

1. Acute subendocardial myocardial infarct.
2. Status post coronary artery bypass grafting, remote.
3. Severe calcific coronary atherosclerosis.
4. Focal myocardial fibrosis.
5. Bronchopneumonia.
6. Severe aortic atherosclerosis.
7. Fibrous pericarditis.
8. Calcific aortic valve annulus.
9. Nephrosclerosis.
10. Cirrhosis with chronic hepatitis.
11. Old splenic infarct.
12. Pleural effusions.
13. Sternum fracture.
14. Anterior rib fractures.
15. Osteoporosis.
16. Status post appendectomy, remote.
17. Status post cholecystectomy, remote.

NAME: BERNSTEIN, SIMON

CASE NUMBER: 12-0913

CAUSE OF DEATH: Myocardial infarct due to severe coronary atherosclerosis

CONTRIBUTORY CAUSE OF DEATH: Bronchopneumonia, cirrhosis

MANNER OF DEATH: Natural

OPINION: Simon Bernstein, a 76-year-old man, died from a heart attack due to blockage of the arteries that feed his heart. He also had pneumonia and cirrhosis. His blood hydrocodone concentration was therapeutic. There was no overdose. He did not have meningitis.



Michael D. Bell, M.D.
District Medical Examiner

Date Signed: November 8, 2012

MDB:df

NAME: BERNSTEIN, SIMON

CASE NUMBER: 12-0913

EXTERNAL EXAMINATION:

The body is that of a 5 foot 7 inch, 191 pound, overweight, white man who appears the reported age of 76 years. His body mass index is 29.9.

The body is well preserved and cold. Mild rigor mortis is detected in the extremities. Purple livor mortis is on his back.

The decedent is normocephalic without apparent injury to the face or scalp. The decedent has short, gray-brown hair. He has brown irides with no conjunctival petechiae. There is slight chemosis. The corneas are clear. The sclerae are nonicteric. No facial, nasal or mandibular fractures are palpated. The nasal septum is intact. No froth or fluid escapes from the nose or mouth. The teeth are natural and in good repair. There is no trauma of the lips, gums or frenulum.

The neck is symmetrical and has no trauma or injury. There is no palpable crepitus or hypermobility. No neck masses are observed.

The thorax is symmetric. The abdomen is protuberant with small ecchymoses on the abdomen. The external genitalia and anus are unremarkable. The decedent is circumcised.

The arms are symmetrical and normally developed. The arms have no needle tracks. The fingernails are short. The legs are symmetrical, and there is slight pedal edema. The back shows a symmetrical external contour and the spine is straight. The back has no trauma. The skin shows no rashes.

IDENTIFICATION:

No tattoos are on the body. A vertical 9 inch scar is in the midline of the chest. A vertical 10 inch scar is on the right abdomen. A transverse 3 inch scar is in the left groin. Three vertical scars run along the inside of the left leg, and they are 3 inches, 4 inches, and 18 inches, respectively.

The decedent is unclothed.

EVIDENCE OF MEDICAL INTERVENTION:

Two hospital blood tubes accompany the body, and they are dated 9/12/2012. The decedent has multiple needle punctures on the right and left antecubital fossa, lower arms and right hand, and all of them are surrounded by small ecchymoses. An identification band is on his right wrist.

INTERNAL EXAMINATION:

BODY CAVITIES:

The sternum is fractured. Anterior ribs 2 through 6 are fractured bilaterally. There is a small amount of extravasated blood surrounding the fracture sites. There is extravasated blood in the anterior mediastinal soft tissues. The bones are osteoporotic, and the soft tissue is friable. There are no fractures of the clavicles, vertebral column or pelvis. The right and left pleural cavities each contain an estimated 200 to 300 milliliters of clear, straw-colored fluid. There is no blood within the peritoneal cavity. The pericardial cavity is obliterated by fibrous adhesions. The pericardial sac and diaphragm are intact. There are no fibrous or fibrinous adhesions involving the intestines. No aromatic or unusual odors are detected inside the body. The intravascular blood is liquid and clotted.

HEAD AND CENTRAL NERVOUS SYSTEM:

The scalp has no edema. The subgaleal tissues have no contusions or injuries. The temporal muscles have no contusions. The skull is intact and has no fractures. No epidural or subdural hematomas are present. The dura mater is intact and has no discoloration.

The 1400 gram brain has thin, transparent leptomeninges with no subarachnoid blood or exudate seen. The leptomeninges are not congested or hyperemic. The cerebral and cerebellar gyri and sulci are of normal size and configuration and have no edema or swelling. No cingulate, uncinata or cerebellar tonsil herniation is present. No contusions or defects are on the surface of the brain. The olfactory bulbs and rest of the cranial nerves are intact. The vertebral, basilar and cerebral arteries, including the arterial circle of Willis, have a moderate amount of atherosclerosis.

The cerebral hemispheres have a thin, gray, cortical ribbon with no slit-like or punctate hemorrhages. The subjacent white matter, including the centrum ovale and corpus callosum, has no discoloration, hematomas or masses. The lateral ventricles are enlarged but have normal configuration and contain no blood. The third ventricle is enlarged. The caudate and lenticular nuclei are unremarkable, as is the thalamus. The mammillary bodies have no discoloration or hemorrhage. The hippocampal gyri are symmetric and have no sclerosis. The occipital lobes are normal. The midbrain, pons and medulla oblongata are unremarkable. The folia cerebelli are neither atrophic nor swollen. The cerebellar white matter and deep midline nuclei are normal. The fourth ventricle and cerebral aqueduct are of normal size and contain no tumor, blood or exudate.

NECK:

The oropharynx is light red-yellow with no trauma or injuries. The epiglottis is light red-yellow and leaf-like, and there is a small amount of aryepiglottic edema. No food or foreign objects obstruct the oropharynx, larynx, trachea or bronchi. The hyoid bone and thyroid cartilages are intact. The anterior cervical neck strap muscles and soft tissues have no contusions or injuries. The prevertebral muscles, fascia and soft tissues have no contusions. The anterior cervical vertebral column is intact. The thyroid gland has its normal anatomic size and location. The thyroid gland is slightly nodular. The cervical lymph nodes are not enlarged.

CARDIOVASCULAR:

The 650 gram heart is covered by easily broken fibrous adhesions. No petechiae or contusions are on the epicardial surface. There is an increased amount of epicardial fat. The heart is right coronary artery dominant. The native coronary arteries arise normally from the aortic root, and their ostia are patent. The native coronary arteries have severe calcific coronary atherosclerosis. A stent is in the native right coronary artery. A clot is in this stent. The native left anterior descending coronary artery has 90-95% intraluminal narrowing by atherosclerosis. The native left circumflex coronary artery has 95% intraluminal narrowing by atherosclerosis. A left thoracic artery graft inserts in the left anterior descending coronary artery. This graft is patent. Two saphenous vein grafts arise from the ascending aorta. One inserts into the posterior descending coronary artery and the other into the left marginal coronary artery. The former saphenous vein graft is occluded at its ostium. The saphenous vein graft to the left marginal coronary artery is narrowed to a pinpoint at its ostium. A stent is in the proximal graft and beyond the stent distally the lumen is narrowed to a pinpoint again.

The free left ventricular wall, ventricular septum, and right ventricular wall are 1.8, 2.0, and 0.3 centimeters thick, respectively. The atria and right ventricles are dilated. The left ventricle chamber is 4 centimeters in diameter. The myocardium is red-brown and firm, with focal scarring in the posterior and lateral left ventricle walls. The scars are up to 1 centimeter in greatest dimension. The endocardium is smooth and transparent with a 1 centimeter area of endocardial thickening in the right ventricle. There is no endocardial hemorrhage or mural thrombosis.

The tricuspid, pulmonic, mitral and aortic valve circumferences are 12.9, 9.0, 11.0, and 7.0 centimeters, respectively. The valves have no ballooning, deformities or vegetations. The commissures are normal. The chordae tendineae are neither ruptured nor thickened. There is moderate calcification of the aortic valve annulus. The rest of the valves and annuli have no calcification.

The aorta has no trauma or injuries. The aorta has severe calcific and ulcerative atherosclerosis. There is no aortic dissection or aneurysm formation.

RESPIRATORY:

The right and left lungs weigh 1180 and 910 grams, respectively. The lungs are normally inflated and occupy most of the pleural cavities. Both lungs have smooth, glistening, transparent pleural surfaces, except for fibrous adhesions involving the posterior lateral left upper lobe. No anthracotic pigment is on the pleural surfaces. No depressions, nodules or bullae are seen. The lungs are light brown anteriorly and dark red posteriorly. The parenchyma has focal nodular areas of consolidation in the posterior segments of the lower lobes. The parenchyma exudes red fluid. No tumor, abscesses, granulomas or pulmonary thromboemboli are seen. The bronchial tree contains red fluid. The pulmonary arteries are normal. The hilar lymph nodes are normal.

NAME: BERNSTEIN, SIMON

CASE NUMBER: 12-0913

HEPATOBIILIARY SYSTEM:

The 1990 gram liver has an intact nodular capsule, and its normal parenchyma is replaced by 2 to 4 millimeter in diameter brown, cirrhotic nodules. No infarcts, granulomas or tumors are seen. The gallbladder is surgically absent.

HEMOLYMPHATIC SYSTEM:

The 340 gram spleen has a smooth, intact capsule with no trauma or injury. A 4 x 1 centimeter shrunken, yellow infarct is present. No granulomas or tumors are seen within the otherwise red-purple, firm parenchyma. Gray-white follicles are not identified.

ENDOCRINE SYSTEM:

The pancreas is pale brown, lobular and soft with no fat necrosis, extravasated blood, tumor or fibrosis. The adrenal glands are thin and have yellow cortices and gray-white medullae. No hemorrhage or tumor is seen in the adrenal glands.

GASTROINTESTINAL SYSTEM:

The esophagus is lined by a smooth, gray-white mucosa with no ulcers, tumors or esophageal varices. The stomach is intact and contains 150 milliliters of red fluid. No aromatic or unusual odors are detected. No pills, capsules or granular material are seen. No blood is in the stomach. The gastric mucosa is red-brown with normal rugae and no ulcers, polyps or tumors. The duodenum has no ulcers. The small and large bowel has no perforation, obstruction or infarction. No mass or tumor is seen in the gastrointestinal tract. The appendix is not identified.

UROGENITAL SYSTEM:

The right and left kidneys weigh 200 and 190 grams, respectively. Both kidneys are enlarged and have scarred, pitted and granular, red-brown surfaces. There is no trauma or injury to the kidneys. The cortices are reduced in thickness to 4 millimeters, and there is an indistinct corticomedullary junction. There are no infarcts, granulomas or tumor. There is no hydronephrosis or renal calculi. There is an increased amount of peripelvic fat. The ureters and bladder are normal. The bladder is intact but contains no urine.

NAME: BERNSTEIN, SIMON

CASE NUMBER: 12-0913

DATE: October 18, 2012

NUMBER OF SLIDES: 8

MICROSCOPIC EXAMINATION

HEART: Myocyte disarray and focal myocardial fibrosis. Myocyte hypertrophy. Acute subendocardial infarction with scant neutrophil infiltration.

LEFT CORONARY ARTERY: 90-95% intraluminal narrowing by atherosclerosis.

LEFT ANTERIOR DESCENDING CORONARY ARTERY: 90-95% intraluminal narrowing by atherosclerosis.

LUNGS: Bronchopneumonia. Rare fat emboli in pulmonary arteries.

LIVER: Cirrhosis with chronic hepatitis.

KIDNEY: Arteriosclerosis.

SPLEEN: Old infarct.

LYMPH NODE: Unremarkable.



Michael D. Bell, M.D.
District Medical Examiner

Date Signed: 10/29/12

MDB:df

Patient: BERNSTEIN, SIMON
Client Patient ID: 15-12-913
Physician: BELL, MICHAEL

Age: 76 **Sex:** M
Account#: 7230586
Client: DIST 15 MEDICAL EXAMINER

TOXICOLOGY

Specimen Collected :09/14/2012

Lab Order No: 21171453

Reg Date: 10/23/12

Test Name	Result	Units	Cutoff/Reporting Limits
-----------	--------	-------	-------------------------

VOLATILE PANEL - VOLP 98245

SPECIMEN TYPE

ANTEMORTEM BLOOD LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 1035

ETHANOL	NONE DETECTED	g/dL	0.020
ACETONE	NONE DETECTED	mg/dL	7.5
METHANOL	NONE DETECTED	mg/dL	15.0
ISOPROPANOL	NONE DETECTED	mg/dL	15.0

Analysis by Gas Chromatography (GC) Headspace Injection

BLOOD DRUG SCREEN - BDSME 98216

SPECIMEN TYPE

ANTEMORTEM PLASMA LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 @ 1035

GC/MS

Quantity Not Sufficient

LC/MS/MS

HYDROCODONE, ZOLPIDEM, ACETAMINOPHEN, CAFFEINE, CAFFEINE METABOLITE

BLOOD IMMUNOASSAY SCREEN

SPECIMEN TYPE

ANTEMORTEM BLOOD LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 @ 1035

AMPHETAMINES	NEGATIVE	mg/L	0.100
BARBITURATES	NEGATIVE	mg/L	0.100
BENZODIAZEPINES	NEGATIVE	mg/L	0.050
BUPRENORPHINE	NEGATIVE	mg/L	0.001
CANNABINOIDS	NEGATIVE	mg/L	0.050
COCAINE METABOLITE	NEGATIVE	mg/L	0.100
FENTANYL	NEGATIVE	mg/L	0.001
METHADONE	NEGATIVE	mg/L	0.050
OPIATES	POSITIVE	mg/L	0.050
SALICYLATES	NEGATIVE	mg/L	50.0

Patient: BERNSTEIN, SIMON
Client Patient ID: 15-12-913
Physician: BELL, MICHAEL

Age: 76 **Sex:** M
Account#: 7230586
Client: DIST 15 MEDICAL EXAMINER

TOXICOLOGY

Specimen Collected :09/14/2012

Lab Order No: 21171453

Reg Date: 10/23/12

Test Name	Result	Units	Cutoff/Reporting Limits
TRICYCLICS	NEGATIVE	mg/L	0.100

ACETAMINOPHEN - ACMP 98203

SPECIMEN TYPE

ANTEMORTEM PLASMA LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 @ 1035

ACETAMINOPHEN	16.3	mg/L	10
---------------	------	------	----

Therapeutic range:
10.0 - 20.0 mg/L

Analysis by Enzyme Immunoassay.

FREE OPIATES PANEL - OPPF 98182

SPECIMEN TYPE

ANTEMORTEM BLOOD LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 @ 1035

CODEINE	NONE DETECTED	mg/L	0.025
MORPHINE	NONE DETECTED	mg/L	0.025
HYDROCODONE	0.094	mg/L	0.025
6-MONOACETYLMORPHINE	NONE DETECTED	mg/L	0.005
HYDROMORPHONE	NONE DETECTED	mg/L	0.025
OXYCODONE	NONE DETECTED	mg/L	0.025
OXYMORPHONE	NONE DETECTED	mg/L	0.025

Analysis by GC/MS

ZOLPIDEM - ZONMS 98621

SPECIMEN TYPE

ANTEMORTEM PLASMA LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 @ 1035

ZOLPIDEM	NONE DETECTED	ng/mL	4.0
----------	---------------	-------	-----

Plasma concentrations following single oral 5 mg and 10 mg immediate release doses range from 29 - 110 ng/mL (mean, 59 ng/mL) and 58 - 270 ng/mL (mean, 120 ng/mL), respectively, occurring at a mean time of 1.6 hours. Peak plasma concentrations following a single oral 12.5 mg extended release dose ranged from 69 - 190 ng/mL (mean = 130 ng/mL) occurring at a mean time of 1.5 hrs.

The ratio of whole blood concentration to serum or plasma concentration is unknown for this analyte.



Wuesthoff Reference Laboratory

6800 Spyglass Court
Melbourne, Florida 32940
Julie Bell, M.D., Laboratory Director

Patient: **BERNSTEIN, SIMON**
Client Patient ID: **15-12-913**
Physician: **BELL, MICHAEL**

Age: **76** Sex: **M**
Account#: **7230586**
Client: **DIST 15 MEDICAL EXAMINER**

TOXICOLOGY

Specimen Collected :09/14/2012

Lab Order No: 21171453

Reg Date: 10/23/12

Test Name	Result	Units	Cutoff/Reporting Limits
-----------	--------	-------	-------------------------

Testing performed by NMS Labs, 3701 Welsh Rd, Willow Grove, PA 19090-2910

Specimens were intact upon receipt. Chain of custody, specimen security and integrity has been maintained. Testing has been performed as requested

Reviewed by: *Susan Rade* Date: 10-23-12

FINAL REPORT - THIS COMPLETES REPORTING ON THIS CASE

TOXICOLOGY_REPORT

BERNSTEIN, SIMON

Form: MM Single RLIT

Page 3 of 3

Printed: 10/23/12 14:18

BATES NO. EIB 003180
02/27/2017



Wuesthoff Reference Laboratory

6800 Spyglass Court
Melbourne, Florida 32940
Julie Bell, M.D., Laboratory Director

Patient: **BERNSTEIN, SIMON**
Client Patient ID: **15-12-913**
Physician: **BELL, MICHAEL**

Age: **113** Sex: **M**
Account#: **VX39518**
Client: **DIST 15 MEDICAL EXAMINER**

TOXICOLOGY

Specimen Collected :02/11/2014

Lab Order No: 381300564

Reg Date: 02/13/14

Test Name	Result	Units	Cutoff/Reporting Limits
-----------	--------	-------	-------------------------

COMMENTS: Test performed on postmortem specimen. The validity of the test, clinical significance, and criteria for interpretation have not been established for this sample type. Normal ranges may not apply.

METALS/METALLOIDS PANEL 3 - M3NMS

SPECIMEN TYPE

BLOOD

CHROMIUM	NONE DETECTED	mcg/L	2.0
reporting limit, reporting limit is 1.0			

Normally:
Less than 2 mcg/L.

CADMIUM	8.5	mcg/L	1.0
---------	-----	-------	-----

Normally:
Less than 5 mcg/L

Refer to the OSHA website for workplace information. Various states require that Blood Cadmium levels above certain cutoffs must be reported to the state in which the patient resides.

Please contact NMS Labs if you need assistance in supplying your state with the required information.

ZPP	130	mcg/dL	2.0
-----	-----	--------	-----

OSHA occupational threshold:
100 mcg/dL blood at hematocrit of 42.

LEAD	NONE DETECTED	mcg/dL	1.1
------	---------------	--------	-----

Reporting limit, reporting limit is 0.50

Reported geometric mean blood lead concentration for US population (both adults and children) is less than 3 mcg/dL (taking into account the 95% CI).

The following are the reported age-based 50th and 95th percentiles (with 95% CI)*:

Age 1 - 5 years:

50th Percentile: 1.50 mcg/dL (1.40 - 1.70)

95th Percentile: 5.80 mcg/dL (4.70 - 6.90)

Age 6 - 11 years:

50th Percentile: 1.10 mcg/dL (1.00 - 1.30)

95th Percentile: 3.70 mcg/dL (3.00 - 4.70)



Wuesthoff Reference Laboratory

6800 Spyglass Court
Melbourne, Florida 32940
Julie Bell, M.D., Laboratory Director

Patient: BERNSTEIN, SIMON
Client Patient ID: 15-12-913
Physician: BELL, MICHAEL

Age: 113 Sex: M
Account#: VX39518
Client: DIST 15 MEDICAL EXAMINER

TOXICOLOGY

Specimen Collected :02/11/2014

Lab Order No: 381300564

Reg Date: 02/13/14

Test Name	Result	Units	Cutoff/Reporting Limits
-----------	--------	-------	-------------------------

Age 12 - 19 years:

50th Percentile: 0.80 mcg/dL (0.800 - 0.900)

95th Percentile: 2.70 mcg/dL (2.30 - 2.90)

Age 20 years and above:

50th Percentile: 1.60 mcg/dL (1.50 - 1.60)

95th Percentile: 4.60 mcg/dL (4.20 - 4.90)

*National Health and Nutrition Examination Survey, 2001-2002 data; Third National Report on Human Exposure to Environmental Chemicals, Department of Health and Human Services, Centers for Disease Control and Prevention.

It is reported that blood levels in the range of 5 - 9 mcg/dL have been associated with adverse health effects in children aged 6 years and younger. Additionally, the following guidelines are offered by US Centers for Disease Control and Prevention, especially in respect to children:

10 - 14 mcg/dL is moderately high and may require re-screening.

20 - 44 mcg/dL is high and may require immediate medical attention.

45 - 69 mcg/dL requires urgent attention.

Greater than 70 mcg/dL is a medical emergency.

Refer to OSHA's website for workplace information. Various states require that blood lead concentrations above certain mandated cutoffs must be reported to the state in which the patient resides. Please contact NMS Labs if you need assistance in supplying your state with the required information.

ARSENIC	18	mcg/L	11
---------	----	-------	----

reporting limit, reporting limit is 5.0

Normally: Less than 10 mcg/L.

Seafood consumption within 2 to 3 days before specimen collection can markedly increase total Arsenic levels.

Various states require that levels above certain cutoffs must be reported to the state in which the patient resides. Please contact NMS Labs if you need assistance in supplying your state with the required information.

MERCURY	4.1	mcg/L	3.0
---------	-----	-------	-----

Normally: Less than 10 mcg/L.



Wuesthoff Reference Laboratory

6800 Spyglass Court
Melbourne, Florida 32940
Julie Bell, M.D., Laboratory Director

Patient: BERNSTEIN, SIMON
Client Patient ID: 15-12-913
Physician: BELL, MICHAEL

Age: 113 Sex: M
Account#: VX39518
Client: DIST 15 MEDICAL EXAMINER

TOXICOLOGY

Specimen Collected :02/11/2014

Lab Order No: 381300564

Reg Date: 02/13/14

Test Name	Result	Units	Cutoff/Reporting Limits
-----------	--------	-------	-------------------------

Various States require that Blood Mercury levels above certain cutoffs must be reported to the state in which the patient resides. Please contact NMS Labs if you need assistance in supplying your state with the required information.

Specimens were intact upon receipt. Chain of custody, specimen security and integrity has been maintained. Testing has been performed as requested

Reviewed by: *Susan Rade* Date: 3-10-14

FINAL REPORT - THIS COMPLETES REPORTING ON THIS CASE

TOXICOLOGY_REPORT

BERNSTEIN, SIMON

Form: MM Single RLIT

Page 3 of 3

Printed: 03/10/14 15:14

BATES NO. EIB 003183
02/27/2017

From: [Eliot Ivan Bernstein](#)
To: "Michael Bell"
Cc: [Caroline Prochotska Rogers Esq. \(caroline@cprogers.com\)](#); [Michele M. Mulrooney ~ Partner @ Venable LLP \(mmulrooney@Venable.com\)](#); [Andrew R. Dietz @ Rock It Cargo USA](#); [Marc R. Garber Esq. \(marcrgarber@gmail.com\)](#); [Marc R. Garber Esq. @ Flaster Greenberg P.C. \(marc.garber@flastergreenberg.com\)](#); [Marc R. Garber Esq. @ Flaster Greenberg P.C. \(marcrgarber@verizon.net\)](#)
Bcc: [Undisclosed List: Eliot I. Bernstein, Inventor ~ Iviewit Technologies, Inc.; Patrick "Pat" Hanley \(cpsvm@yahoo.com\)](#); [Pat Handley \(svm231@aol.com\)](#); [""tourcandy@gmail.com" \(tourcandy@gmail.com\)""](#)
Subject: RE: CASE NUMBER: 12-0913 --- Simon Bernstein Autopsy
Date: Friday, January 10, 2014 3:45:00 PM

Hello Dr. Bell,

Thank you for your reply and continued efforts on my behalf and I would like to clarify a few statements in your email below. First, I did not ever tell the police I was worried about my father getting too much of his medication or that he was being poisoned. These claims came from my brother Theodore and my father's assistant Rachel Walker who believed he was murdered by his companion and so stated to the police and the hospital the day my father died on September 13, 2012. In fact, I stated that I did not believe my father was being poisoned by either over medication or other poisons by his companion Maritza Puccio as evidenced in the Police Report. I reviewed the drug toxicology you provided and agree with your assessment of that. As for what poisons may have been used when the, alleged by others, switching of pills with pills of an unknown substance took place and I agree with you that it could have been anything and which is why I requested the Police take all of his medications into evidence but they did not. I am not sure what a heavy metal screen is and what it tests for or what other poison screening tests are available, could you please clarify this for me? Further, did you review the records of my father in the 8 weeks prior to his hospitalization, which may also have significant information and may further provide evidence of possible poisoning, as he was suddenly and unexpectedly suffering during that time from a wide range of symptoms in those weeks and he was taken to several of his doctors to evaluate who were all perplexed and this led to brain scans at the hospital just days before his death. Did you get a chance to review the report on the brain scan done? I am not sure but it appears prudent in ruling out foul play that these records be reviewed from all of his doctors during that time for information that could reveal what, if any, poisons were used based on the symptoms he was suffering and the battery of tests run on him concerning all these problems. I am not represented by an attorney in this matter as there appears at this stage of inquiry no need to spend money on one and so please continue to deal directly with me as Simon's son via email or feel free to call me at my contact info below.

I pray you had a wonderful holiday season with your family and again thank you for your time, effort and consideration of these matters,

Eliot I. Bernstein
Inventor
Iviewit Holdings, Inc. – DL
2753 N.W. 34th St.
Boca Raton, Florida 33434-3459
(561) 245.8588 (o)
(561) 886.7628 (c)

(561) 245-8644 (f)
iviewit@iviewit.tv
<http://www.iviewit.tv>

NOTICE: Due to Presidential Executive Orders, the National Security Agency may have read this email without warning, warrant, or notice. They may do this without any judicial or legislative oversight and it can happen to ordinary Americans like you and me. You have no recourse nor protection save to vote against any incumbent endorsing such unlawful acts.

CONFIDENTIALITY NOTICE:

This message and any attachments are covered by the Electronic Communications Privacy Act, 18 U.S.C. SS 2510-2521.

This e-mail message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message or call (561) 245-8588. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately.

*The Electronic Communications Privacy Act, 18 U.S.C. 119 Sections 2510-2521 et seq., governs distribution of this "Message," including attachments. The originator intended this Message for the specified recipients only; it may contain the originator's confidential and proprietary information. The originator hereby notifies unintended recipients that they have received this Message in error, and strictly proscribes their Message review, dissemination, copying, and content-based actions. Recipients-in-error shall notify the originator immediately by e-mail, and delete the original message. Authorized carriers of this message shall expeditiously deliver this Message to intended recipients. See: Quon v. Arch.

Wireless Copyright Notice. Federal and State laws govern copyrights to this Message. You must have the originator's full written consent to alter, copy, or use this Message. Originator acknowledges others' copyrighted content in this Message. Otherwise, Copyright © 2011 by originator Eliot Ivan Bernstein, iviewit@iviewit.tv and www.iviewit.tv. All Rights Reserved.

From: Michael Bell [<mailto:mbell@pbccgov.org>]
Sent: Friday, January 10, 2014 1:21 PM
To: Eliot Ivan Bernstein
Subject: RE: CASE NUMBER: 12-0913 --- Simon Bernstein

The autopsy was done at the Palm Beach ME office.

All drugs are "poisons" when given in sufficient doses. You initially told police you were worried about your father getting too much of his medications. The toxicology clearly shows that did not happen. There are thousands of drugs(poisons) and therefore it is impossible to test for all of them. If you think you know what was given, then please share that information. I will do a heavy metal screen which will take several weeks.

I have reviewed all the records of your father's hospitalization. My opinion is unchanged.

All further communication should be through your attorney who can call me at 561-688-4575.

From: Eliot Ivan Bernstein [<mailto:iviewit@iviewit.tv>]
Sent: Monday, January 06, 2014 12:23 PM
To: Michael Bell
Cc: Caroline Prochotska Rogers Esq.; Michele M. Mulrooney ~ Partner @ Venable LLP; Andrew R. Dietz @ Rock It Cargo USA; Marc R. Garber Esq.; Marc R. Garber, Esquire @ Flaster Greenberg P.C.; Marc R. Garber Esq. @ Flaster Greenberg P.C.
Subject: RE: CASE NUMBER: 12-0913 --- Simon Bernstein

Dear Dr. Bell,

I have not heard back on my email to you below. Can you please provide me a timeframe for your getting back to me? Please also include information regarding if the poison screening was done when the autopsy was conducted, not just a drug screening, as evidence exists that contact was made with the hospital on the night my father died that he may have been poisoned and similar claims were made to the Palm Beach County Sheriff the day he died. The remainder of the questions in my email still need to be addressed and as I am currently in ongoing civil and criminal complaints regarding my father, a prompt reply with an ETA would be greatly appreciated.

Thank you,
Eliot Bernstein

From: Eliot Bernstein [<mailto:iviewit@gmail.com>]
Sent: Monday, November 11, 2013 6:23 AM
To: Michael D. Bell, M.D. ~ Medical Examiner @ Office of the District Medical Examiner - District 15 - State of Florida (mbell@pbcgov.org)
Cc: Caroline Prochotska Rogers Esq. (caroline@cprogers.com); Michele M. Mulrooney ~ Partner @ Venable LLP (mmulrooney@Venable.com); Andrew R. Dietz @ Rock It Cargo USA; Marc R. Garber Esq. (marcgarber@gmail.com); Marc R. Garber, Esquire @ Flaster Greenberg P.C.; Marc R. Garber Esq. @ Flaster Greenberg P.C. (marcgarber@verizon.net)
Subject: FW: CASE NUMBER: 12-0913 --- Simon Bernstein

Dear Dr. Bell,

Thank you for your prompt reply to my inquiry. A few more questions arose after reviewing your report. First I would like to state that there has been an arrest made in my parents' estates of the Notary Public Kimberly Moran who acted on behalf of the law firm Tescher & Spallina in forging and fraudulently creating documents for my father, after he was deceased. I have alleged to the court that these documents were part of a conspiratorial effort by primarily my brother and his friends Donald Tescher and Robert Spallina to seize control of Simon's estate post mortem and change the beneficiaries using post mortem documents. It should also be noted that in a September 13, 2013 hearing before Judge Martin H. Colin in the Del Ray Beach courthouse, it was found that the estate of my mother was closed by my father months after he was deceased, as if he were alive at the time and thus perpetrating a fraud on the court, which prompted Judge Colin to state twice that he should read Robert Spallina, Esq., Donald Tescher, Esq., Mark Manceri, Esq. and my brother Theodore Bernstein their Miranda rights for the crimes he identified at the hearing that they committed. That after Simon was deceased these fraudulent and forged documents that gave

fiduciary control to Tescher, Spallina and Ted then provided the way for far more serious felony crimes to be committed. The Palm Beach County Sheriff has made an arrest of Moran thus far and that report is filed as case # 13097087.

With that said, after reviewing your report I noted that you received my father's body, the day after he died on September 14, 2013. The reason I ask if this is correct, is that we were informed after my father died that his body had been taken to Miami to have an autopsy performed, which delayed the burial by several days as we waited for the autopsy to be performed. The autopsy was alleged by my brother, Spallina and others to be being conducted in Miami and after reviewing your report it was clear that you indicate the body never was transported to Miami. Therefore, please verify the information regarding the transportation of the body after the hospital to your offices with any/all stops in between.

I requested in my original letter to you if a poison screening had been completed, your letter stated a toxicology report was run but it appears to be a drug only test, not a poison screening. The reason this is now important is that immediately following my father's death as noted in your report materials, a claim was made to Palm Beach County Sheriff by Rachel Walker and Theodore Bernstein primarily that my father was murdered by his girlfriend, Maritza Puccio, via either overdosing or poisoning. Walker claimed that Maritza was switching pills in containers and may have been switching the pills with other substances and other substances may have been given to him, which may have included poisons or other drugs. I also note that after the officer interviewing Walker counted out the pills he was on and everything seemed in order, Walker claimed that the pain medication was not the only drug that may have been tampered with and that other substances may have been given to Simon in the weeks leading up to his death.

I do not doubt your conclusion that my father died of a heart attack but there can be many substances, including poisons that can induce a heart failure, I am trying to assess if the poison screening might have unearthed any substances in addition to the drug screen run by your agency. I am confused by some of your claims as to what occurred at the hospital that day as they contradict in part what we were told by the doctors who handled my father that day, including the following;

1. You claimed that evidence of a heart attack was found in the reports on admission to the hospital but that turned out to be wholly disproved by the end of the day.
2. Initially in the morning when we first took my father into the hospital, the first doctor attending him thought he was having a heart attack due to his prior history, despite my father claiming that he was not having a heart attack and that he knew what a heart attack felt like and he was not having one and thought he was fine, stating he was just confused and in pain from other ailments he was having.
3. Later in the afternoon the initial doctor claimed that he did not find any signs of a heart attack after running a battery of tests and called in an infectious disease doctor to evaluate and run tests, as he thought something else was going on other than heart related as he was having several other readings regarding other major organs that were highly abnormal.
4. We were assured by the cardiologist in charge of my father's care in the evening, before he let us go home that Simon's heart was fine and that NO markers were found indicating a heart attack. Instead he claimed he had "West Nile Virus" or some other virus of an unknown origin or that something else was wrong entirely, as many of his other levels he tested were off the charts, indicating something else was going on. He stated Simon would be fine, he was stable and they would begin testing in the morning.

5. We were called back to the hospital several hours later early the next morning. When I arrived my father's girlfriend Maritza had been ejected from the ICU where she was staying with Simon overnight as someone had informed the hospital that Simon might be poisoned and they had shut his room off visitors until security could arrive. When I arrived at ICU they would not at first let me in until security could escort me to my father where he was being resuscitated for a second time.

Finally, my father began developing a series of ailments several weeks prior to his death that had me and others running him to a variety of doctors to be tested for a variety of ailments, including a brain scan a few weeks prior to his death. That brain scan was run by the same cardiologist who treated my dad at the hospital the day he died and his symptoms prior to that day included strange screaming pains in his head, delusions, hallucinations and more. I wondered if you had reviewed any of his prior doctor reports in the two months leading up to his death, as we never determined the exact cause of what was making him melt down over the last weeks of life in such bizarre fashion. In fact, the cardiologist at the hospital the day he died was confused how his charts appeared fine when he did the brain scan only a few days earlier and stated he could not believe it was the same man when he got the reports at the hospital that day. Did you get a chance to review all the reports from the hospital that day and all the test results run or did you just review the admission report? If you reviewed all of the records and reports what were the other problems and tests run and what were the results. These results were of concern to the doctors that day and I wonder if any of those other problems could come from poisoning. If you ran a poison screening please provide me with the results as you did with the drug toxicology. Please feel to write back to me as I do not answer my phone much and am far easier to reach via email. I look forward to hearing from you soon. Thank you again in advance for your continued time, effort and consideration of these matters. Eliot

From: Michael Bell <mbell@pbcgov.org>
Date: November 7, 2013 at 11:17:02 AM EST
To: Eliot Ivan Bernstein <iviewit@iviewit.tv>
Cc: "Caroline Prochotska Rogers Esq." <caroline@cprogers.com>
Subject: RE: CASE NUMBER: 12-0913 --- Simon Bernstein

Hi Mr Bernstein,

I tried to call your cell phone, but it would not accept anymore messages because it was full.

Your father died of a heart attack that was evident at autopsy and in the hospital records (he had elevated cardiac enzymes on admission).

He did NOT have West Nile virus. This disease causes a meningoencephalitis. This was NOT present at autopsy. I have attached the additional microscopic examination report as I did not see it in the pdf you sent me.

We did a toxicology screen which showed therapeutic concentrations of acetaminophen and hydrocodone. Zolpiden was detected but the level was too low to be measured. The toxicology testing can detect hundreds of different drugs.

If you have any other questions, please call me at 561-688-4575.

From: Eliot Ivan Bernstein [<mailto:iviewit@iviewit.tv>]
Sent: Saturday, November 02, 2013 7:02 PM
To: Michael Bell
Cc: Caroline Prochotska Rogers Esq.
Subject: CASE NUMBER: 12-0913 --- Simon Bernstein

Dear Dr. Bell,

I write to you after review of your attached autopsy report on my father that raises some questions regarding the cause of death that I hope you can help answer. On September 12, 2013 when we brought my father into the hospital the first diagnoses we received in the morning was that he had a mild heart attack. After testing an infectious disease doctor was brought in who claimed it could be instead some sort of virus as it was not looking like a heart attack. Later that evening while in intensive care, a doctor came and told my family that he did not have a heart attack and that his heart was fine and instead they thought my dad had West Nile Virus or some other exotic virus and that we could go home. The doctor claimed he was stable, we could go home and they would begin testing the next day. In fact, the doctor asked me if it was I who brought my father in for a brain procedure several weeks earlier and stated that when he reviewed the file to compare to his earlier records he was stunned to see the results and stated that Simon had perfect test results just days earlier for the brain procedure and now he was off the chart on several levels. The doctor stated his problems definitely were not due to his heart as he found no markers of heart attack or other heart complications. Several hours later, I was called to the emergency room where they were attempting to resuscitate my dad but to no avail and he passed.

I was informed when he passed that they were going to do a test for West Nile Virus and other similar infectious diseases and I was wondering if these tests were also performed post mortem to rule all those causes out. Finally, I was wondering if a poison screening had been done and if one can now be done if requested.

Thank you for your time, effort and consideration in the handling of this matter.

Eliot I. Bernstein
Inventor
Iviewit Holdings, Inc. – DL
2753 N.W. 34th St.
Boca Raton, Florida 33434-3459
(561) 245.8588 (o)
(561) 886.7628 (c)

(561) 245-8644 (f)
iviewit@iviewit.tv
<http://www.iviewit.tv>

NOTICE: Due to Presidential Executive Orders, the National Security Agency may have read this email without warning, warrant, or notice. They may do this without any judicial or legislative oversight and it can happen to ordinary Americans like you and me. You have no recourse nor protection save to vote against any incumbent endorsing such unlawful acts.

CONFIDENTIALITY NOTICE:

This message and any attachments are covered by the Electronic Communications Privacy Act, 18 U.S.C. SS 2510-2521.

This e-mail message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message or call (561) 245-8588. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately.

*The Electronic Communications Privacy Act, 18 U.S.C. 119 Sections 2510-2521 et seq., governs distribution of this "Message," including attachments. The originator intended this Message for the specified recipients only; it may contain the originator's confidential and proprietary information. The originator hereby notifies unintended recipients that they have received this Message in error, and strictly proscribes their Message review, dissemination, copying, and content-based actions. Recipients-in-error shall notify the originator immediately by e-mail, and delete the original message. Authorized carriers of this message shall expeditiously deliver this Message to intended recipients. See: Quon v. Arch.

Wireless Copyright Notice. Federal and State laws govern copyrights to this Message. You must have the originator's full written consent to alter, copy, or use this Message. Originator acknowledges others' copyrighted content in this Message. Otherwise, Copyright © 2011 by originator Eliot Ivan Bernstein, iviewit@iviewit.tv and www.iviewit.tv. All Rights Reserved.

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

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

Case No. 502014CP003698XXXXSB

Eliot Ivan Bernstein, Individually;
Eliot Bernstein in his capacity as
Natural Guardian of his
minor children, Joshua, Jacob and Daniel;
and as beneficiary of the alleged Shirley
Bernstein Trust dated May 20, 2008, as
amended and Eliot Bernstein as Trustee of the
Eliot Bernstein Family Trust dated May 20,
2008,

Honorable Martin Colin

Jury Trial Requested

Counter Plaintiff,

v.

Tescher & Spallina, P.A., and all Partners Associates and of Counsel;
Robert L. Spallina, Esq., Personally;
Robert L. Spallina, Esq., Professionally;
Donald R. Tescher, Esq., Personally;
Donald R. Tescher, Esq., Professionally;
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;
Theodore Stuart Bernstein, Individually;
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;
Theodore Bernstein as Personal Representative of the Shirley Estate;
Lisa Sue Friedstein, Individually;
Jill Marla Iantoni, Individually;
Pamela Beth Simon, Individually;
Mark Manceri, Esq., Personally;
Mark Manceri, Esq., Professionally;
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;
Alan B. Rose, Esq. – Personally;
Alan B. Rose, Esq. – Professionally;
Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;
John J. Pankauski, Esq. – Personally;
John J. Pankauski, Esq. – Professionally;
Kimberly Francis Moran – Personally;
Kimberly Francis Moran – Professionally;
Lindsay Baxley aka Lindsay Giles – Personally;
Lindsay Baxley aka Lindsay Giles – Professionally;

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 1

“Simon L. Bernstein Amended and Restated Trust Agreement” Dated July 25, 2012;
Simon Bernstein Trust Agreement Dated May 20th 2008;
Shirley Bernstein Trust Agreement Dated May 20th 2008;
The Estate of Simon Bernstein;
The Estate of Shirley Bernstein;
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;
SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;
John and Jane Doe’s (1-5000),

Counter Defendants,

_____/

Judge Martin Colin, Personally;
Judge Martin Colin, Professionally;
Judge David French, personally;
Judge David French, professionally;

Material and Fact Witnesses who may
become Defendants in any amended
complaint.

_____/

**PETITION TO REMOVE TED BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE OF THE ALLEGED SHIRLEY BERNSTEIN
IRREVOCABLE TRUST**

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 2

COMES NOW, PRO SE¹, Eliot Ivan Bernstein (“Eliot”) as Beneficiary and Interested Party both for himself personally and as Guardians for his three minor children of the alleged “Shirley Bernstein Trust dated May 20, 2008, as amended” (“Shirley Trust”) (see Exhibit A3) and as Trustee of the “Eliot Bernstein Family Trust dated 5/20/2008” (see Exhibit A4) and hereby files this “PETITION TO REMOVE TED BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE OF THE ALLEGED SHIRLEY BERNSTEIN IRREVOCABLE TRUST” and in support thereof states, on information and belief, as follows:

I. Eliot has standing to seek removal.

The provisions of §736.0706(1), §736.0103, and §733.707(3), Fla. Stats. (2014) govern the issue of who has standing to seek removal of a trustee. Section 736.0706(1) Fla. Stat. (2014) states:

*(1) The settlor, a cotrustee, or a **beneficiary** may request the court to remove a trustee, or a trustee may be removed by the court on the court's own initiative. (emphasis added)*

§736.0103, Fla. Stat. (2014), defines a "beneficiary":

*(4) "Beneficiary" means a person who has **a present or future beneficial interest in a trust, vested or contingent**, or who holds a power of appointment over trust property in a capacity other than that of trustee. (emphasis added)*

II. This Court has the Authority Under Florida Law to Remove TED as Trustee of the Revocable Trust.

¹ Pleadings in this case are being filed by Plaintiff In Propria Persona, PRO SE, wherein pleadings are to be considered without regard to technicalities. Propria, pleadings are not to be held to the same high standards of perfection as practicing lawyers. See Haines v. Kerner 92 Set 594, also See Power 914 F2d 1459 (11th Cir1990), also See Hulsey v. Ownes 63 F3d 354 (5th Cir 1995). also See In Re: HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991)." In Puckett v. Cox, it was held that a pro-se pleading requires less stringent reading than one drafted by a lawyer (456 F2d 233 (1972 Sixth Circuit USCA). Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957)"The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." According to Rule 8(f) FRCP and the State Court rule which holds that all pleadings shall be construed to do substantial justice.

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 3

Under Florida law, this Court has broad authority to affect trust administration². Under §736.0201, Fla. Stat. (2014), the Court has the following power:

736.0201. Role of court in trust proceedings

* * * *

- (4) A judicial proceeding involving a trust may relate to the validity, administration, or distribution of a trust, including proceedings to:
- (a) Determine the validity of all or part of a trust;
 - (b) **Appoint or remove a trustee;**
 - (c) Review trustees' fees;
 - (d) Review and settle interim or final accounts;
 - (e) Ascertain beneficiaries; determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments; instruct trustees; and determine the existence or nonexistence of any immunity, power, privilege, duty or right;
 - (f) Obtain a declaration of rights;
 - (g) Determine any other matters involving trustees and beneficiaries.
(emphasis added)

III. Legal Standard for Removal of Trustee.

When removal of a trustee is at issue, the following statutory provisions of §736.0706, Fla. Stat. (2014) are to be considered:

736.0706. Removal of trustee

* * * * *

- (2) **The court may remove a trustee if:**
- (a) **The trustee has committed a serious breach of trust;**
 - (b) The lack of cooperation among cotrustees substantially impairs the administration of the trust;
 - (c) **Due to unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries;** or
 - (d) **There has been a substantial change of circumstances** or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

² Eliot has filed a pleading with the Court to Remove Theodore on the Court's own motion based on a host of reasons that disqualify Theodore at this time, including Prima Facie evidence in the Court's possession already. The filing was docketed August 28, 2014 and titled "AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN" and being all Pro Se, is hereby included by reference in entirety with all exhibits herein.

TED's removal is warranted by Subsections (2) (a), (c) and/or (d). Additionally, §736.0802, Fla. Stat. (2014) describes the primary duty of a trustee:

736.0802. Duty of loyalty

- (1) As between a trustee and the beneficiaries, a trustee shall administer the trust **solely** in interests of the beneficiaries.
- (2) Subject to the rights of persons dealing with or assisting the trustee as provided ins. 736.1016 a ... transaction ... which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction ... (emphasis added)

See Aiello v. Hyland, 793 So. 2d 1150, 1152 (Fla. 4th DCA 2001) (removal of trustee was required where trustee had a conflict of interest with interests of the trust; the conflict of interest made the trustee unable to properly carry out his duty of loyalty to the trust). Therefore, the only remedy is removal and a non-conflicted independent trustee appointed.

IV. Theodore Stuart Bernstein Should Be Removed as Trustee of the alleged Irrevocable Trust of Shirley Bernstein (see Exhibit A3 – 2008 Alleged Shirley Trust) by the Terms of the Trust and also due to Conflict of Interests, Adverse Interests, Breaches of Fiduciary Duties and more.

A. Theodore Bernstein is Not Eligible to Serve as a Successor Trustee under the very terms of the alleged Irrevocable Trust, which means he is "unfit" under §736.0706(2)(c).

1. Ted Bernstein is "PREDECEASED" for all purposes of dispositions of the Shirley Trust.

The language of the Shirley Trust states clearly and unambiguously,

ARTICLE III - GENERAL

E. **Definitions.** In this Agreement,

- 1. Children, Lineal Descendants. The terms "*child*," "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 5

loses his or her status as such through adoption by another person.
Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me,
provided, however, *if* my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants **all** predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.
(emphasis added)

The definition of Disposition from NOLO Legal Dictionary, “(2) The act of transferring care, possession, or ownership to another, such as by deed or will.” Thus, for purposes of the dispositions made under the 2008 Shirley Trust, Ted is definitely dead and thus cannot serve as Successor Trustee, despite the ALLEGED Shirley Trust ALLEGEDLY naming him.

Further, there has been admission from Robert Spallina, Esq. (“SPALLINA”) to Palm Beach County Sheriff Investigators³ that he fraudulently altered a Shirley Trust document already to attempt to include Ted’s lineal descendants back into the Shirley Trust illegally. Spallina was also acting as Ted’s attorney at the time in his alleged role of Successor Trustee in the alleged Shirley Trust.

That Tescher & Spallina, PA have also been found to have closed Shirley’s Estate with a dead Personal Representative, Simon, as part of a larger fraud on the Court in efforts to change beneficiaries of the Shirley Estate and Shirley Trusts.

That Tescher & Spallina, PA have also been found to have posited in the Court Record fraudulently notarized and forged documents for six parties, including a document for Simon forged and notarized Post Mortem.

Originals of the Shirley Trust have been suppressed and denied from the beneficiaries for over two years despite repeated requests to inspect and further it appears that Schedules,

³ Palm Beach County Sheriff Reports at [www.iviewit.tv/Sheriff Reports.pdf](http://www.iviewit.tv/Sheriff%20Reports.pdf)

Memorandums, Addendums and Codicils are all missing, making it impossible to determine the Trust Res, in violation of Probate Rules and Statutes.

That it is alleged that TESCHER and SPALLINA have further fraudulently altered the Shirley Trust document to name TED as a Successor Trustee in the Shirley Trust after Simon, despite the absolute conflict with the language in the Shirley Trust that considers TED predeceased and thereby unqualified to act as a Successor Trustee as he is dead legally for the purposes of the document. It should be noted by the Court, that in a deposition taken of TESCHER, he states that Simon and Shirley did mirrored trust documents in 2008. The 2008 Simon Trust (see Exhibit A) however was suppressed and denied and not given to the beneficiaries with his alleged 2012 Amended and Restated Trust after his death and was not turned over by TESCHER and SPALLINA, until they were removed from the proceedings for their involvement in fraud and more and whereby this Court issued an Order for them to turn over all their records and properties to the newly elected Curator, Benjamin Brown, Esq. in 2014.

When noting the successorship in Simon's 2008 Trust that is alleged to mirror Shirley's, Simon had chosen William Stansbury, currently the largest Creditor⁴ in the Simon Estate as the successor trustee after Shirley, NOT TED. It would seem logical that both Simon and Shirley had chosen Stansbury for his outstanding character and integrity in place of their eldest son TED, as they had both considered TED predeceased and an unfit businessman having just recovered from bankruptcy and not possessing a college degree as part of their decision. There is also evidence that

⁴ Stansbury is a creditor due to a lawsuit that primarily has TED as the perpetrator of multiple torts against Stansbury amounting to over \$2,000,000.00. It also has been alleged in the Simon Estate case before the Court that Simon was unaware until several weeks before his death (at around the same time he is alleged to have amended his 2008 Trust, which was about 48 days or so before his death) that TED may have misappropriated millions of dollars from Stansbury and that he too was being sued. Ted hired counsel Greenberg Traurig to represent him in the matter, Simon did not have counsel and died before he could be represented properly in the matter. Greenberg Traurig later resigned as Counsel to Ted and Alan B. Rose, Esq. replaced them.

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE
Friday, September 12, 2014

Page 7

Simon was going to make Stansbury the CEO of LIC Holdings, Inc., a company he and TED owned, as he did not find TED fit to run that company either in the event he passed.

Initially, the Bernstein family members were told by SPALLINA and TESCHER that TED was the Successor PR and Trustee of Shirley's Estate and Trusts because Florida law stated the oldest child was the Successor. Then after Eliot confirmed with others that this was untrue, they later claimed that they had found in the trust that TED was named, which appears to be yet another fraudulent document submitted to the beneficiaries and interested parties and this Court in these matters. That Eliot awaits inspection of the original trust and will be turning that over to investigators as well.

Despite if the document named TED to be successor, it contradicts the terms of the trust that specifically consider him predeceased. Where there are several ongoing frauds and frauds on the Court, all under investigation and all benefiting TED and his minion of Attorneys at Law (four out of five have resigned as TED's counsel already for irreconcilable differences and two already removed for their involvement in FRAUD). There are numerous other reasons that TED is not qualified, nor was he ever, to be a Successor Trustee or be a fiduciary in ANY capacity in the Estates and Trusts of both Simon and Shirley, as further defined herein.

That it is alleged that TED, with the aid of TESCHER and SPALLINA, have used a series of fraudulent documents to seize illegally Dominion and Control of the Estates and Trusts of Simon and Shirley Bernstein and then once control was obtained, used the documents and their control to begin looting the estates and trusts through a variety of felony criminal misconduct.

That the alleged 2012 Simon Will and Simon's Amended & Restated Trust have been found by Governor Rick Scott's Notary Public Division to have been improperly notarized so as not to be able to determine if Simon was present at the signing. The only two witnesses to the document are Robert Spallina, Esq. and Kimberly Moran who have both admitted to fraudulently altering

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 8

documents in the Simon and Shirley Estates and Trusts. Further, the documents are constructed improperly as SPALLINA, who becomes PR and TRUSTEE for Simon in the documents that he created, also witnesses the documents, which directly benefit him and his partner TESCHER as they control the Estate and Trust through their roles as, Co-Personal Representatives, Co-Trustees and SPALLINA additionally as counsel to the Co-Personal Representatives and Co-Trustees. Once SPALLINA gains control with these documents, he begins an unaccounted billing of the Estates and Trusts and where once Eliot had the Sheriff's investigating their frauds, a legal frenzy of billings arose from their attempts to defend against Eliot's actions and tell lies upon lies in the hearings before this Court, only later to confess of involvement in advancing the frauds, a confession which appears heavily perjured and full of other admitted criminal acts and comes only after Sheriff's came knocking on their door and arrests were made of their Legal Assistant and Notary Public, Kimberly Moran who admitted to forging and fraudulently notarizing documents in these matters and more. These documents suffer other construct issues that have been pled to the Court in unheard motions and petitions currently before the Court in the Estate and Trust lawsuits involving Simon and Shirley.

That TED was directly involved in taking improper and illegal distributions from the Shirley Trust that benefited his family, against allegedly the advice of his Counsel Spallina (as reported by Spallina to Palm Beach County Sheriff Investigators) and based on the fraudulent documents Spallina created to include his family back into the Shirley Trust. TED has advanced this fraudulent scheme, converted funds improperly, breached his alleged fiducial responsibilities repeatedly to deny beneficiaries access to information regarding the Shirley Trust, including but not limited to, failing to produce any accountings in violation of Probate Rules and Statutes, failing to give notice and documentation of his successorship to beneficiaries and in fact suppressing and denying required disclosure in violation of Probate and Trust Rules and Statutes and more. That TED's involvement

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 9

in advancing the frauds and failure to act as fiduciary according to Probate and Trust Rules and Statutes are all cause for his immediate removal in ALL fiducial capacities.

The remainder of the Petition is borrowed from the Petition to Remove TED as Successor Trustee in the Simon Estate recently filed and set for hearing on September 24, 2014 for good and just causes. These same issues are applicable in evaluating his lack of character and fitness to serve as a fiduciary in the Shirley Trust that make his removal necessary and mandatory by this Court, as well as for removal from any other fiducial claims TED asserts in the Estates and Trusts of Simon and Shirley Bernstein. There is also a motion for Your Honor to remove Theodore on your own motion under Fla Stat. 736.

V. IN RE THE SIMON BERNSTEIN TRUST - Theodore Stuart Bernstein Should Be Removed as Trustee of the alleged Revocable Trust by the Terms of the Trust and his Conflict of Interest.

A. Theodore Bernstein is Not Eligible to Serve as a Successor Trustee under the very terms of the alleged Revocable Trust, which means he is "unfit" under §736.0706(2)(c).

2. Ted Bernstein is a "related party" and therefore not eligible to serve.

The previous co-trustees of the alleged Revocable Trust were Donald Tescher, Esq. ("TESCHER") and Robert Spallina, Esq. ("SPALLINA") by virtue of the Successor Trustee provision set forth in Article IV, Section C of the alleged Revocable Trust. A copy of the alleged Trust⁵ is attached hereto as Exhibit "A." By letter dated January 14, 2014 addressed to the five children of Simon Bernstein, TESCHER and SPALLINA, resigned as co-trustees of Simon's Revocable Trust, co-personal representatives/executors to the Estate of Simon, SPALLINA resigned as counsel to TED as alleged Trustee (for irreconcilable differences) in the Shirley Trust and as

⁵ This alleged Revocable Trust of Simon's has been found to have improper notarization affixed by the Governor Rick Scott's Notary Public Division. The two witnesses to the document have already confessed to fraudulent alteration of other documents in the Shirley Bernstein and Simon Bernstein Estates and Trusts, including admitted forgery and fraudulent notarizations.

counsel to TED as Personal Representative of the Shirley Estate and both resigned in all other fiducial and legal capacities they were acting in for any Bernstein family related matters. Upon resignation TESCHER stating, "If the majority of the Bemstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity." TESCHER made the appointment of TED after claiming he learned that his law firm and SPALLINA had fraudulently altered a Shirley trust document to change beneficiaries illegally and then make illegal distributions under a fraudulent scheme. The alleged successorship was done without sending notice to beneficiaries that they had done this transfer and the document transferring notarized by the already convicted Felon for fraudulent notarizations, Kimberly Moran. TED accepted the alleged successorship without sending notice to beneficiaries and neither TESCHER, SPALLINA or TED provided an accounting of the trust upon the transfer, all in violation of Probate and Trust Rules and Statutes. A copy of the resignation letter is attached hereto as Exhibit "B."

If TED has become successor trustee of the Revocable Trust, he should be removed. He is ineligible under the very terms of the Revocable Trust to serve as successor trustee. Article IV, Section C.(3) (Page 16) of the Revocable Trust states:

- C. Appointment of Successor Trustee
3. . . . A successor Trustee appointed under this subparagraph shall **not** be a Related or Subordinate Party of the trust. (**emphasis added**)

Under Article III, Subsection E(7), A "Related or Subordinate Party" is defined in the Trust as follows:

ARTICLE III. GENERAL

E. Definitions. In this Agreement,

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 11

The "Code" is defined as "the Internal Revenue Code of 1986 ... "

A "Related or subordinate party" under the Code means any nonadverse party who is " ... (2) any one of the following: The Grantor's father, mother, issue, brother or sister ... "

TED is the son, or an "issue" of the Grantor, SIMON BERNSTEIN, and a related party (father) to alleged beneficiaries, TED's sons, SIMON's grandsons. Therefore, TED is ineligible as a Related or Subordinate Party and is therefore again unfit to serve as a successor trustee under §736.0706(2)(c).

3. Ted Bernstein was specifically disqualified to be a Successor Trustee by the terms of the Trust.

Another provision of the Trust also disqualifies TED.

Article III E (I) states:

Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me ... " (**emphasis added**)

The prior Simon revocable trust done in 2008 that was alleged to be amended by Simon 48 days prior to his sudden and unexpected death reads from Article III E (I),

E. **Definitions.** In this Agreement,

I. **Children. Lineal Descendants.** The terms "child," "children" and "lineal descendants mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person.

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 12

Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder. **(emphasis added)**

Therefore, by the very language of the Trust and the prior pre alleged 2008 Simon Trust done with Shirley in 2008⁶ (see Exhibit A2), Ted Bernstein, in either scenario is wholly disinherited, predeceased and disqualified by these provisions to serve as a Successor Trustee as TED is considered DEAD for all purposes of the disposition and distributions of the trust. This is Prima Facie evidence for this Court to act on its own motion and instantly remove TED to protect the interests of the beneficiaries and others from an unqualified and possibly fraudulent successorship.

SPALLINA and TESCHER allegedly appointed TED as they parted in disgrace despite this language that disqualifies him, the language **that they wrote**. This transfer fraudulent transfer of fiduciary power and trusteeship was to retain the illegal Dominion and Control of the Estates and Trusts that TED, TESCHER and SPALLINA gained through the fraudulent documents, a criminal succession of trusteeship. TED, should have been removed with TESCHER and SPALLINA with his counsel Alan B. Rose, as they are centrally involved in the fraudulent schemes and illegal distributions made and TED and his minion of attorneys at law have benefited the most from the crimes committed by his former counsel TESCHER and SPALLINA. TESCHER and SPALLINA are also TED's close personal friends and business associates and TED brought them in to the Bernstein family. This illegal transfer assured TESCHER and SPALLINA a successor that

⁶ The original Simon Trust done in 2008 with Shirley was not turned over to beneficiaries until TESCHER and SPALLINA were ordered by the Court to turn over their records upon their removal in 2014 to the Curator Benjamin Brown, Esq.

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 13

would continue to aid and abet their crimes and attempt to cover them up in the Court and prevent the beneficiaries access to the estate and trust information. This continuation of breaches is alleged to be exactly what is taking place since TED has claimed these fiduciary roles, in what appears yet another Fraud on this Court by now the unfit and unqualified alleged successor TED and his last remaining lawyer Rose, after four have already abandoned him. In Shirley's Estate this Court appointed TED as PR after reopening the Estate due to TESCHER, SPALLINA and others frauds. TED, since the time of appointment in October 2013, has failed to provide, a full copy of the Shirley Will and Trusts with all Schedules and Addendums (as required by statute to account for the Trust Corpus/Trust Res) and has provided no statutorily required accountings. These intentional violations of Probate and Trust Rules and Statutes by TED since your honor found him fit in October 2013, and again this is a serious enough breach of fiduciary duties for this Court to instantly remove Theodore on its own motion as unfit, unqualified and for egregious breaches of fiduciary duties in failure to accountant.

B. Ted Bernstein, as Trustee of the Revocable Trust, has a Conflict of Interest with the Estate of Simon Bernstein.

At the time of SIMON'S death, it was determined that there existed a life insurance policy issued by Heritage Union Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 (the "Insurance Trust")⁷ as beneficiary.

Shortly after SIMON's death in 2012, Robert Spallina, one of the, resigning Co-Personal Representatives of the Estate of Simon Bemstein, resigning Co-Trustees of Simon's Revocable Trust, resigning counsel to the Co-Personal Representatives and Co-Trustees TESCHER and SPALLINA, resigning counsel to TED as Personal Representative of the Shirley Estate and resigning

⁷ The Court should note that in TESCHER and SPALLINA's production documents Ordered by this Court to be turned over to the appointed Curator, Benjamin Brown, Esq., turned up a 2000 insurance trust done by Proskauer Rose, LLP. This Proskauer insurance trust specifically mentioned the insurance policy as part of the trust corpus. This trust was discovered with correspondences indicating that it was intentionally secreted from this Court, a US Federal Court and the true and proper beneficiaries with intent and scienter and replaced with a scheme to use a "lost" and "missing" 1995 Insurance Trust that no executed copies exist for or have been produced. See Exhibit F.

counsel to TED as alleged Trustee in the Shirley Irrevocable Trusts, submitted a claim form to Heritage Union Life on behalf of the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 that he signed as "Trustee", for the benefit of the grown children of Simon Bernstein. SPALLINA did not tender the 2000 Proskauer Trust in his possession, instead intentionally secreting that. SPALLINA submitted this death benefit claim 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 "C" attached.) Under Florida law, if it is determined that no Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 existed at the time of SIMON's death, the insurance proceeds would be payable to the personal representative of the Estate. They would then after satisfying possibly any Creditors flow into a pour over trust for either Eliot, Lisa and Jill or the ten grandchildren of Simon, which will be determined by this Court in the future due to the frauds committed in the dispositive documents. In no scenario would TED or PAMELA receive any proceeds if they flowed into the Estate and thus have conflicting interests with their children that they allege to be beneficiaries of Simon's Estate and Trusts and other beneficiaries.

Because no executed insurance trust instrument was produced, Heritage refused to pay the life insurance proceeds to anyone without a court order and so DENIED the claim⁸. To this date, almost two years later, no executed trust instrument has been tendered in the Federal Illinois Insurance Litigation. That Ted Bernstein acting as "Trustee" on behalf of the legally nonexistent Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois (the

⁸ The Court should note that SPALLINA filed the claim acting as the trustee of the lost trust that he claims never to have seen or possessed and attempted to have the monies converted and comingled with his law firm Tescher & Spallina P.A. account.

The Court should further note that when the Illinois Life Insurance Litigation was filed shortly after SPALLINA's claim was denied, TED filed the lawsuit as trustee to the lost trust that he too claims never to have seen or possessed an executed copy of, replacing SPALLINA.

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 15

"Life Insurance Litigation") for Breach of Contract for Heritage's failure to pay the claim to the legally nonexistent trust. The case has since been removed to the United States District Court for the Northern District of Illinois in Chicago under the tutelage of the Honorable Amy St. Eve.

The Estate of Simon Bernstein filed a Motion to Intervene in the Life Insurance Litigation to assert the Estate's interest in the life insurance proceeds. The Plaintiffs, including TED acting as "Trustee", after SPALLINA initially filed the death benefit claim as the "Trustee" of the legally nonexistent trust, filed a Memorandum of Law in Opposition to the Estate's Motion to Intervene (the "Opposition Memorandum") (*See*, Exhibit "D," attached).

The opening paragraph of the Opposition Memorandum states as follows:

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, by **TED BERNSTEIN, as Trustee**, (collectively referred to as "BERNSTEIN TRUST"), **TED BERNSTEIN, individually**, PAMELA B. SIMON, JILL IANTONI AND LISA FRIEDSTEIN, and state as their Memorandum of Law in Opposition to the Estate of Simon Bernstein's Motion to Intervene as follows: **(emphasis added)**

TED stands to benefit personally if the claim by the Simon Bernstein Estate to the life insurance proceeds is defeated because TED and his siblings (**other than Eliot**) have taken the position that they are the beneficiaries of the legally nonexistent lost or missing Insurance Trust. Despite the opposition of TED BERNSTEIN to the Intervention, the court has granted the Estate's Motion to Intervene. TED is now an opposing party of record to the Estate's interest in the Life Insurance litigation.

TED, individually and as the alleged trustee of the alleged Insurance Trust, has placed his personal interests above the interests of the Revocable Trust beneficiaries, who are allegedly the grandchildren of SIMON or may be Eliot, Jill and Lisa, through TED's open, notorious and public opposition to the Estate's intervention in the Life Insurance Litigation. This creates an inherent conflict of interest for TED. TED, as successor trustee of the Revocable Trust, owes a duty of loyalty

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 16

under §736.0706(1), Fla. Stat. (2014) to the trust beneficiaries, to administer the trust solely in their interest. The Estate and trust beneficiaries are alleged to be the grandchildren of Simon Bernstein, although Eliot has challenged these documents done days before Simon's death validity, especially in light of already proven, admitted and alleged crimes committed in Shirley and Simon's Estate and Trusts. The crimes, include but are not limited to,

- i. six admitted instances of forgery (including Post Mortem for Simon),
- ii. a proven felony conviction rendered for an admitted six fraudulent notarizations (including Post Mortem for Simon),
- iii. an admitted fraudulent alteration of a Shirley's Trust document by SPALLINA,
- iv. Fraud on the Court through fraudulent and false instruments posited in the Court by Officers of the Court and Tescher & Spallina, PA law firm, acting on behalf of a DEAD Personal Representative to close the Estate of Shirley, and,
- v. the Governor Rick Scott's Notary Public Division's findings of improper notarizations on Simon's alleged 2012 Will and Amended and Restated Simon Bernstein Trust done 48 days before his death. The legally invalid notarizations leave it unknown if Simon was present on the day of signing the documents and the only witnesses to alleged signing of the document have already admitted to fraud, SPALLINA and MORAN.

This means TED must support, or at the least not obstruct, the efforts of the Estate to attempt to recover an additional alleged \$1.7 million in life insurance benefits⁹. If so recovered, this would dramatically increase the Estate assets that Eliot and/or his children will receive (when the Court determines the beneficiaries due to the residue effects of the crimes that attempted to change beneficiaries in the Estates and Trusts of Shirley and Simon that have caused intentional

⁹ The Court should also note that NO parties in the Insurance Litigation, including the life insurance carriers involved to date have produced a bona fide copy of the executed insurance policy for the Breach of Contract lawsuit that is based upon it and thus no terms, including the beneficiaries and the face are known at this time, making this yet another "Rabbit Hole" of apparent malfeasances.

interferences and delays with expectancies. By opposing intervention by the Estate TED's actions exposed the estate/trust assets to liability. The need to have this Court Order intervention was due to the fact that TED'S counsel and the prior Co-Personal Representatives/Executors and Co-Trustees Robert Spallina, Esq. and Donald Tescher, Esq. to the Estate, failed to file any intervener action on behalf of the Estate and in fact aided and abetted TED'S efforts to convert the asset of the Estate to TED by SPALLINA'S filing the alleged Fraudulent Insurance Claim to benefit his client TED. SPALLINA actually acted as the "Trustee" of the lost insurance trust that he claims never to have seen or possessed and also fraudulently acted as the "Trustee" of the primary beneficiary "LaSalle National Trust NA" at his business address, as evidenced in Exhibit C. When the carrier DENIED SPALLINA's claim, TED filed the Insurance Litigation as the Trustee of the lost trust and not SPALLINA. However, both TED and SPALLINA have made statements that they have never seen or possessed this missing trust and yet both claim to be "Trustee" for various of their fraudulent attempts to collect the proceeds outside the Estate.

Thanks to, this Court, William Stansbury (who has financed the counsel for the beneficiaries and his interests as a Creditor), Peter Feaman, Esq., Benjamin Brown, Esq. and others, the Estate is now represented by counsel. Once the disgraced TESCHER and SPALLINA were removed from these matters, the Estate was able by Order of the Court to retain counsel to intervene in the Federal action on behalf of the Estate of Simon in efforts to protect the beneficiaries. The Federal court has now allowed that intervention on behalf of the Estate of Simon and the Estate is represented for the first time in almost two years. More importantly, TED'S efforts in the Life Insurance Litigation are designed to keep the alleged \$1.7 million out of the estate and trust and to redirect the money to him and his siblings (excluding Eliot).

As a consequence of the foregoing, TED is in breach of his fiduciary duty to the beneficiaries of the Revocable Trust by opposing efforts to make the Estate more solvent, which in tum exposes

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 18

the Trust to increased liability, and warrants his removal under §736.0706(2)(a). Ted's continued interference is an attempt to redirect estate assets to himself personally and would further damage the estate beneficiaries. In addition, Ted's interference with his minion of Attorneys at Law has caused un-necessary and costly legal fees of an unknown amount since no accountings for legal fees have been submitted to this Court or the beneficiaries.

Additionally, this inherent and irreparable conflict of interest is a breach of his duty of loyalty and warrants removal under *Aiello, supra*, 793 So. 2d at 1152. *See also Brigham v. Brigham*, 119 So. 3d 374, 386 (Fla. 3d DCA 2009); *McCormick v. Cox*, 118 So. 3d 980, 987-88 (Fla. 3d DCA 2013) (removal of trustee was warranted where trustee had a conflict of interest and breach his fiduciary duties; trial court properly exercised its authority to remove trustee).

C. Misconduct in the Shirley Bernstein Estate and Trust

There are serious proven and admitted felony crimes and further allegations of fraud, forgery and fraudulently altered trust documents in the Shirley Bernstein Estate and Shirley Bernstein trust, where Ted Bernstein is the Personal Representative of the Estate and the alleged Successor Trustee of Shirley's trust. Documents were submitted to the Court bearing notarized signatures of Simon Bernstein on a date after he had passed away. The signatures were admitted to be FORGED for six parties, including Simon Post Mortem and Eliot. TESCHER and SPALLINA's Legal Assistant and Notary Public, Kimberly Francis Moran, confessed to Palm Beach County Sheriff Investigators that she fraudulently notarized and forged documents and since has been arrested and convicted of Felony misconduct. That these documents and others were then posited with the Court by TESCHER and SPALLINA through their law firm Tescher & Spallina P.A. on behalf of Simon acting as the PR/Executor while DEAD. Yes, Simon was DEAD yet acting as PR/Executor and where TESCHER and SPALLINA failed to notify the Court of his death and elect a successor to properly and legally close Shirley's Estate, instead using Simon to close the Estate four months after he had passed. This

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 19

was done as part of a larger fraud in efforts to change beneficiaries of Shirley`s irrevocable trust`s beneficiary class, committed through a series of Frauds on the Court that used Simon when he was dead, to appear living at the closing of Shirley`s Estate. No successor was appointed until this Court reopened the Estate of Shirley due to the fact that Simon closed the Estate as Personal Representative/Executor while dead.

This Court was apprised of these allegations in a hearing conducted September 13, 2013 wherein the Court stated it had enough Prima Facie evidence of felony criminal misconduct and Fraud on the Court by the potential parties involved in advancing these frauds, TED and SPALLINA, that Your Honor stated they should be read their Miranda Rights, twice. (*See* Transcript of Proceedings, pages 15 and 16, attached as Exhibit "E.")

Evidence and admissions of further felony misconduct have since been obtained regarding new acts recently uncovered and there are many new crimes being alleged after receiving new and damning evidence from the former disgraced fiduciaries and attorneys at law, TESCHER and SPALLINA, when they resigned and turned over their records and properties to the successor curator, Benjamin Brown, Esq. Brown then turned the information over finally to beneficiaries as part of their records and there appears to be a plethora of new crimes uncovered.

Further, the attorney, SPALLINA for TED BERNSTEIN as Personal Representative of the Estate of Shirley Bernstein has admitted to altering provisions of the Shirley Bernstein Trust to Palm Beach County Sheriff Investigators¹⁰, which had the effect of benefitting TED BERNSTEIN`s family primarily and directly in efforts to fraudulently and knowingly convert assets to TED`s family. That TED advanced the fraudulent beneficiary scheme to change Shirley`s beneficiaries of her irrevocable beneficiary class with TESCHER and SPALLINA. Statements made by SPALLINA to Palm Beach

¹⁰ Palm Beach County Sheriff Reports can be found at [www.iviewit.tv/Sheriff Reports.pdf](http://www.iviewit.tv/Sheriff%20Reports.pdf) , fully incorporated by reference herein.

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 20

Sheriff Investigators reveal that TED took distributions against the advice of his counsel, again making him wholly unfit to continue as a fiduciary in these matters.

TED also claimed to Palm Beach Sheriff Investigators that he had not read all of Shirley's trust documents that he was acting as fiduciary under, see the attached PBSO report.

Ted Bernstein's involvement with his former counsel TESCHER and SPALLINA¹¹ in such activity involving the Estate and Trust of Shirley Bernstein should disqualify him from serving as Successor Trustee of the Revocable Trust or any other fiducial capacities in the Estates and Trusts of Simon and Shirley.

That in addition to the instant pleading, the following already filed pleadings, in particular to the motions and petitions to remove TED, are hereby be incorporated in entirety with all Exhibits by reference herein, as additional facts and Prima Facie Evidence for the Court to consider in the removal of TED in all fiducial roles in the Estates and Trusts of Simon and Shirley Bernstein;

i. Docket #244 - Simon Estate (see Exhibit G)

MOT - MOTION
Filing Date: 28-AUG-2014
Filing Party: BERNSTEIN, ELIOT IVAN
Docket Text: (AMENDED) FOR REMOVAL OF PERSONAL REPRESENTATIVE AND TRUSTEE OF THE ESTATES AND TRUST OF SIMON AND SHIRLEY BERNSTEIN IN ALL FIDUCIAL CAPACITIES ON THE COURT'S OWN INITIATIVE UNEXECUTED ORDER ATTACHED EFILED

ii. Docket #215 - Simon Estate (see Exhibit H)

PET - PETITION
Filing Date: 29-JUL-2014
Filing Party: STANSBURY, WILLJAM E

¹¹ The Court should note that TED's current counsel, Alan B. Rose, Esq. was also involved in knowingly advancing the fraudulent beneficiary scheme with TESCHER, SPALLINA and TED and continues to advance such fraudulent scheme through continued toxic pleadings with this Court in efforts to now have the Court change Shirley trust documents, four years Post Mortem, in efforts to have the Court, through Fraud on the Court, change the beneficiaries of Shirley's Irrevocable Beneficiary Class to fit the crimes already committed by TED and his siblings, other than Eliot, when they knowingly took distributions to knowingly improper parties to mainly benefit TED and his sister Pamela Simon who were both disinherited and considered predeceased by both Simon and Shirley, for good and just cause and perhaps this Court is starting to see in part why their parents did not want them involved in the Estates and Trusts in any way, shape or form, as stated, "for all purposes."

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 21

Docket Text: PETITION TO REMOVE TED BERNSTEIN AS SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN REVOCABLE TRUST

iii. Docket #188 - Simon Estate (see Exhibit I)

188 RESP - RESPONSE TO:

Filing Date: 27-JUN-2014

Filing Party: STANSBURY, WILLIAM E

Docket Text: RESPONSE IN OPPOSITION TO THE APPOINTMENT OF TED BERNSTEIN AS SUCCESSOR PERSONAL REPRESENTATIVE AND MOTION FOR THE APPOINTMENT OF AN INDEPENDENT THIRD PARTY AS BOTH SUCCESSOR PERSONAL REPRESENTATIVE AND TRUSTEE OF THE SIMON BERNSTEIN TRUST AGREEMENT F/B

iv. Docket #126 - Simon Estate (see Exhibit J)

126 NOF - NOTICE OF FILING

Filing Date: 22-MAY-2014

Filing Party: William Stansbury

Docket Text: JOINDER IN PETITION FILED BY ELIOT IVAN BERNSTEIN FOR REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING F/B WILLIAM E. STANSBURY, CREDITOR OF THE E/O SIMON BERNSTEIN E-FILED

v. Docket # - Simon Estate (see Exhibit K)

97 PET PETITION

Filing Date: 07-APR-2014

Filing Party: Eliot Bernstein

Docket Text: PETITION FOR CONSTRUCTION OF TESTAMENTARY TRUST, FOR REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING BY ELIOT IVAN BERNSTEIN

WHEREFORE, Eliot Ivan Bernstein requests that THEODORE "TED" STUART BERNSTEIN, the alleged apparent successor trustee of the Shirley Bernstein Trust, be removed, that the court appoint a Successor Trustee with no apparent conflicts of interest, and that the Court require the filing of a Trust Accounting, whereby TED and the former removed fiduciaries, TESCHER and SPALLINA, have failed to file or tender to beneficiaries any accounting in the Estate of Shirley and

the Shirley trusts for four years and the Simon trust for two years¹².

Dated, Friday, September 12, 2014.

Eliot Bernstein, Pro Se, Individually and as
Legal Guardian on behalf of his minor three
children.

X

CERTIFICATE OF SERVICE

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the
foregoing has been furnished by email to all parties on the following Service List, Friday,
September 12, 2014.

Eliot Bernstein, Pro Se, Individually and as
Legal Guardian on behalf of his minor three
children

X

SERVICE LIST

¹² The Court should note that NO COMPLETE TRUSTS OR WILLS HAVE EVER BEEN PROVIDED to beneficiaries with all of the Schedules and Addendums attached to show what the Corpus of each entity is and the only accounting tendered in these matters was for Simon's Estate. The accounting provided was upon the Court's Order for TESCHER and SPALLINA to file a Final Accounting upon their termination. That accounting has been challenged by ALL parties, including, the Curator Benjamin Brown, Esq., the new Personal Representative of the Simon Estate, Brian O'Connell, Esq. and Eliot, for gross violations of statutory accounting rules and regulations and more.

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 23

<p>RESPONDENT PERSONALLY, PROFESSIONALLY, AS A GUARDIAN AND TRUSTEE FOR MINOR/ADULT CHILDREN, AS AN ALLEGED TRUSTEE AND ALLEGED PERSONAL REPRESENTATIVE</p> <p>Theodore Stuart Bernstein Life Insurance Concepts 950 Peninsula Corporate Circle, Suite 3010 Boca Raton, Florida 33487 tbernstein@lifeinsuranceconcepts.com</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 arose@pm-law.com and arose@mrachek-law.com mchandler@mrachek-law.com cklein@mrachek-law.com lmrachek@mrachek-law.com rfitzgerald@mrachek-law.com skonopka@mrachek-law.com dthomas@mrachek-law.com gweiss@mrachek-law.com jbaker@mrachek-law.com mchandler@mrachek-law.com lchristian@mrachek-law.com telarke@mrachek-law.com gdavies@mrachek-law.com pgillman@mrachek-law.com dkelly@mrachek-law.com cklein@mrachek-law.com lwilliamson@mrachek-law.com</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 courtfilings@pankauskilawfirm.com john@pankauskilawfirm.com</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM AND AS FORMER COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Robert L. Spallina, Esq., Tescher & Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 rspallina@tescherspallina.com kmoran@tescherspallina.com ddustin@tescherspallina.com</p>
<p>RESPONDENT INDIVIDUALLY AND AS GUARDIAN AND TRUSTEE OF HER MINOR CHILD</p> <p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	<p>COUNSEL FOR LIMITED APPEARANCE representing Mr. Tescher in connection with his Petition for Designation and Discharge as Co-Personal Representative of the Estate of Simon L. Bernstein, deceased.</p> <p>Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway Suite 200 Boca Raton, Florida 33432 ijb@ijblegal.com martin@kolawyers.com</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and FORMER WITHDRAWN COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES, NO NOTICES OF APPEARANCES</p> <p>Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net mrmlaw1@gmail.com</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM AND AS FORMER COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Donald Tescher, Esq., Tescher & Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 dtescher@tescherspallina.com dtescher@tescherspallina.com</p>

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 24

			ddustin@tescherspallina.com m kmoran@tescherspallina.com m
RESPONDENT INDIVIDUALLY AND AS GUARDIAN AND TRUSTEE OF HER MINOR CHILD Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com	COUNSEL TO CREDITOR WILLIAM STANSBURY Peter Feaman, Esquire Peter M. Feaman, P.A. 3615 Boynton Beach Blvd. Boynton Beach, FL 33436 pfeaman@feamanlaw.com service@feamanlaw.com mkoskey@feamanlaw.com	COURT APPROVED CURATOR TO REPLACE THE REMOVED FORMER PERSONAL REPRESENTATIVES/CO-TRUSTEES/COUNSEL TO THEMSELVES AS FIDUCIARIES TESCHER AND SPALLINA Benjamin Brown, Esq., Thornton B Henry, Esq., and Peter Matwiczkyk Matwiczkyk & Brown, LLP 625 No. Flagler Drive Suite 401 West Palm Beach, FL 33401 bbrown@matbrolaw.com attomeys@matbrolaw.com bhenry@matbrolaw.com pmatwiczkyk@matbrolaw.com	COUNSEL FOR JILL IANTONI and LISA FRIEDSTEIN William M. Pearson, Esq. P.O. Box 1076 Miami, FL 33149 wpearsonlaw@bellsouth.net
RESPONDENT INDIVIDUALLY AND AS GUARDIAN AND TRUSTEE OF HER MINOR CHILD Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 lisa@friedsteins.com lisa.friedstein@gmail.com lisa@friedsteins.com	COUNSEL FOR JILL IANTONI and LISA FRIEDSTEIN William H. Glasko, Esq. Golden Cowan, P.A. 1734 South Dixie Highway Palmetto Bay, FL 33157 bill@palmettobaylaw.com eservice@palmettobaylaw.com m tmealy@gcprobatelaw.com	RESPONDENT - ADULT CHILD Alexandra Bernstein 3000 Washington Blvd, Apt 424 Arlington, VA, 22201 alb07c@gmail.com	RESPONDENT ARRESTED AND CONVICTED OF FRAUD AND ADMITTED TO FORGERY OF SIX SIGNATURES, INCLUDING POST MORTEM FOR SIMON/HAS HAD NOTARY PUBLIC LICENSE REVOKED BY FLORIDA GOVERNOR RICK SCOTT NOTARY PUBLIC DIVISION. *See notes Kimberly Moran kmoran@tescherspallina.com m

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 25

<p>RESPONDENT – ADULT CHILD</p> <p>Eric Bernstein 2231 Bloods Grove Circle Delray Beach, FL 33445 ebenstein@lifeinsuranceconcepts.com edb07@fsu.edu edb07fsu@gmail.com</p>	<p>RESPONDENT – INITIALLY MINOR CHILD AND NOW ADULT CHILD</p> <p>Michael Bernstein 2231 Bloods Grove Circle Delray Beach, FL 33445 mchl_bernstein@yahoo.com</p>		<p>COUNSEL TO ALEXANDRA, ERIC AND MICHAEL BERNSTEIN AND MOLLY SIMON</p> <p>John P Morrissey, Esq. John P. Morrissey, P.A. 330 Clematis Street Suite 213 West Palm Beach, FL 33401 john@jmorrisseylaw.com</p>
<p>RESPONDENT – ADULT STEPSON TO THEODORE</p> <p>Matt Logan 2231 Bloods Grove Circle Delray Beach, FL 33445 matl89@aol.com</p>	<p>RESPONDENT'S MINOR CHILDREN OF PETITIONER 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</p>	<p>RESPONDENT – MINOR CHILD</p> <p>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</p>	
<p>RESPONDENT/REPRIMANDED BY FLORIDA GOVERNOR RICK SCOTT NOTARY PUBLIC DIVISION FOR FAILING TO NOTARIZE AN ALLEGED 2012 WILL AND TRUST OF SIMON AND SIGNING NOTARY UNDER FALSE NAME</p> <p>Lindsay Baxley aka Lindsay Giles lindsay@lifeinsuranceconcepts.com</p>	<p>RESPONDENT MINOR CHILDREN</p> <p>Carley & Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 Lisa@friedsteins.com lisa.friedstein@gmail.com</p>	<p>RESPONDENT – MINOR CHILD INITIALLY NOW ADULT CHILD</p> <p>Molly Simon 1731 N. Old Pueblo Drive Tucson, AZ 85745 molly.simon1203@gmail.com</p>	

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

Page 26

EXHIBIT A

2012 ALLEGED AMENDED AND RESTATED TRUST OF SIMON L.
BERNSTEIN



EXHIBIT

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE
Friday, September 12, 2014

BATES NO. EIB 003217
02/27/2017

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

LAW OFFICES
TESCHER & SPALLINA, P.A.

EXHIBIT A

SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is dated this 26 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "*Trustee*," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "*Trust Agreement*," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. **Payments During My Life.** If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

LAW OFFICES
TESCHER & SPALLINA, P.A.

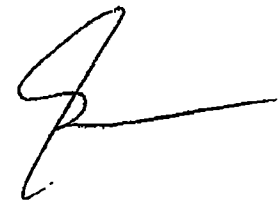
C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "*beneficiary*" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. Trusts for Beneficiaries. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:



1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

D. Termination of Small Trust. If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

E. Contingent Gift. If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

F. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

G. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

ARTICLE III. GENERAL

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

-3-

LAW OFFICES
TESCHER & SPALLINA, P.A.

BATES NO. EIB 003221
02/27/2017

A. **Disability.** Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. **Timing of Income Distributions.** The Trustee shall make required payments of income at least quarterly.

C. **Substance Abuse.**

1. **In General.** If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. **Testing.** The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. **Treatment.** If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an

in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*," "*grandchild*," "*grandchildren*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is



raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to



such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such



Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Release of Medical Information.

1. Disability of Beneficiary. Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested



beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph LA hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any

decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.



4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole

proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

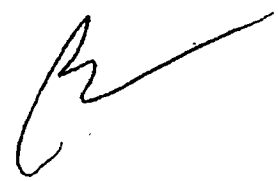
e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.



11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.



18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this

paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust



hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C., subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

a. The remaining Trustees, if any; otherwise,

b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or



entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. **Power to Remove Trustee.** Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. **Method of Appointment of Trustee.** Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. **Limitations on Removal and Replacement Power.** Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. **Successor Fiduciaries.** No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. **Liability and Indemnification of Trustee.**

1. **Liability in General.** No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. **Indemnification of Trustee.** Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual



and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the



Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts. I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons



designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

-20-

LAW OFFICES
TESCHER & SPALLINA, P.A.



1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. **Recipients.** The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).



2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

F. **Subchapter S Stock.** Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. **Residence as Homestead.** I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

[remainder of page intentionally left blank]



IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

[Handwritten signature of Simon L. Bernstein]

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 27 day of July, 2012:

[Handwritten signature of Robert L. Spallina]
Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARRLAND, FL 33076

[Handwritten signature of Kimberly Moran]
Print Name: Kimberly Moran
Address: 6362 Las Flores Drive
Boca Raton, FL 33433

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.

[Handwritten signature of Lindsay Baxley]
Signature - Notary Public-State of Florida
Lindsay Baxley
Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]

NOTARY PUBLIC-STATE OF FLORIDA
Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

EXHIBIT A2

2008 ALLEGED TRUST OF SIMON BERNSTEIN

EXHIBIT
PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE
Friday, September 12, 2014

BATES NO. EIB 003243
02/27/2017

SIMON L. BERNSTEIN

TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

SIMON L. BERNSTEIN

TRUST AGREEMENT

This Trust Agreement is dated this 20th day of May, 2008, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee). Said Trustee acknowledges receipt of the property described in the Attachment to this Agreement, and agrees to hold said property and all additions, in trust, as provided in this Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

B. Payments During My Life. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare, and also may in its discretion pay to my spouse such amounts of said net income and principal as is proper for her Welfare. Any income not so paid shall be added to principal.

C. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. **Recipients.** The gifts may be made only to my spouse and my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. **Trustee Limited.** When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent

SIMON L. BERNSTEIN
TRUST AGREEMENT

TESCHER & SPALLINA, P.A.



(5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

D. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Marital Deduction Gift. If my spouse survives me:

1. Family Trust. The Trustee shall hold as a separate "*Family Trust*" (i) all property of the trust estate as to which a federal estate tax marital deduction would not be allowed if it were distributed outright to my spouse, and (ii) after giving effect to (i), the largest pecuniary amount which will not result in or increase any federal or state death tax otherwise payable by reason of my death. In determining the pecuniary amount the Trustee shall assume that none of this Family Trust qualifies for a federal estate tax deduction, and shall assume that all of the Marital Trust hereinafter established (including any part thereof disclaimed by my spouse) qualifies for the federal estate tax marital deduction. I recognize that the pecuniary amount may be reduced by certain state death taxes and administration expenses which are not deducted for federal estate tax purposes.

2. Marital Trust. The balance of the trust remaining after the establishment of the Family Trust shall be held as a separate "*Marital Trust*."

Notwithstanding the foregoing, prior to the funding of the Family Trust and the Marital Trust under this Subparagraph II.B., or only the Family Trust if my spouse does not survive me, the Trustees of this Trust



or the Personal Representatives of my estate as the case may be, shall finalize the sale of my shares in LIC HOLDINGS, INC., a Florida corporation or its successor in interest ("**LIC HOLDINGS**"), owned by me or this Trust at the time of my death, pursuant to that certain buy-sell agreement entered into by and between my son, TED S. BERNSTEIN, and me. Upon the sale of such shares, the Trustee shall fund the trust(s) provided for hereunder.

3. Disclaimer. Any part of the Marital Trust my spouse disclaims shall be added to the Family Trust. My spouse shall not be deemed to have predeceased me for purposes of such addition. I suggest that my spouse or my spouse's fiduciaries consider an appropriate partial disclaimer to minimize the death taxes due upon both of our deaths.

If my spouse does not survive me, the entire trust shall be held as the Family Trust without regard to the provisions of Subparagraph II.B.1 describing or limiting which assets shall be held thereunder.

C. During Spouse's Life. Commencing with the date of my death the Trustee shall,

1. Marital Trust. Pay to my spouse from the Marital Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare; and

2. Family Trust. Pay to my spouse from the Family Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare. I request (but do not require) that no principal be paid to my spouse from the Family Trust for my spouse's Welfare unless the Marital Trust has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

D. Disposition of Trusts Upon Death of Survivor of My Spouse and Me. Upon the death of the survivor of my spouse and me,

1. Limited Power. My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or for the benefit of one or more of my lineal descendants and their spouses;

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and held in separate Trusts for my lineal descendants then living, *per stirpes*. Any assets allocated under this Subparagraph II.D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by me as grantor on even date herewith (the "**Family Trusts**" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts



for such lineal descendants and administered as provided in Subparagraph II.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "*beneficiary*," with their separate trusts to be administered as provided in Subparagraph II.E. below.

E. Trusts for Beneficiaries. The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

F. Termination of Small Trust. If at any time after the death of the survivor of my spouse and me in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

G. Contingent Gift. If at any time property of a trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if my spouse and I had each then owned one-half of such property and had each then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.



H. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

I. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years as provided in F.S. § 689.225(2)(a)(2), nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

J. Florida Homestead Possessory Rights. Notwithstanding anything herein to the contrary, if any portion of any Florida improved residential real estate (excluding commercial multi-unit rental property) is an asset of the Marital Trust, my spouse shall have the exclusive and continuous present right to full use, occupancy and possession of such real estate for life. It is my intention that my spouse's interest in such property shall constitute a "beneficial interest for life" and "equitable title to real estate" as contemplated by Section 196.041(2) of Florida Statutes, as amended from time to time or any corresponding provision of law.

ARTICLE III. GENERAL

A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary (other than my spouse as beneficiary of the Marital Trust) is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.



C. Substance Abuse.

1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended (excluding, however, mandatory income rights under the Marital Trust). In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to



the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("*TED*") and PAMELA B. SIMON ("*PAM*"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.



2. Code. "**Code**" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "**Disabled**" or being under "**Disability**" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "**education**" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. My Spouse. "**My spouse**" is SHIRLEY BERNSTEIN ("**SHIRLEY**").

6. Needs and Welfare Distributions. Payments to be made for a person's "**Needs**" means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's "**Welfare**" means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

7. Per Stirpes. In a division "**per stirpes**" each generation shall be represented and counted whether or not it has a living member.



8. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

9. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

10. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.



H. **Presumption of Survivorship.** If my spouse and I die under circumstances which make it difficult or impracticable to determine which one of us survived the other, I direct that my spouse shall be deemed to have survived me for purposes of this Agreement (except in regard to any property passing hereunder that became part of this trust solely by reason of passage to my probate estate or this trust from the probate estate of or a revocable trust established by my spouse in which case the opposite presumption shall apply), notwithstanding any provisions of law which provide for a contrary presumption. If any person other than my spouse shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. **Governing Law.** This Agreement is governed by the law of the State of Florida.

J. **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. **Mandatory Notice Required by Florida Law.** The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

L. **Release of Medical Information.**

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or



at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.



2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and



personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;



b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to

exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under



a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Selection of Assets for Marital Trust. The Trustee shall have sole discretion to determine which assets shall be allocated to the Marital Trust; provided, if possible no assets or the proceeds of any assets which do not qualify for the federal estate tax marital deduction shall be allocated to the Marital Trust. To the extent that other assets qualifying for the marital deduction are available, the Trustee shall not allocate to the Marital Trust any assets with respect to which a credit for foreign taxes paid is allowable under the Code, nor any policy of insurance on the life of my spouse. Any allocation of assets among the Family Trust and the Marital Trust shall, with respect to each such trust, be comprised of assets having an aggregate market value at the time of such allocation fairly representative of the net appreciation or depreciation in the value of the property available for such



allocation between the date of valuation for federal estate tax purposes and the date or dates of said allocation and selection.

26. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

27. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

28. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate or my spouse's estate.

29. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

30. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, SHIRLEY and WILLIAM E. STANSBURY ("**BILL**"), or either of them alone if the other is unable to serve, shall serve as successor co-Trustees or Trustee as the case may be. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a



trust hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances:

a. Trustee of the Marital Trust. SHIRLEY shall serve as Trustee of the Marital Trust. While serving as Trustee, my spouse may designate a co-Trustee to serve with my spouse and my spouse may remove and/or replace such co-Trustee from time to time.

b. Trustee of the Family Trust. SHIRLEY shall serve as Trustee of the Family Trust. While serving as Trustee, my spouse may designate a co-Trustee that is not a Related or Subordinate Party to serve with my spouse and my spouse may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

c. Trustee of Separate Trusts for My Children. Each child of mine shall serve as sole Trustee of his or her separate trust. While serving alone as Trustee, a child of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such child and such child may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

d. Trustee of Separate Trusts for My Lineal Descendants Other Than My Children. In regard to a separate trust held for a lineal descendant of mine other than a child of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon reaching age twenty-five (25).

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

- a. The remaining Trustees, if any; otherwise,
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two



witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 25 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from



the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without



liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts.

1. **Family Trust.** I direct (a) that the Trustee shall divide any trust other than the Marital Trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions of this Trust Agreement relating to the trust that is being divided) so that the generation-skipping tax inclusion ratio of one such trust is zero.

2. **Marital Trust.** I direct that, if possible, (a) the Trustee shall divide the Marital Trust into two separate Marital Trusts (each subject to the provisions hereof concerning the Marital Trust) so that through allocation of my GST exemption remaining unallocated at my death and not otherwise allocated to transfers occurring at or by reason of my death (including allocations to the Family Trust), if any, the generation-skipping tax inclusion ratio of one such Marital Trust is zero (the GST Marital Trust), (b) my Personal Representative to exercise the election provided by Code Section 2652(a)(3) as to the GST Marital Trust, and (c) that upon the death of my spouse the total amount recoverable by my spouse's estate from the property of the Marital Trusts under Code Section 2207A shall first be recoverable in full from the non-GST Marital Trust to the extent thereof.

3. **Misc.** I direct that (a) upon the death of the survivor of me and my spouse, any property then directed to be paid or distributed which constitutes a direct skip shall be paid first from property then exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) to the extent thereof, (b) property exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) and not directed to be paid or distributed in a manner which constitutes a direct skip shall be divided and distributed as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and lineal descendants, in such estates, interests, and proportions as such beneficiary may, by a will specifically referring to this general power appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available. Notwithstanding any other provision of this Trust Agreement, for purposes of funding any pecuniary payment or trust division to which there is allocated any GST exemption, such payment or trust division allocation shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such



distribution or allocation could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. In regard to the division or severance of a trust hereunder, including the Marital Trust, such division or severance shall be made in a manner that all resulting trusts are recognized for purposes of Chapter 13 of the Code, including without limitation complying with the requirements of Treas.Reg. §26.2654-1(b). Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this Article which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.



2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property" nor from the Marital Trust.

E. Marital Trust. I intend the maximum obtainable reduction of federal estate tax due by reason of my death by use of the federal estate tax marital deduction, and qualification of all property of the Marital Trust for the marital deduction. This Agreement shall be construed and all powers shall be exercised consistent with such intent. For example, the Trustee shall not allocate any receipt to principal or any disbursement to income if such allocation understates the net income of the Marital Trust under Florida law; and upon the written demand of my spouse, the Trustee shall convert unproductive or underproductive property of said trust into productive property within a reasonable time notwithstanding any other provision hereunder. The foregoing notwithstanding, if my spouse survives me but dies within six months after my death, the Marital Trust provided in Subparagraph II.B will be reduced to that amount, if any, required to obtain for my estate an estate tax marital deduction resulting in the lowest combined estate taxes in my estate and my spouse's estate, on the assumption that my spouse died after me on the date of my death, that my spouse's estate is valued on the same date and in the same manner as my estate is valued for federal estate tax purposes, and that elections in my spouse's estate were made that would be consistent with minimizing taxes. The purpose of this provision is to equalize, insofar as possible, our estates for federal estate tax purposes, based on the above assumptions.

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.



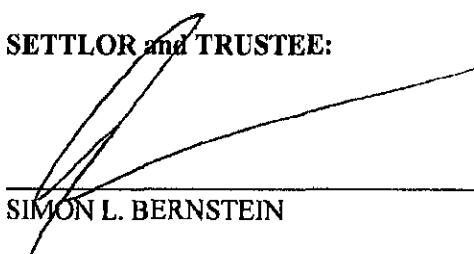
G. Residence as Homestead. Regardless of anything herein to the contrary, while any residential real property located in Florida is owned by a trust, I, or my spouse if I am not then living and such trust is the Marital Trust, shall have the right to use, possess and occupy such residence as a personal residence so that such right shall constitute a possessory right in such real property within the meaning of Florida Statute Section 196.041.

[remainder of page intentionally left blank]

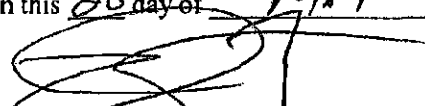



IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:


SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 20 day of May, 2008:

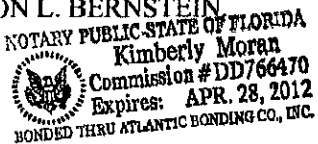

Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

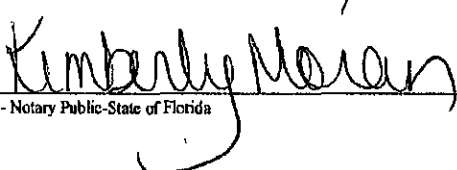

Print Name: TRACI KRATISH
Address: 16068 GLENCREST AVE
DEERBURY BEACH, FL 33446

STATE OF FLORIDA
COUNTY OF PALM BEACH

SS.

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SIMON L. BERNSTEIN




Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known or Produced Identification _____
Type of Identification Produced _____

FAWPDATA\dr\Demarcin, Shirley & Simon\2008 Estate Planning\Simon L. Bernstein Trust Agreement.wpd [05/15/24 19:08]

SIMON L. BERNSTEIN
TRUST AGREEMENT

TESCHER & SPALLINA, P.A.

ATTACHMENT

The following property has been delivered in trust under this Agreement:

One Dollar (\$1.00) Cash

During my life, the Trustee has no duty to maintain, invest, review, insure, account for, or any other responsibility with respect to trust property other than income producing property, or any duty to pay premiums on life insurance payable to the trust, and shall receive no fee for its services as Trustee based on any trust property other than income producing property.



SIMON L. BERNSTEIN, Settlor and Trustee

WILL OF
SIMON L. BERNSTEIN

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

CONFORMED COPY

WILL OF

SIMON L. BERNSTEIN

The original of this Will is being held in the safe deposit box of the law firm of Tescher & Spallina, P.A.

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. My spouse is SHIRLEY BERNSTEIN ("**SHIRLEY**"). My children are TED S. BERNSTEIN ("**TED**"), PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to SHIRLEY, if SHIRLEY survives me, my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if SHIRLEY does not survive me, I give this property to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical, and if neither SHIRLEY nor any child of mine survives me, this property shall pass with the residue of my estate.

ARTICLE II. RESIDENCES

I give to SHIRLEY, if SHIRLEY survives me, my entire interest in any real property used by us as a permanent or seasonal residence, subject to any mortgage or other lien. If SHIRLEY does not survive me, such interest shall pass with the residue of my estate.

ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate to the Trustee then serving under my revocable Trust Agreement dated today, as may be amended and restated from time to time (the "*Existing Trust*"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

LAST WILL
OF SIMON L. BERNSTEIN

TESCHER & SPALLINA, P.A.

ARTICLE IV. PERSONAL REPRESENTATIVES

1. **Appointment and Bond.** I appoint SHIRLEY and WILLIAM E. STANSBURY, or either of them alone if the other is unable to serve, as my Personal Representative (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. **Powers of Personal Representatives.** My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. **Investments.** To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. **Distributions or Divisions.** To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. **Management.** To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. **Borrowing.** To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on

the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and

define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. Survivorship. A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. Death Costs. My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Articles I and II of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs.

5. Reimbursement for Debts and Expenses. My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. Expenses of Handling Tangible Personal Property. All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. Dealing with Estate. Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good

faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. **Spouse.** The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

[remainder of page intentionally left blank]

I have published and signed this instrument as my Will at Boca Raton, Florida, on the 20 day of May, 2008.

/s/ Simon L. Bernstein
SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this 20 day of May, 2008.

/s/ Robert L. Spallina residing at 7387 Wisteria Ave
[Witness Signature] [Witness Address]

Parkland, FL 33076
[Witness Address]

/s/ Diana Banks residing at 23415 Boca Trace Dr
[Witness Signature] [Witness Address]

Boca Raton, FL 33433
[Witness Address]

State Of Florida

SS.

County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

/s/ Simon L. Bernstein
SIMON L. BERNSTEIN, Testator

We, Robert Spallina and Diana Banks, have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

/s/ Robert L. Spallina
Witness

/s/ Diana Banks
Witness

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced _____ (state type of identification) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced _____ (state type of identification) as identification, and Diana Banks, who is personally known to me or who has produced _____ (state type of identification) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this 20 day of May, 2008.

Kimberly Moran
Commission # DD766470
Expires: APR. 28 2012

/s/ Kimberly Moran
Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

F:\WPDATA\drt\Bernstein, Shirley & Simon\2008 Estate Planning\Will of Simon L. Bernstein.wpd [08/15/41:29 5 19]

LAST WILL
OF SIMON L. BERNSTEIN

TESCHER & SPALLINA, P.A.

SIMON L. BERNSTEIN
IRREVOCABLE TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

SIMON L. BERNSTEIN

IRREVOCABLE TRUST AGREEMENT

THIS AGREEMENT, made this 20 day of May, 2008, between SIMON L. BERNSTEIN, of Palm Beach County, Florida hereafter called "Trustor," and WILMINGTON TRUST COMPANY, a Delaware corporation, hereafter called "Trustee," WITNESSETH:

WHEREAS, Trustor desires to establish a trust of the property described in the attached "Schedule A" and other property which may be added from time to time, all of which is hereafter called the "trust fund;" and

WHEREAS, Trustee accepts such trust and agrees to administer it in accordance with the terms and conditions of this agreement;

NOW, THEREFORE, Trustor hereby gives Trustee the property described in "Schedule A," in trust, for the following purposes:

SECTION 1: DISTRIBUTION.

A. During Trustor's Lifetime. During Trustor's lifetime, Trustee may, from time to time and subject to Subsection D of this Section 1, distribute all, some, or none, of the net income and principal to Trustor and Trustor's wife, SHIRLEY BERNSTEIN, as Trustee deems appropriate. Trustee shall take into account other sources of funds available to them. Trustee shall accumulate any net income not so distributed and add it to principal, to be disposed of as a part of it.

B. On Trustor's Death. On Trustor's death, Trustee shall distribute the trust fund to such person or persons, other than Trustor, Trustor's creditors, Trustor's estate, and the creditors of Trustor's estate, in such manner and amounts, and on such terms, whether in trust or otherwise, as Trustor effectively appoints by specific reference hereto in his Will. However, Trustor may, from time to time, release this special power of appointment, in whole or in part, by a written instrument delivered to Trustee during his lifetime. On Trustor's death, Trustee shall distribute the remaining assets of this Trust to the then serving Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 13, 2008, as may be amended and restated from time to time, to be held and administered as provided thereunder.

C. Contingent Gift. If at any time Trustee holds any portion of the principal of any trust not disposed of effectively under the previous provisions, then at such time Trustee shall distribute such principal, free from trust, to such then living person or persons as are then determined to be Trustor's distributees by the application of the intestacy laws of the State of Delaware governing the distribution of intestate personal property then in effect, as though Trustor had died at that particular time, intestate, a resident of the State of Delaware and owning such property then so distributable.

²
TESCHER & SPALLINA, P.A.



D. Distribution Adviser. Trustee shall exercise its discretionary power to distribute income and/or principal to Trustor's wife pursuant to Subsection A of this Section 1 only with the written consent of the distribution adviser who shall be Trustor, so long as he is willing and able to act in such capacity. If at any time there is no distribution adviser, or if such adviser fails to express in writing to Trustee consent or disapproval as to the exercise of any discretionary power within fifteen (15) calendar days after Trustee has sent a written request for such consent to such adviser's last known address by certified mail (or by any other means for which the sender shall have evidence of receipt by the addressee), Trustee may act in the matter as it deems appropriate. The distribution adviser shall act in a fiduciary capacity and conform to the purposes of this agreement. Such adviser shall have no duty to inquire into or see to the performance by Trustee of its duties under this agreement. The distribution adviser shall receive no compensation and shall not be reimbursed for expenses incurred while acting as such adviser.

SECTION 2: MERGER WITH SIMILAR TRUSTS.

If at any time a trust is set aside for any person or persons under the terms of this agreement which is substantially the same as any other trust established for that person or persons by Trustor or Trustor's wife, Trustee may, in its sole discretion, merge the trust created hereunder with the other trust for such person or persons, and the two trusts shall thereafter be held, administered, and distributed as one.

SECTION 3: ALTERNATIVE METHODS OF DISTRIBUTION.

Trustee may take any reasonable steps to disburse funds to or for a beneficiary, including: (i) distribution, either by hand or mail, to the beneficiary or the guardian of the person or property (whether the guardian is formally appointed or a natural guardian), (ii) distribution to a custodian for the beneficiary under the Uniform Transfers to Minors Act (or similar statute) of any state, (iii) deposit to the account of the beneficiary in any federally insured depository, or (iv) direct application for the benefit of the beneficiary.

SECTION 4: SPENDTHRIFT PROVISION.

No beneficiary (including Trustor) may alienate or in any other manner, whether voluntary or involuntary, assign, transfer, pledge, or mortgage his or her interest in any trust hereunder, and no one (including a spouse or former spouse) may attach or otherwise reach any interest of any beneficiary hereunder to satisfy a claim against that beneficiary, whether the claim is legal or equitable in origin. The provisions of this Section shall not limit or otherwise affect any power of appointment conferred upon a beneficiary or the right of a beneficiary to disclaim or release any interest created hereunder. This Section constitutes a restriction on the transfer of Trustor's beneficial interest in the trust fund that is enforceable under applicable non-bankruptcy laws within the meaning of Section 541(c)(2) of the Bankruptcy Code (11 U.S.C. § 541(c)(2)) or any other similar or successor statute.

3
TESCHER & SPALLINA, P.A.

SECTION 5: PAYMENT OF DEATH TAXES, DEBTS, AND EXPENSES OF ADMINISTRATION.

On the death of the Trustor, Trustee shall, unless otherwise directed by the beneficiary's Will or Revocable Trust Agreement, distribute to the Personal Representative of the beneficiary's estate an amount equal to the sum of all additional transfer taxes and costs of administration payable by such Personal Representative as a result of the inclusion of the trust in the Trustor's estate. Certification of such Personal Representative as to the amount of such additional taxes and costs will be determinative for all purposes. Trustee shall make such distributions directly to the appropriate payee, if so directed by such Personal Representative.

SECTION 6: TRUSTEE'S POWERS.

In addition to those powers granted by law, Trustee is specifically authorized and empowered, in its sole discretion, but subject to the provisions of Section 7:

A. To sell at public or private sale, exchange for like or unlike property, convey, lease for terms longer or shorter than the trust, and otherwise dispose of any or all property held hereunder, for such price and upon such terms and credits as it deems proper.

B. To invest in any kind of property, real, personal, or mixed, regardless of the laws governing investments by fiduciaries, without any duty to diversify investments.

C. Unless otherwise directed by the investment adviser named in Section 7 hereof, to execute securities transactions, without necessity of providing written confirmation thereof to such adviser at the time of settlement, and to execute securities transactions through any brokerage service, whether discount or full service, including Wilmington Brokerage Services at its normal rates of compensation, without diminution of compensation otherwise payable to Trustee, even if Wilmington Trust Company is serving as Trustee.

D. To vote directly or by proxy at any election or stockholders' meeting any shares of stock, excluding stock of Wilmington Trust Corporation.

E. To participate in any plan or proceeding, including any voting trust plan for liquidating, protecting, or enforcing any interest in any property, or for reorganizing, consolidating, merging, or adjusting the finances of any corporation issuing any such interest; to accept in lieu thereof any new or substituted stocks, bonds, notes, or securities, whether of the same or a different kind or class, or with different priorities, rights, or privileges; to pay any assessment or any expense incident thereto; and to do any other act or thing that it deems necessary or advisable in connection therewith.

F. To deposit, or arrange for the deposit of, securities at Depository Trust Company (DTC) and/or at any other securities depository or clearing corporation.

4
TESCHER & SPALLINA, P.A.



G. To make any division or distribution in cash or in kind, or partly in cash and partly in kind; and to elect to recognize taxable gain or loss resulting from a distribution. Trustee may consider the income tax basis of the property then available for division or distribution, as well as the circumstances of the beneficiaries, and need not make division or distribution on a pro rata, asset-by-asset basis. Trustee shall not adjust the interest of any beneficiary as a result of any action taken or forborne under the provisions of this Subsection G.

H. To make loans, against adequate collateral, to any person including the Personal Representative of the estate of Trustor or any beneficiary and/or to purchase any property at its then fair market value from any person including such Personal Representative.

I. To borrow money from any person or corporation, including Trustee, and to pledge or mortgage as security any real or personal property.

J. To litigate, submit to arbitration, compromise, or settle any claim in favor of or against any trust hereunder, and to execute all agreements, deeds, and releases necessary or proper in connection therewith.

K. To retain attorneys-at-law, accountants, investment counsel, agents, and other advisers without diminution of compensation otherwise payable to Trustee.

L. To pay the taxes and expenses of maintaining, repairing, improving, and insuring any real property held hereunder.

M. To receipt for the proceeds of any life insurance made payable to Trustee, to institute any suit or proceedings, and to take any action necessary to collect such proceeds. However, Trustee need not institute any suit or proceeding unless its expenses, including counsel fees and costs, are available in the trust fund or are advanced or guaranteed in an amount and in a manner reasonably satisfactory to it.

N. To renounce, in whole or in part, any property or interest in property which may become payable to any trust hereunder, except to the extent that the distribution of such property resulting from such renunciation is fundamentally inconsistent with the provisions of this agreement.

O. To divide any trust hereunder into separate trusts if the purposes for which the trust was created are better served thereby.

P. To consider gains from the sale of capital assets in the trust to be part of a mandatory or discretionary distribution of principal to a beneficiary.

SECTION 7: INVESTMENT ADVISER.

Trustee shall exercise the powers hereinbefore granted to it in Subsections A, B,

5
TESCHER & SPALLINA, P.A.



D, E, H and I of Section 6 with respect to each trust hereunder only with the written consent or on the written direction of the investment adviser of such trust, provided that: (i) Trustee shall sell any Wilmington Trust Corporation stock held by it hereunder unless specifically directed to do otherwise by such adviser; (ii) the purchase, sale, and voting of Wilmington Trust Corporation stock shall be solely on the direction of the investment adviser; (iii) Trustee shall manage and invest the otherwise uninvested cash in each such trust in its sole discretion; (iv) the investment adviser may at any time, or from time to time, delegate to Trustee the authority to exercise in its sole discretion the power to buy or sell any property (or, having delegated the authority to do so, revoke such authority); and (v) if at any time during the continuance of any such trust there shall be no investment adviser of such trust, or if the investment adviser of such trust shall fail to communicate in writing to Trustee his or her consent, disapproval, or direction as to the exercise of any of the aforesaid powers for which exercise the consent or direction of such adviser shall be necessary, within twenty (20) days after Trustee shall have sent to such adviser, by certified mail (or by any other means for which the sender shall have evidence of receipt by the addressee), at his or her last known address, a written request for such consent or direction (notwithstanding that Trustee shall be under no obligation to request any such direction), then Trustee is hereby authorized and empowered to take such action in the premises as it, in its sole discretion, shall deem to be for the best interest of the beneficiaries of such trust. The investment adviser hereunder shall be Trustor and Trustor's wife, in the order named, while willing and able to act in such capacity. Initially, Trustee shall exercise such powers on the direction of the investment adviser, but the investment adviser may establish from time to time whether the Trustee shall exercise such powers with the consent or on the direction of such adviser. To qualify, any person appointed investment adviser of a trust hereunder shall deliver a written instrument to Trustee indicating acceptance and agreement that all powers conferred upon such adviser will be exercised in a fiduciary capacity for the exclusive interest of the beneficiaries. The investment adviser need not inquire into the Trustee's performance of its duties and shall not be held liable for any loss whatsoever to any trust hereunder, unless it results from actions taken in bad faith. The investment adviser shall serve without compensation, but the investment adviser (other than Trustor) may be reimbursed for out-of-pocket expenses, including investment counsel fees.

SECTION 8: ADDITIONS TO THE TRUST FUND.

With the consent of Trustee, any person may add property to any trust hereunder, and such property shall thereafter be held by Trustee as a part thereof.

SECTION 9: IRREVOCABILITY.

This trust shall be irrevocable and not subject to amendment by Trustor or any other person. However, Trustee is authorized to modify or amend the provisions of this agreement to ensure that this agreement is a qualified disposition under the Act. Trustee may rely upon the advice of counsel in taking any action pursuant to the authority given to Trustee, and Trustee shall be without liability therefor.

6
TESCHER & SPALLINA, P.A.



SECTION 10: PAYMENT OF INCOME.

Except where otherwise provided, the payment of the net income of any trust hereunder shall be made at such times as are convenient to the beneficiary and agreed to by Trustee.

SECTION 11: NON-ACCRUAL OF INCOME.

Notwithstanding any statute or rule of law to the contrary, any income accrued or on hand and not actually distributed to a beneficiary upon the termination of his or her interest shall be treated as though it had, in fact, accrued thereafter. Any income accrued upon shares of stock or interest-bearing property when delivered to Trustee shall be treated as though such income had, in fact, accrued after such delivery.

SECTION 12: THIRD PARTIES NOT OBLIGED TO FOLLOW FUNDS.

No person or corporation dealing with Trustee shall be obliged to see to the application of money paid or property delivered to Trustee, to inquire into the propriety of Trustee's exercising its powers, or to determine the existence of any fact upon which Trustee's power to perform any act hereunder may be conditioned.

SECTION 13: TRUSTEE'S COMPENSATION.

Trustee shall receive compensation for its services hereunder from time to time in accordance with the current rates then charged by it for trusts of similar size and character. If Trustee renders any extraordinary services, it may receive additional compensation therefor.

SECTION 14: RESIGNATION AND REMOVAL OF TRUSTEE.

At any time during the remainder of Trustor's life, Trustee may resign by written notice delivered to Trustor, and WILLIAM E. STANSBURY may remove Trustee by written notice delivered to it. In either case, WILLIAM E. STANSBURY may appoint another bank or trust company that is described in Section 3570(9) of the Act, as successor Trustee by written notice delivered to Trustee. During Trustor's lifetime, Trustee shall be deemed to have resigned on the date on which: (i) it ceases to be a Trustee described in Section 3570(9) of the Act; or (ii) a court takes any action whereby such court declines to apply Delaware law in determining the validity, construction, or administration of any trust hereunder or of the effect of the spendthrift provision hereunder in any action brought against trustee. Unless objections are filed as provided below, Trustee shall, within ninety (90) days after it resigns or is removed, deliver any assets held hereunder to the successor Trustee. If WILLIAM E. STANSBURY does not appoint such a successor Trustee, Trustee may petition the appropriate court to appoint such a successor Trustee. Upon resignation or removal, Trustee shall deliver a statement of its activities to the

TESCHER & SPALLINA, P.A.



date of such resignation or removal for which it has not reported to the person to whom Trustee was directed to give notice of resignation or who was authorized to remove Trustee. Such person shall have sixty (60) days from receipt of such statement to file with Trustee any objections to its actions as Trustee. If no such objections are filed, Trustee shall be without any further liability or responsibility to any past, present, or future beneficiaries. No successor Trustee shall be required to examine into the acts of its predecessor Trustee, and each successor Trustee shall have responsibility only with respect to the property actually delivered to it by its predecessor Trustee.

SECTION 15: SIMULTANEOUS DEATH.

If Trustor and Trustor's wife die under circumstances where the order of deaths cannot be determined, and if any of the principal is includable in Trustor's estate for transfer tax purposes, then for the purposes of this agreement with respect to such principal, Trustor's wife shall be deemed to have survived Trustor and died immediately thereafter.

SECTION 16: TRUST SITUS.

This agreement creates a Delaware trust, and all matters pertaining to the validity, construction, and application of this agreement or to the administration of the trusts created by it shall be governed by Delaware law.

SECTION 17: DEFINITIONS.

A. "Trustor's wife" refers to SHIRLEY BERNSTEIN.

B. "Code" means the Internal Revenue Code of 1986, as amended, or any corresponding federal tax statute enacted after the date of this agreement. A reference to a specific section of the Code refers not only to that section but also to any corresponding provision of any federal tax statute enacted after the date of this agreement, as in effect on the date of application.

C. "Transfer taxes" means all applicable federal estate taxes (except additional estate taxes imposed under Section 2032A of the IRC), state estate or inheritance taxes, and generation-skipping transfer taxes imposed on any "direct skip" (as defined in Chapter 13 of the Code) other than a direct skip from a trust or resulting from a disclaimer, and any interest and penalties thereon. The term does not include federal or state gift taxes, generation-skipping transfer taxes imposed on a "taxable termination," a "taxable distribution," or a "direct skip" from a trust or resulting from a disclaimer, income taxes, real estate transfer taxes, or any tax or duty imposed by a foreign country or political subdivision thereof. In addition, the term does not include any tax imposed by Section 2056A of the Code or any corresponding provision of applicable state law.

TESCHER & SPALLINA, P.A.



D. "Act" means the Delaware Qualified Dispositions in Trust Act (12 Delaware Code Section 3570, et seq.), as amended, or any corresponding Delaware statute enacted after the date of this agreement. A reference to a specific section of the Act refers not only to that section but also to any corresponding provision of any Delaware statute enacted after the date of this agreement, as in effect on the date of application.

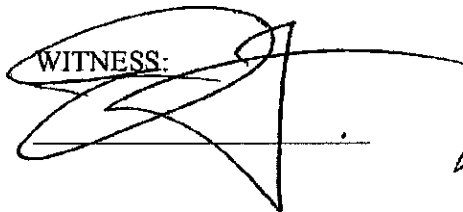
E. Use of any gender in this agreement includes the masculine, feminine and neuter genders as appropriate. Use of the singular number includes the plural and vice versa unless the context clearly requires otherwise.

F. "Personal Representative" means the executor or administrator of a decedent's estate and shall include all persons serving in such capacity from time to time.

G. Use of the verb "shall" in this agreement indicates a mandatory direction, and use of the verb "may" indicates authorization to take action.


H. Captions, headings and sub-headings, as used herein, are for convenience only and have no legal or dispositive effect.


IN WITNESS WHEREOF, SIMON L. BERNSTEIN, Trustor, has set his Hand and Seal the 20th day of May, 2008, and WILMINGTON TRUST COMPANY, Trustee, has caused this agreement to be signed in its name by one of its ^{Asst} Vice Presidents and its corporate seal to be affixed by one of its Assistant Secretaries, the 20th day of May, 2008, all done in duplicate as of the date of execution by Trustor, which date shall be the effective date of this instrument. (N.A.N.)

WITNESS: 

 (SEAL)
SIMON L. BERNSTEIN, Trustor

WILMINGTON TRUST COMPANY, Trustee

By: 
Asst. Vice President

Attest: 
Assistant Secretary

TESCHER & SPALLINA, P.A.

STATE OF FLORIDA)
) SS.
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 20th day of May, 2008, by SIMON L. BERNSTEIN.

NOTARY PUBLIC-STATE OF FLORIDA
Kimberly Moran
Commission #DD766470
Expires: APR. 28, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

Kimberly Moran
Notary Public

STATE OF DELAWARE)
) SS.
COUNTY OF NEW CASTLE)

The foregoing instrument was acknowledged before me this 2nd day of June, 2008, by Nicole A. McClelland, ^{Asst.} Vice President of Wilmington Trust Company, a Delaware corporation, on behalf of the corporation.

Laura D. Barone
Notary Public

LAURA D. BARONE
Notary Public - State of Delaware
My Comm. Expires April 3, 2012

“SCHEDULE A”

Consisting of One Page

of

SIMON L. BERNSTEIN

Irrevocable Trust Agreement

Dated May 20, 2008

Between

SIMON L. BERNSTEIN

and

WILMINGTON TRUST COMPANY

* * *

CASH in the amount of One Dollar (\$1.00)

* * *

TESCHER & ¹¹SPALLINA, P.A.

EXHIBIT A3

2008 ALLEGED TRUST OF SHIRLEY BERNSTEIN



EXHIBIT
PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE
Friday, September 12, 2014

BATES NO. EIB 003293
02/27/2017

SHIRLEY BERNSTEIN

TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

SHIRLEY BERNSTEIN

TRUST AGREEMENT

This Trust Agreement is dated this 20 day of MAY, 2008, and is between SHIRLEY BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SHIRLEY BERNSTEIN, of Palm Beach County, and SHIRLEY BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee). Said Trustee acknowledges receipt of the property described in the Attachment to this Agreement, and agrees to hold said property and all additions, in trust, as provided in this Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

B. **Payments During My Life.** If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare, and also may in its discretion pay to my spouse such amounts of said net income and principal as is proper for his Welfare. Any income not so paid shall be added to principal.

C. **Gifts.** If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. **Recipients.** The gifts may be made only to my spouse and my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. **Trustee Limited.** When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent

SHIRLEY BERNSTEIN
TRUST AGREEMENT

SB

TESCHER & SPALLINA, P.A.

(5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

D. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Specific Cash Devise. The Trustee shall set aside in a separate trust the sum of Two Hundred Thousand (\$200,000.00) Dollars for MATTHEW LOGAN, and said separate trust shall be administered as provided in Subparagraph II.F below. If MATTHEW LOGAN does not survive me this devise shall lapse.

C. Marital Deduction Gift. If my spouse survives me:

1. Family Trust. The Trustee shall hold as a separate "*Family Trust*" (i) all property of the trust estate as to which a federal estate tax marital deduction would not be allowed if it were distributed outright to my spouse, and (ii) after giving effect to (i), the largest pecuniary amount which will not result in or increase any federal or state death tax otherwise payable by reason of my death. In determining the pecuniary amount the Trustee shall assume that none of this Family Trust qualifies for a federal estate tax deduction, and shall assume that all of the Marital Trust hereinafter established (including any part thereof disclaimed by my spouse) qualifies for the federal estate tax marital deduction. I recognize that the pecuniary amount may be reduced by certain state death taxes and administration expenses which are not deducted for federal estate tax purposes.

SP

2. Marital Trust. The balance of the trust remaining after the establishment of the Family Trust shall be held as a separate "*Marital Trust*."

3. Disclaimer. Any part of the Marital Trust my spouse disclaims shall be added to the Family Trust. My spouse shall not be deemed to have predeceased me for purposes of such addition. I suggest that my spouse or my spouse's fiduciaries consider an appropriate partial disclaimer to minimize the death taxes due upon both of our deaths.

If my spouse does not survive me, the entire trust shall be held as the Family Trust without regard to the provisions of Subparagraph II.B.1 describing or limiting which assets shall be held thereunder.

D. During Spouse's Life. Commencing with the date of my death the Trustee shall,

1. Marital Trust. Pay to my spouse from the Marital Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare; and

2. Family Trust. Pay to my spouse from the Family Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare. I request (but do not require) that no principal be paid to my spouse from the Family Trust for my spouse's Welfare unless the Marital Trust has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

E. Disposition of Trusts Upon Death of Survivor of My Spouse and Me. Upon the death of the survivor of my spouse and me,

1. Limited Power. My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or for the benefit of one or more of my lineal descendants and their spouses;

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and held in separate Trusts for my lineal descendants then living, *per stirpes*. Any assets allocated under this Subparagraph II.D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by my spouse as grantor on even date herewith (the "*Family Trusts*" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts for such lineal descendants and administered as provided in Subparagraph II.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "*beneficiary*," with their separate trusts to be administered as provided in Subparagraph II.E. below.

F. Trusts for Beneficiaries. The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

G. Termination of Small Trust. If at any time after the death of the survivor of my spouse and me in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

H. Contingent Gift. If at any time property of a trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if my spouse and I had each then owned one-half of such property and had each then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

I. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be

liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

J. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years as provided in F.S. § 689.225(2)(a)(2), nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

K. Florida Homestead Possessory Rights. Notwithstanding anything herein to the contrary, if any portion of any Florida improved residential real estate (excluding commercial multi-unit rental property) is an asset of the Marital Trust, my spouse shall have the exclusive and continuous present right to full use, occupancy and possession of such real estate for life. It is my intention that my spouse's interest in such property shall constitute a "beneficial interest for life" and "equitable title to real estate" as contemplated by Section 196.041(2) of Florida Statutes, as amended from time to time or any corresponding provision of law.

ARTICLE III. GENERAL

A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary (other than my spouse as beneficiary of the Marital Trust) is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.

C. Substance Abuse.



1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended (excluding, however, mandatory income rights under the Marital Trust). In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate



takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("*TED*") and PAMELA B. SIMON ("*PAM*"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.

SB

2. Code. "**Code**" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "**Disabled**" or being under "**Disability**" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "**education**" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. My Spouse. "**My spouse**" is SIMON L. BERNSTEIN ("**SIMON**").

6. Needs and Welfare Distributions. Payments to be made for a person's "**Needs**" means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's "**Welfare**" means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

7. Per Stirpes. In a division "**per stirpes**" each generation shall be represented and counted whether or not it has a living member.

Beneficiary Related to Subordinate Party. A "Related or Subordinate Party" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

9. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

10. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If my spouse and I die under circumstances which make it difficult or impracticable to determine which one of us survived the other, I direct that my spouse shall be deemed to have survived me for purposes of this Agreement (except in regard to any property passing hereunder that became part of this trust solely by reason of passage to my probate estate or this trust from the probate estate of or a revocable trust established by my spouse in which case the opposite presumption shall apply), notwithstanding any provisions of law which provide for a contrary presumption. If any person other than my spouse shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Mandatory Notice Required by Florida Law. The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

L. Release of Medical Information.

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or

at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "estate"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

SB

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and

SB

personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to

exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under

a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Selection of Assets for Marital Trust. The Trustee shall have sole discretion to determine which assets shall be allocated to the Marital Trust; provided, if possible no assets or the proceeds of any assets which do not qualify for the federal estate tax marital deduction shall be allocated to the Marital Trust. To the extent that other assets qualifying for the marital deduction are available, the Trustee shall not allocate to the Marital Trust any assets with respect to which a credit for foreign taxes paid is allowable under the Code, nor any policy of insurance on the life of my spouse. Any allocation of assets among the Family Trust and the Marital Trust shall, with respect to each such trust, be comprised of assets having an aggregate market value at the time of such allocation fairly representative of the net appreciation or depreciation in the value of the property available for such

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

Case No. 502015CP001162XXXXSB
Judge Martin Colin

ELIOT BERNSTEIN, individually;
ELIOT BERNSTEIN as a beneficiary of the
2008 SIMON L. BERNSTEIN TRUST
AGREEMENT, as amended and restated in the
SIMON L. BERNSTEIN AMENDED AND
RESTATED TRUST AGREEMENT dated
July 25, 2012 and as Legal Guardian of
JOSHUA BERNSTEIN, JACOB BERNSTEIN,
and DANIEL BERNSTEIN,

Plaintiffs,

v.

THEODORE STUART BERNSTEIN, as Successor
Trustee of the 2008 SIMON L. BERNSTEIN
TRUST AGREEMENT, as amended and restated in the
SIMON L. BERNSTEIN AMENDED AND RESTATED
TRUST AGREEMENT dated July 25, 2012;
ALEXANDRA BERNSTEIN;
ERIC BERNSTEIN;
MICHAEL BERNSTEIN;
MOLLY SIMON;
JILL MARLA IANTONI;
MAX FRIEDSTEIN;
LISA SUE FRIEDSTEIN,

Defendants.

**AMENDED COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN
AS SUCCESSOR TRUSTEE**

COMES NOW, Eliot Ivan Bernstein ("Eliot" or "Plaintiff"), beneficiary of the 2008
SIMON L. BERNSTEIN TRUST AGREEMENT and Eliot Bernstein as Legal Guardian of his
three minor children under the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20,
2008, as amended and restated in the SIMON L. BERNSTEIN AMENDED AND RESTATED



TRUST AGREEMENT dated July 25, 2012 (the "2012 Simon Trust or "Trust(s)"), and pursuant to §736.0706, Fla. Stat. (2013), files this Amended Complaint To Remove Theodore Stuart Bernstein ("Ted") As Successor Trustee, and in support states as follows:

1. Plaintiff Eliot Ivan Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is a beneficiary of the 2008 Simon Trust.

2. Plaintiff Eliot Ivan Bernstein is legal guardian of his three minor children, Joshua Bernstein, Jacob Bernstein and Daniel Bernstein, beneficiaries under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.

3. Plaintiff has standing to seek removal in his capacity as Legal Guardian for his minor children who are beneficiaries of the 2012 Simon Trust.

4. Defendant, Theodore Stuart Bernstein is currently serving as the Successor Trustee of the Trusts and is a resident of Palm Beach County.

5. Alexandra Bernstein, who is over the age of 18, resides in Virginia and is a beneficiary under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.

6. Eric Bernstein, who is over the age of 18, resides in Palm Beach County Florida and is a beneficiary under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.

7. Michael Bernstein, who is over the age of 18, resides in Palm Beach County Florida and is a beneficiary under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.

8. Molly Simon, who is over the age of 18, resides in Arizona is a beneficiary under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.



9. Jill Marla Iantoni is the parent and natural guardian of minor beneficiary Julia Iantoni under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.

10. Max Friedstein who is over the age of 18, resides in New York and is a beneficiary under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.

11. Lisa Friedstein is the parent and natural guardian of minor beneficiary Carley Friedstein under the alleged SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.

12.

Legal Standard for Removal of Trustee

13. When removal of a trustee is at issue, §736.0706, Fla. Stat. (2014) governs:

736.0706. Removal of trustee

(2) The court may remove a trustee if:

- (a) The trustee has committed a serious breach of trust;**
- (b) The lack of cooperation among cotrustees substantially impairs the administration of the trust;**
- (c) Due to unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or**
- (d) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.**

14. TED's removal is warranted by Subsections (2) (a), (c) and/or (d) of §736.0706, Fla. Stat. (2014).

15. The previous Co-Trustees of the 2012 Simon Trust were DONALD R. TESCHER, ESQ. and ROBERT L. SPALLINA, ESQ. (Teschler & Spallina) by virtue of the Successor Trustee



provision set forth in Article IV, Section C of the 2012 Simon Trust. A copy of the 2012 Amended and Restated Trust is attached hereto as Exhibit "A."

16. By a letter dated January 14, 2014 addressed to the five children of Simon Bernstein, as opposed to the beneficiaries of the 2012 Simon Trust, TESCHER and SPALLINA resigned as,

- i. Co-Trustees of Simon's 2012 trust,
- ii. Co-Personal Representatives/Executors to the Simon Estate,
- iii. Counsel to themselves as Co-Trustees and Co-Personal Representatives of Simon's Estate and trusts,
- iv. Counsel to TED as alleged Trustee of the Shirley Trust,
- v. Counsel to TED as Personal Representative of the Shirley Estate,
- vi. Counsel to TED as Alleged Trustee of the legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated 1995,
- vii. Alleged Trustee of the legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated 1995, and,
- viii. Counsel in all other fiducial and legal capacities they were acting in for any Bernstein family related matters.

A copy of the letter is attached hereto as Exhibit "B."

17. Upon their resignation, TESCHER stated, "If the majority of the Bernstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity."

COUNT I

TED BERNSTEIN IS NOT ELIGIBLE TO SERVE AS SUCCESSOR TRUSTEE AS THE LANGUAGE OF THE TRUST DISQUALIFIES HIM TO SERVE AS SUCH

18. Article IV, Section C.(3) (Page 16) of the 2012 Simon Trust states:

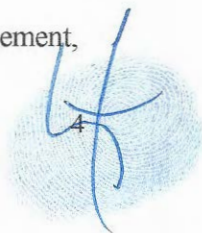
C. Appointment of Successor Trustee

3. . . . A successor Trustee appointed under this subparagraph shall **not** be a Related or Subordinate Party of the trust. (**emphasis added**)

19. Under Article III, Subsection E (7), A "Related or Subordinate Party" is defined in the Trust as follows:

ARTICLE III. GENERAL

E. Definitions. In this Agreement,



7. Related or Subordinate Party. A "Related or Subordinate Party" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

The "Code" is defined as "the Internal Revenue Code of 1986 ... "

A "Related or subordinate party" under the Code means any nonadverse party who is " ... (2) any one of the following: The Grantor's father, mother, issue, brother or sister ... "

20. TED is the son, or an "issue" of the Grantor, SIMON BERNSTEIN, and a related party (father) to some of the beneficiaries. Therefore, TED is ineligible as a "Related or Subordinate Party" to serve as a Successor Trustee under §736.0706(2)(c).

21. Further, TED is specifically disqualified to be a Successor Trustee by the terms of the 2012 Simon Trust in another provision of the Trust that also disqualifies TED. Article III E (1) states:

Notwithstanding the foregoing, **for all purposes of this Trust and the dispositions made hereunder**, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me...” (**emphasis added**)

22. Therefore, by the very language of the Trust, TED, in any scenario, is wholly disinherited, considered legally predeceased and further disqualified by the provision of the Trust to serve as a Successor Trustee.

COUNT II

TED BERNSTEIN, AS SUCCESSOR TRUSTEE, HAS FAILED TO FOLLOW FLORIDA STATUTE 736.0813 AND 736.08135 BY BREACHING HIS DUTY TO INFORM AND ACCOUNT

23. The duty of a trustee to account has been codified in Florida Statute §736.0813:

736.0813 Duty to inform and account.—

The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.



(1) The trustee's duty to inform and account includes, but is not limited to, the following:

(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust and the full name and address of the trustee.

(b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, and the right to accountings under this section.

(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, to each qualified beneficiary annually and on termination of the trust or on change of the trustee. (emphasis supplied)

(e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

24. TED has provided NO accountings for the 2012 Simon Trust.

25. The duty to account is so fundamental to the law of trusts that this duty cannot be diminished by the trust itself. The trust instrument may provide that a trustee need not account or only account informally to a beneficiary, but according to the Florida Trust Code, any such limiting provisions are ineffectual and cannot relieve the trustee of his or her duty to account fully to a qualified beneficiary. See: Florida Statute §736.0105(2)(s).

A. FAILURE TO ACCOUNT IN THE SIMON TRUST

26. Ted, currently acting as successor trustee in 2012 Simon Trust has provided NO accountings despite repeated requests by beneficiaries and despite changes in fiduciaries, when TED's former counsel and fiduciaries for the 2012 Simon Trust, TESCHER and SPALLINA resigned.



27. Between TED and his former counsel there has been NO accounting for over two years in violation of probate and trust rules and statutes.

COUNT III

TED BERNSTEIN, AS TRUSTEE, HAS FAILED TO KEEP ACCURATE RECORDS AND COMMITTED WASTE OF TRUST AND ESTATE ASSETS

28. TED as successor trustee has a duty to maintain clear, complete, and accurate books and records regarding the trust.

29. The Florida Trust Code explicitly states that a trustee shall keep clear, distinct and accurate records of the administration of the trust.

736.0810 Record keeping and identification of trust property.

(1) A trustee shall keep clear, distinct, and accurate records of the administration of the trust.

(2) A trustee shall keep trust property separate from the trustee's own property.

(3) Except as otherwise provided in subsection

(4), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(5) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

30. TED does not possess the original signed and executed 2012 Simon Trust under which he alleges to operate as Successor Trustee.

31. At this time no original signed and legally executed originals exist of the 2012 Simon Trust.

32. The 2012 Simon Trust was also used to seize control of Trust assets.

33. Once control was gained by TED he began to loot Trusts through a series of fraudulent acts and he began recklessly billing outrageous and unaccounted for legal and

fiduciary fees, while simultaneously concealing, altering and destroying records and precluding beneficiaries from any financial information or access to the dispositive documents.

34. Legal and fiduciary fees have run rampant, with often 6-7 attorneys attending hearings.

35. Real estate was sold at fire sale prices and distributions were made to knowingly improper parties by TED and other accounts were discovered being used post mortem at Legacy Bank and others. Bank accounts and investment accounts are unaccounted for.

36. A trustee who, after being requested to do so, refuses to provide a beneficiary with relevant information about the assets of the trust, refuses to account for how the trust is being administered, and who refuses to provide an accounting when required, has breached his fiduciary duty owing to the beneficiaries and should be removed.

COUNT IV

TED BERNSTEIN SHOULD BE REMOVED AS SUCCESSOR TRUSTEE BASED ON CONFLICT OF INTEREST

A. ILLINOIS INSURANCE LITIGATION CONFLICT OF INTEREST

37. At the time of SIMON'S death, it was determined that there existed a life insurance policy issued by Heritage Union Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 (the "Insurance Trust) as beneficiary.

38. Shortly after SIMON's death in 2012 a claim form was filed to Heritage Union Life on behalf of the nonexistent Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995.

39. This was done for the benefit of the grown children of Simon Bernstein (excluding Eliot), including TED, who as set forth above, was considered predeceased under the Simon's estate and Trust plans.



40. Under Florida law, if it is determined that no Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 existed at the time of SIMON'S death, the insurance proceeds are payable to the Estate of Simon and then per the terms of Simon's Last Will and Testament, would pour over into Trust.

41. After the claim was denied by Heritage, TED somehow replaced a prior Trustee as the alleged "Trustee" of the lost trust and he filed an Illinois circuit court breach of contract lawsuit against Heritage. The suit was transferred to federal court in the United States District Court for the Northern District of Illinois in Chicago.

42. The Estate of Simon Bernstein filed a Motion to Intervene in the Illinois life insurance litigation to assert the Estate's interest in the life insurance proceeds. The Curator, Ben Brown, retained counsel with the approval of this Court.

43. The Plaintiffs in the Life Insurance Litigation, include TED acting as "Trustee" of the nonexistent 1995 trust and TED, individually. They filed a Memorandum of Law in Opposition to the Estate's Motion to Intervene (the "Opposition Memorandum").

44. The opening paragraph of the Opposition Memorandum states as follows:

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, by **TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually, PAMELA B. SIMON, JILL IANTONI AND LISA FRIEDSTEIN... (emphasis added)**

45. As Plaintiff, TED stands to benefit personally if the claim by the Simon Bernstein Estate to the life insurance proceeds is defeated because TED and his siblings (other than Eliot) have taken the position that they are the beneficiaries of the nonexistent Insurance Trust and not their children.



46. Despite the opposition of TED BERNSTEIN to the Intervention, the federal court granted the Estate's Motion to Intervene.

47. TED is now an opposing party of record to the Estate's claim in the Illinois life insurance litigation.

48. TED, individually and as the alleged trustee of the nonexistent 1995 Insurance Trust, has placed his personal interests above the interests of the 2012 Simon Trust beneficiaries, the grandchildren of SIMON, including his own children.

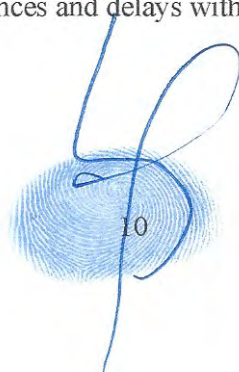
49. Through TED's opposition to the Estate's intervention in the Illinois life insurance litigation, and that he is a party plaintiff in that litigation, an inherent conflict of interest is present where TED is blocking the interests of his children and other beneficiaries of the Trust while simultaneously acting as Trustee of the Trust.

50. TED, as Successor Trustee of the 2012 Simon trust, owes a duty of loyalty under §736.0706(1), Fla. Stat. (2014) to the trust beneficiaries to administer the trust solely in their interests. His actions in the Illinois Insurance Litigation have violated that duty.

51. TED, acting as a fiduciary to the Trust, must support, or at the least not obstruct, the efforts of the Estate and 2012 Simon Trust to recover an additional \$1.7 million in life insurance benefits. However, TED benefits directly from his obstruction and therefore has an obvious conflict of interest.

52. If the insurance proceeds are recovered for the Estate, this would dramatically increase the Estate assets that Estate and Trust beneficiaries receive.

53. This attempt to redirect the insurance proceeds by TED through a lost insurance trust scheme has caused intentional interferences and delays with expectancies to the Trust beneficiaries.



10

54. TED attempted to block the grandchildren, including minor children, from their interests being represented by counsel in the Illinois insurance litigation, leaving the grandchildren's interests wholly unprotected while trying to secure the benefits for himself.

55. TED'S efforts in the Life Insurance Litigation are designed to keep the approximately \$1.7 million out of the estate and trust and to redirect the money to him and his siblings (excluding Plaintiff).

56. As a consequence of the foregoing conflict of interest, TED is in breach of his fiduciary duty to the beneficiaries of the 2012 Simon Trust by opposing efforts to make the Estate and Simon Trusts more solvent, which in turn exposes the Estate and Simon Trusts to increased liability. This warrants his removal under §736.0706(2)(a).

57. TED's continued interference is an attempt to redirect estate assets to him personally and would further damage the trust beneficiaries as Ted's interference has caused unnecessary and costly legal fees to the Estate and Trust beneficiaries.

B. TED'S CONFLICT OF INTEREST WITH BENEFICIARIES

i. TED'S ADVERSE INTEREST WITH ELIOT

58. TED and his counsel have adverse interests to Eliot and in fact are hostile towards Eliot and his minor children, due to the fact that Eliot is the one who has uncovered their wrongdoings exposed them to potential criminal prosecution.

59. TED and his attorneys have conspired to use a strategy of force and aggression on Eliot, which was discovered in an email TED sent to Eliot describing their tactics and then later TED attested to their intent on the record before the Court.



11

**ii. TED'S CONFLICT OF INTEREST HAS CAUSED HARM TO
MINOR CHILDREN BENEFICIARIES**

60. The Palm Beach County Circuit Court, Probate Division, ordered that tuition for Saint Andrews school, including past due balances, be paid for Plaintiffs' three minor children for the 2014-2015 school year.

61. TED intentionally failed to make the Court-ordered payment, resulting in all three children being removed from school and forcing them to attend new schools, causing damages to the minor children both short term and long term, emotionally and scholastically.

62. Because of the conflicts of interests with the beneficiaries, TED has failed to maintain a duty of impartiality owed to the beneficiaries and should therefore be removed.

63. TED as Personal Representative of the Estate of Shirley Bernstein has knowledge that Shirley Bernstein's Trust was altered, which had the effect of benefitting TED'S family over others.

64. No successor was appointed until this Court reopened the Estate of Shirley due to the fact that Simon closed the Estate as Personal Representative/Executor while dead, yet TED acted as Personal Representative in multiple transactions during that time in order to begin selling assets of the estate and trusts of Shirley.

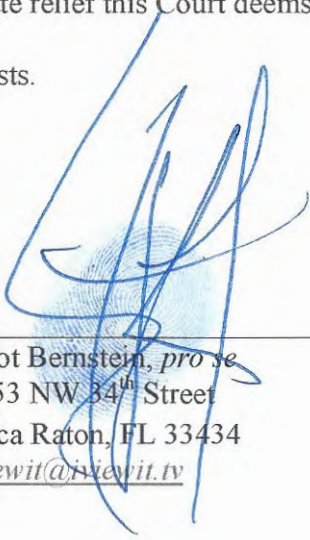
65. Statements made by SPALLINA to Palm Beach Sheriff investigators reveal that TED took distributions against the advice of his counsel, again making him wholly unfit to continue as a fiduciary in these matters.

66. TED also claimed to Palm Beach Sheriff investigators that he had not read all of the trust documents that he was acting as fiduciary under, again making him wholly unfit to continue as a fiduciary in these matters.

WHEREFORE, Plaintiff requests that this Court,

1. Remove TED as the alleged successor trustee of the Simon Trust,
2. Appoint a successor trustee with no conflicts of interests or affiliation with any of the former fiduciaries or attorneys at law involved in the prior frauds in any way,
3. Require the filing of a Trust Accounting as required by law.
4. Award damages for failure to account or for improper accounting, including the removal of the trustee, reducing or denying compensation to the trustee, and requiring the trustee to repay money to the trust or by restoring property to the trust by other means.
5. Appoint a special fiduciary to take possession of the trust property and administer the trust;
6. Subject to §736.1016, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; any other appropriate relief this Court deems just and proper, including an award of attorney's fees and costs.

Dated: Monday, April 27, 2015



Eliot Bernstein, *pro se*
2753 NW 34th Street
Boca Raton, FL 33434
iviewit@iviewit.tv

CERTIFICATE OF SERVICE


I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Monday, April 27, 2015.

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children.

X



SERVICE LIST

<p>Alan B. Rose, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 arose@pm-law.com and arose@mrachek-law.com</p>	<p>John P Morrissey, Esq. John P. Morrissey, P.A. 330 Clematis Street Suite 213 West Palm Beach, FL 33401 john@jmorrisseylaw.com</p>	<p>Carley & Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 Lisa@friedsteins.com lisa.friedstein@gmail.com</p>
<p>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</p>		

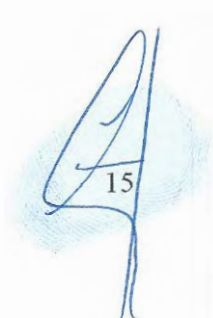


EXHIBIT A

**SIMON L. BERNSTEIN TRUST AGREEMENT DATED MAY 20, 2008, AS
AMENDED AND RESTATED IN THE SIMON L. BERNSTEIN AMENDED
AND RESTATED TRUST AGREEMENT DATED JULY 25, 2012**

SIMON L. BERNSTEIN
TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

SIMON L. BERNSTEIN

TRUST AGREEMENT

This Trust Agreement is dated this 20th day of MAY, 2008, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee). Said Trustee acknowledges receipt of the property described in the Attachment to this Agreement, and agrees to hold said property and all additions, in trust, as provided in this Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

B. Payments During My Life. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare, and also may in its discretion pay to my spouse such amounts of said net income and principal as is proper for her Welfare. Any income not so paid shall be added to principal.

C. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. **Recipients.** The gifts may be made only to my spouse and my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. **Trustee Limited.** When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent

SIMON L. BERNSTEIN
TRUST AGREEMENT

TESCHER & SPALLINA, P.A.



(5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

D. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Marital Deduction Gift. If my spouse survives me:

1. Family Trust. The Trustee shall hold as a separate "*Family Trust*" (i) all property of the trust estate as to which a federal estate tax marital deduction would not be allowed if it were distributed outright to my spouse, and (ii) after giving effect to (i), the largest pecuniary amount which will not result in or increase any federal or state death tax otherwise payable by reason of my death. In determining the pecuniary amount the Trustee shall assume that none of this Family Trust qualifies for a federal estate tax deduction, and shall assume that all of the Marital Trust hereinafter established (including any part thereof disclaimed by my spouse) qualifies for the federal estate tax marital deduction. I recognize that the pecuniary amount may be reduced by certain state death taxes and administration expenses which are not deducted for federal estate tax purposes.

2. Marital Trust. The balance of the trust remaining after the establishment of the Family Trust shall be held as a separate "*Marital Trust*."

Notwithstanding the foregoing, prior to the funding of the Family Trust and the Marital Trust under this Subparagraph II.B., or only the Family Trust if my spouse does not survive me, the Trustees of this Trust

or the Personal Representatives of my estate as the case may be, shall finalize the sale of my shares in LIC HOLDINGS, INC., a Florida corporation or its successor in interest ("**LIC HOLDINGS**"), owned by me or this Trust at the time of my death, pursuant to that certain buy-sell agreement entered into by and between my son, TED S. BERNSTEIN, and me. Upon the sale of such shares, the Trustee shall fund the trust(s) provided for hereunder.

3. Disclaimer. Any part of the Marital Trust my spouse disclaims shall be added to the Family Trust. My spouse shall not be deemed to have predeceased me for purposes of such addition. I suggest that my spouse or my spouse's fiduciaries consider an appropriate partial disclaimer to minimize the death taxes due upon both of our deaths.

If my spouse does not survive me, the entire trust shall be held as the Family Trust without regard to the provisions of Subparagraph II.B.1 describing or limiting which assets shall be held thereunder.

C. During Spouse's Life. Commencing with the date of my death the Trustee shall,

1. Marital Trust. Pay to my spouse from the Marital Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare; and

2. Family Trust. Pay to my spouse from the Family Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare. I request (but do not require) that no principal be paid to my spouse from the Family Trust for my spouse's Welfare unless the Marital Trust has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

D. Disposition of Trusts Upon Death of Survivor of My Spouse and Me. Upon the death of the survivor of my spouse and me,

1. Limited Power. My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or for the benefit of one or more of my lineal descendants and their spouses;

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and held in separate Trusts for my lineal descendants then living, *per stirpes*. Any assets allocated under this Subparagraph II.D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by me as grantor on even date herewith (the "**Family Trusts**" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts



for such lineal descendants and administered as provided in Subparagraph II.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "*beneficiary*," with their separate trusts to be administered as provided in Subparagraph II.E. below.

E. Trusts for Beneficiaries. The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

F. Termination of Small Trust. If at any time after the death of the survivor of my spouse and me in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

G. Contingent Gift. If at any time property of a trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if my spouse and I had each then owned one-half of such property and had each then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.



H. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

I. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years as provided in F.S. § 689.225(2)(a)(2), nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

J. Florida Homestead Possessory Rights. Notwithstanding anything herein to the contrary, if any portion of any Florida improved residential real estate (excluding commercial multi-unit rental property) is an asset of the Marital Trust, my spouse shall have the exclusive and continuous present right to full use, occupancy and possession of such real estate for life. It is my intention that my spouse's interest in such property shall constitute a "beneficial interest for life" and "equitable title to real estate" as contemplated by Section 196.041(2) of Florida Statutes, as amended from time to time or any corresponding provision of law.

ARTICLE III. GENERAL

A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary (other than my spouse as beneficiary of the Marital Trust) is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.



C. Substance Abuse.

1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended (excluding, however, mandatory income rights under the Marital Trust). In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to



the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children. Lineal Descendants. The terms "*child*," "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("*TED*") and PAMELA B. SIMON ("*PAM*"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.



2. Code. "**Code**" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "**Disabled**" or being under "**Disability**" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "**education**" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. My Spouse. "**My spouse**" is SHIRLEY BERNSTEIN ("**SHIRLEY**").

6. Needs and Welfare Distributions. Payments to be made for a person's "**Needs**" means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's "**Welfare**" means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

7. Per Stirpes. In a division "**per stirpes**" each generation shall be represented and counted whether or not it has a living member.



8. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

9. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

10. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.



H. Presumption of Survivorship. If my spouse and I die under circumstances which make it difficult or impracticable to determine which one of us survived the other, I direct that my spouse shall be deemed to have survived me for purposes of this Agreement (except in regard to any property passing hereunder that became part of this trust solely by reason of passage to my probate estate or this trust from the probate estate of or a revocable trust established by my spouse in which case the opposite presumption shall apply), notwithstanding any provisions of law which provide for a contrary presumption. If any person other than my spouse shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Mandatory Notice Required by Florida Law. The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

L. Release of Medical Information.

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or



at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and



personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to



exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under



a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Selection of Assets for Marital Trust. The Trustee shall have sole discretion to determine which assets shall be allocated to the Marital Trust; provided, if possible no assets or the proceeds of any assets which do not qualify for the federal estate tax marital deduction shall be allocated to the Marital Trust. To the extent that other assets qualifying for the marital deduction are available, the Trustee shall not allocate to the Marital Trust any assets with respect to which a credit for foreign taxes paid is allowable under the Code, nor any policy of insurance, on the life of my spouse. Any allocation of assets among the Family Trust and the Marital Trust shall, with respect to each such trust, be comprised of assets having an aggregate market value at the time of such allocation fairly representative of the net appreciation or depreciation in the value of the property available for such



allocation between the date of valuation for federal estate tax purposes and the date or dates of said allocation and selection.

26. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

27. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

28. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate or my spouse's estate.

29. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

30. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, SHIRLEY and WILLIAM E. STANSBURY ("**BILL**"), or either of them alone if the other is unable to serve, shall serve as successor co-Trustees or Trustee as the case may be. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a



trust hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances:

a. Trustee of the Marital Trust. SHIRLEY shall serve as Trustee of the Marital Trust. While serving as Trustee, my spouse may designate a co-Trustee to serve with my spouse and my spouse may remove and/or replace such co-Trustee from time to time.

b. Trustee of the Family Trust. SHIRLEY shall serve as Trustee of the Family Trust. While serving as Trustee, my spouse may designate a co-Trustee that is not a Related or Subordinate Party to serve with my spouse and my spouse may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

c. Trustee of Separate Trusts for My Children. Each child of mine shall serve as sole Trustee of his or her separate trust. While serving alone as Trustee, a child of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such child and such child may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

d. Trustee of Separate Trusts for My Lineal Descendants Other Than My Children. In regard to a separate trust held for a lineal descendant of mine other than a child of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon reaching age twenty-five (25).

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

a. The remaining Trustees, if any; otherwise,

b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two

witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 25 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.I, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from



the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without



liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts.

1. **Family Trust.** I direct (a) that the Trustee shall divide any trust other than the Marital Trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions of this Trust Agreement relating to the trust that is being divided) so that the generation-skipping tax inclusion ratio of one such trust is zero.

2. **Marital Trust.** I direct that, if possible, (a) the Trustee shall divide the Marital Trust into two separate Marital Trusts (each subject to the provisions hereof concerning the Marital Trust) so that through allocation of my GST exemption remaining unallocated at my death and not otherwise allocated to transfers occurring at or by reason of my death (including allocations to the Family Trust), if any, the generation-skipping tax inclusion ratio of one such Marital Trust is zero (the GST Marital Trust), (b) my Personal Representative to exercise the election provided by Code Section 2652(a)(3) as to the GST Marital Trust, and (c) that upon the death of my spouse the total amount recoverable by my spouse's estate from the property of the Marital Trusts under Code Section 2207A shall first be recoverable in full from the non-GST Marital Trust to the extent thereof.

3. **Misc.** I direct that (a) upon the death of the survivor of me and my spouse, any property then directed to be paid or distributed which constitutes a direct skip shall be paid first from property then exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) to the extent thereof, (b) property exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) and not directed to be paid or distributed in a manner which constitutes a direct skip shall be divided and distributed as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and lineal descendants, in such estates, interests, and proportions as such beneficiary may, by a will specifically referring to this general power appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available. Notwithstanding any other provision of this Trust Agreement, for purposes of funding any pecuniary payment or trust division to which there is allocated any GST exemption, such payment or trust division allocation shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such



distribution or allocation could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. In regard to the division or severance of a trust hereunder, including the Marital Trust, such division or severance shall be made in a manner that all resulting trusts are recognized for purposes of Chapter 13 of the Code, including without limitation complying with the requirements of Treas.Reg. §26.2654-1(b). Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this Article which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. **Gift Transfers Made From Trust During My Lifetime.** I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. **Death Costs.** If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property" nor from the Marital Trust.

E. Marital Trust. I intend the maximum obtainable reduction of federal estate tax due by reason of my death by use of the federal estate tax marital deduction, and qualification of all property of the Marital Trust for the marital deduction. This Agreement shall be construed and all powers shall be exercised consistent with such intent. For example, the Trustee shall not allocate any receipt to principal or any disbursement to income if such allocation understates the net income of the Marital Trust under Florida law; and upon the written demand of my spouse, the Trustee shall convert unproductive or underproductive property of said trust into productive property within a reasonable time notwithstanding any other provision hereunder. The foregoing notwithstanding, if my spouse survives me but dies within six months after my death, the Marital Trust provided in Subparagraph II.B will be reduced to that amount, if any, required to obtain for my estate an estate tax marital deduction resulting in the lowest combined estate taxes in my estate and my spouse's estate, on the assumption that my spouse died after me on the date of my death, that my spouse's estate is valued on the same date and in the same manner as my estate is valued for federal estate tax purposes, and that elections in my spouse's estate were made that would be consistent with minimizing taxes. The purpose of this provision is to equalize, insofar as possible, our estates for federal estate tax purposes, based on the above assumptions.

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

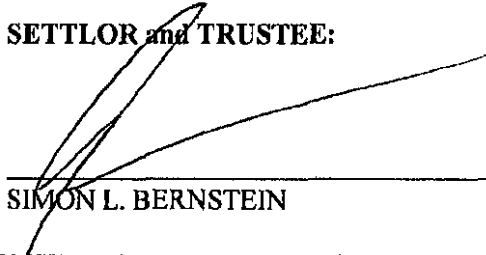
G. Residence as Homestead. Regardless of anything herein to the contrary, while any residential real property located in Florida is owned by a trust, I, or my spouse if I am not then living and such trust is the Marital Trust, shall have the right to use, possess and occupy such residence as a personal residence so that such right shall constitute a possessory right in such real property within the meaning of Florida Statute Section 196.041.

[remainder of page intentionally left blank]

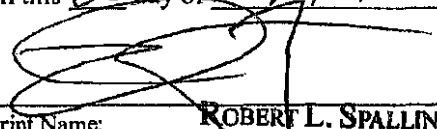


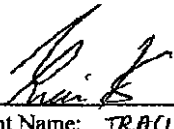
IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:


SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 20 day of May, 2008:


Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

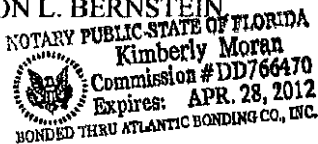

Print Name: TRACI KEATISH
Address: 16068 GLENCREST AVE
DEERBERRY BEACH, FL 33446

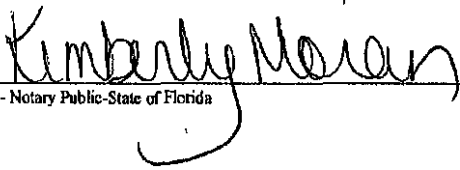
STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SIMON L. BERNSTEIN.




Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known or Produced Identification
Type of Identification Produced _____

FAWPDATA\adm\Demwcin, Shirley & Simon\2008 Estate Planning\Simon L. Bernstein Trust Agreement.wpd [05 15:24 19 08]

SIMON L. BERNSTEIN
TRUST AGREEMENT

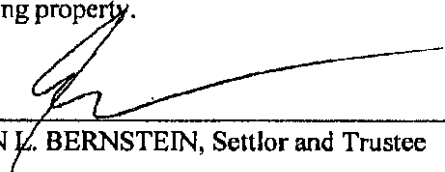
TESCHER & SPALLINA, P.A.

ATTACHMENT

The following property has been delivered in trust under this Agreement:

One Dollar (\$1.00) Cash

During my life, the Trustee has no duty to maintain, invest, review, insure, account for, or any other responsibility with respect to trust property other than income producing property, or any duty to pay premiums on life insurance payable to the trust, and shall receive no fee for its services as Trustee based on any trust property other than income producing property.



SIMON L. BERNSTEIN, Settlor and Trustee

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

LAW OFFICES
TESCHER & SPALLINA, P.A.

SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is dated this 26 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "*Trustee*," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "*Trust Agreement*," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. Payments During My Life. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

LAW OFFICES
TESCHER & SPALLINA, P.A.

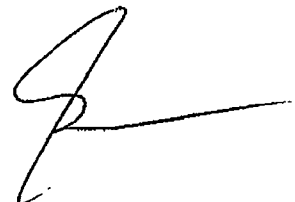
C. **Upon My Death.** Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. **Disposition of Tangible Personal Property.** If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. **Disposition of Trust Upon My Death.** Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "*beneficiary*" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. **Trusts for Beneficiaries.** The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:



1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

D. Termination of Small Trust. If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

E. Contingent Gift. If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

F. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

G. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

ARTICLE III. GENERAL

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

- 3 -

LAW OFFICES
TESCHER & SPALLINA, P.A.

BATES NO. EIB 003359
02/27/2017

A. **Disability**. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. **Timing of Income Distributions**. The Trustee shall make required payments of income at least quarterly.

C. **Substance Abuse**.

1. **In General**. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. **Testing**. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. **Treatment**. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an

in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*," "*grandchild*," "*grandchildren*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is



raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to

such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such



Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Release of Medical Information.

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested



beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph I.A hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any



decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.



4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole



proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this

paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust

hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

- a. The remaining Trustees, if any; otherwise,
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or

entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual



and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the



Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts. I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons



designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:



1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. **Recipients.** The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).



2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. Residence as Homestead. I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

[remainder of page intentionally left blank]

A large, stylized handwritten signature in black ink, appearing to be the initials 'RS' followed by a long horizontal stroke.

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

[Handwritten signature of Simon L. Bernstein]

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 21 day of July, 2012:

Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

[Handwritten signature of Kimberly Moran]
Print Name: Kimberly Moran
Address: 6362 Las Flores Drive
Boca Raton, FL 33433

STATE OF FLORIDA
COUNTY OF PALM BEACH

SS.

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.

[Handwritten signature of Lindsay Baxley]
Signature - Notary Public - State of Florida
Lindsay Baxley
Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]
NOTARY PUBLIC-STATE OF FLORIDA
Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

SHIRLEY BERNSTEIN

TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

SHIRLEY BERNSTEIN

TRUST AGREEMENT

This Trust Agreement is dated this 20 day of MAY, 2008, and is between SHIRLEY BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SHIRLEY BERNSTEIN, of Palm Beach County, and SHIRLEY BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee). Said Trustee acknowledges receipt of the property described in the Attachment to this Agreement, and agrees to hold said property and all additions, in trust, as provided in this Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

B. **Payments During My Life.** If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare, and also may in its discretion pay to my spouse such amounts of said net income and principal as is proper for his Welfare. Any income not so paid shall be added to principal.

C. **Gifts.** If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. **Recipients.** The gifts may be made only to my spouse and my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. **Trustee Limited.** When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent

SHIRLEY BERNSTEIN
TRUST AGREEMENT

SB

TESCHER & SPALLINA, P.A.

(5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

D. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Specific Cash Devise. The Trustee shall set aside in a separate trust the sum of Two Hundred Thousand (\$200,000.00) Dollars for MATTHEW LOGAN, and said separate trust shall be administered as provided in Subparagraph II.F below. If MATTHEW LOGAN does not survive me this devise shall lapse.

C. Marital Deduction Gift. If my spouse survives me:

1. Family Trust. The Trustee shall hold as a separate "*Family Trust*" (i) all property of the trust estate as to which a federal estate tax marital deduction would not be allowed if it were distributed outright to my spouse, and (ii) after giving effect to (i), the largest pecuniary amount which will not result in or increase any federal or state death tax otherwise payable by reason of my death. In determining the pecuniary amount the Trustee shall assume that none of this Family Trust qualifies for a federal estate tax deduction, and shall assume that all of the Marital Trust hereinafter established (including any part thereof disclaimed by my spouse) qualifies for the federal estate tax marital deduction. I recognize that the pecuniary amount may be reduced by certain state death taxes and administration expenses which are not deducted for federal estate tax purposes.

SP

2. Marital Trust. The balance of the trust remaining after the establishment of the Family Trust shall be held as a separate "*Marital Trust*."

3. Disclaimer. Any part of the Marital Trust my spouse disclaims shall be added to the Family Trust. My spouse shall not be deemed to have predeceased me for purposes of such addition. I suggest that my spouse or my spouse's fiduciaries consider an appropriate partial disclaimer to minimize the death taxes due upon both of our deaths.

If my spouse does not survive me, the entire trust shall be held as the Family Trust without regard to the provisions of Subparagraph II.B.1 describing or limiting which assets shall be held thereunder.

D. During Spouse's Life. Commencing with the date of my death the Trustee shall,

1. Marital Trust. Pay to my spouse from the Marital Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare; and

2. Family Trust. Pay to my spouse from the Family Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare. I request (but do not require) that no principal be paid to my spouse from the Family Trust for my spouse's Welfare unless the Marital Trust has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

E. Disposition of Trusts Upon Death of Survivor of My Spouse and Me. Upon the death of the survivor of my spouse and me,

1. Limited Power. My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or for the benefit of one or more of my lineal descendants and their spouses;

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and held in separate Trusts for my lineal descendants then living, *per stirpes*. Any assets allocated under this Subparagraph II.D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by my spouse as grantor on even date herewith (the "*Family Trusts*" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts for such lineal descendants and administered as provided in Subparagraph II.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "*beneficiary*," with their separate trusts to be administered as provided in Subparagraph II.E. below.

F. Trusts for Beneficiaries. The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

G. Termination of Small Trust. If at any time after the death of the survivor of my spouse and me in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

H. Contingent Gift. If at any time property of a trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if my spouse and I had each then owned one-half of such property and had each then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

I. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be

SB

liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

J. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years as provided in F.S. § 689.225(2)(a)(2), nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

K. Florida Homestead Possessory Rights. Notwithstanding anything herein to the contrary, if any portion of any Florida improved residential real estate (excluding commercial multi-unit rental property) is an asset of the Marital Trust, my spouse shall have the exclusive and continuous present right to full use, occupancy and possession of such real estate for life. It is my intention that my spouse's interest in such property shall constitute a "beneficial interest for life" and "equitable title to real estate" as contemplated by Section 196.041(2) of Florida Statutes, as amended from time to time or any corresponding provision of law.

ARTICLE III. GENERAL

A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary (other than my spouse as beneficiary of the Marital Trust) is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.

C. Substance Abuse.



1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended (excluding, however, mandatory income rights under the Marital Trust). In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate



takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. **Exoneration.** No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. **Tax Savings Provision.** Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. **Income on Death of Beneficiary.** Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. **Definitions.** In this Agreement,

1. **Children, Lineal Descendants.** The terms "*child*," "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("*TED*") and PAMELA B. SIMON ("*PAM*"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.

SB

2. Code. "**Code**" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "**Disabled**" or being under "**Disability**" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "**education**" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. My Spouse. "**My spouse**" is SIMON L. BERNSTEIN ("**SIMON**").

6. Needs and Welfare Distributions. Payments to be made for a person's "**Needs**" means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's "**Welfare**" means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

7. Per Stirpes. In a division "**per stirpes**" each generation shall be represented and counted whether or not it has a living member.

Beneficiary Related to Subordinate Party. A "Related or Subordinate Party" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

9. Spouse. A person's "spouse" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

10. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If my spouse and I die under circumstances which make it difficult or impracticable to determine which one of us survived the other, I direct that my spouse shall be deemed to have survived me for purposes of this Agreement (except in regard to any property passing hereunder that became part of this trust solely by reason of passage to my probate estate or this trust from the probate estate of or a revocable trust established by my spouse in which case the opposite presumption shall apply), notwithstanding any provisions of law which provide for a contrary presumption. If any person other than my spouse shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Mandatory Notice Required by Florida Law. The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

L. Release of Medical Information.

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or

at any time revokes an authorization within its term; the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "estate"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

SB

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and

SB

personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to

exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under

a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Selection of Assets for Marital Trust. The Trustee shall have sole discretion to determine which assets shall be allocated to the Marital Trust; provided, if possible no assets or the proceeds of any assets which do not qualify for the federal estate tax marital deduction shall be allocated to the Marital Trust. To the extent that other assets qualifying for the marital deduction are available, the Trustee shall not allocate to the Marital Trust any assets with respect to which a credit for foreign taxes paid is allowable under the Code, nor any policy of insurance on the life of my spouse. Any allocation of assets among the Family Trust and the Marital Trust shall, with respect to each such trust, be comprised of assets having an aggregate market value at the time of such allocation fairly representative of the net appreciation or depreciation in the value of the property available for such

allocation between the date of valuation for federal estate tax purposes and the date or dates of said allocation and selection.

26. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

27. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

28. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate or my spouse's estate.

29. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

30. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, SIMON and TED, one at a time and successively in that order, shall serve as successor Trustee. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

SB

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances:

a. Trustee of the Marital Trust. SIMON and TED, one at a time and successively in that order, shall serve as Trustee of the Marital Trust. While serving as Trustee, my spouse may designate a co-Trustee to serve with my spouse and my spouse may remove and/or replace such co-Trustee from time to time.

b. Trustee of the Family Trust. SIMON and TED, one at a time and successively in that order, shall serve as Trustee of the Family Trust. While serving as Trustee, my spouse may designate a co-Trustee that is not a Related or Subordinate Party to serve with my spouse and my spouse may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

c. Trustee of Separate Trusts for My Children. Each child of mine shall serve as sole Trustee of his or her separate trust. While serving alone as Trustee, a child of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such child and such child may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

d. Trustee of Separate Trusts for My Lineal Descendants Other Than My Children. In regard to a separate trust held for a lineal descendant of mine other than a child of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon reaching age twenty-five (25) years.

e. Trustee of Separate Trust for MATTHEW LOGAN. In regard to a separate trust held MATTHEW LOGAN, his mother, DEBORAH BERNSTEIN ("**DEBORAH**"), shall serve as Trustee until MATTHEW attains age 25 years, at which time he shall serve as a co-Trustee with DEBORAH of such separate trust.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

a. The remaining Trustees, if any; otherwise,

b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 25 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee: Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts

1. Family Trust. I direct (a) that the Trustee shall divide any trust other than the Marital Trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions of this Trust Agreement relating to the trust that is being divided) so that the generation-skipping tax inclusion ratio of one such trust is zero.

2. Marital Trust. I direct that, if possible, (a) the Trustee shall divide the Marital Trust into two separate Marital Trusts (each subject to the provisions hereof concerning the Marital Trust) so that through allocation of my GST exemption remaining unallocated at my death and not otherwise allocated to transfers occurring at or by reason of my death (including allocations to the Family Trust), if any, the generation-skipping tax inclusion ratio of one such Marital Trust is zero (the GST Marital Trust), (b) my Personal Representative to exercise the election provided by Code Section 2652(a)(3) as to the GST Marital Trust, and (c) that upon the death of my spouse the total amount recoverable by my spouse's estate from the property of the Marital Trusts under Code Section 2207A shall first be recoverable in full from the non-GST Marital Trust to the extent thereof.

3. Misc. I direct that (a) upon the death of the survivor of me and my spouse, any property then directed to be paid or distributed which constitutes a direct skip shall be paid first from property then exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) to the extent thereof, (b) property exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) and not directed to be paid or distributed in a manner which constitutes a direct skip shall be divided and distributed as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and lineal descendants, in such estates, interests, and proportions as such beneficiary may, by a will specifically referring to this general power appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

SB

Notwithstanding any other provision of this Trust Agreement, for purposes of funding any pecuniary payment or trust division to which there is allocated any GST exemption, such payment or trust division allocation shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution or allocation could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. In regard to the division or severance of a trust hereunder, including the Marital Trust, such division or severance shall be made in a manner that all resulting trusts are recognized for purposes of Chapter 13 of the Code, including without limitation complying with the requirements of Treas.Reg. §26.2654-1(b). Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this Article which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to

a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and

5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the property disposed of pursuant to the prior paragraphs captioned "Disposition of Tangible Personal Property", "Specific Cash Devise" nor from the Marital Trust.

E. Marital Trust. I intend the maximum obtainable reduction of federal estate tax due by reason of my death by use of the federal estate tax marital deduction, and qualification of all property of the Marital Trust for the marital deduction. This Agreement shall be construed and all powers shall be exercised consistent with such intent. For example, the Trustee shall not allocate any receipt to principal or any disbursement to income if such allocation understates the net income of the Marital Trust under Florida law; and upon the written demand of my spouse, the Trustee shall convert unproductive or underproductive property of said trust into productive property within a reasonable time notwithstanding any other provision hereunder. The foregoing notwithstanding, if my spouse survives me but dies within six months after my death, the Marital Trust provided in Subparagraph II, B will be reduced to that amount, if any, required to obtain for my estate an estate tax marital deduction resulting in the lowest combined estate taxes in my estate and my spouse's estate, on the assumption that my spouse died after me on the date of my death, that my spouse's estate is valued on the same date and in the same manner as my estate is valued for federal estate tax purposes, and that elections in my spouse's estate were made that would be consistent with minimizing taxes. The purpose of this provision is to equalize, insofar as possible, our estates for federal estate tax purposes, based on the above assumptions.

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise

SB

manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. Residence as Homestead. Regardless of anything herein to the contrary, while any residential real property located in Florida is owned by a trust, I, or my spouse if I am not then living and such trust is the Marital Trust, shall have the right to use, possess and occupy such residence as a personal residence so that such right shall constitute a possessory right in such real property within the meaning of Florida Statute Section 196.041.

[remainder of page intentionally left blank]

SB

ATTACHMENT

The following property has been delivered in trust under this Agreement:

One Dollar (\$1.00) Cash

During my life, the Trustee has no duty to maintain, invest, review, insure, account for, or any other responsibility with respect to trust property other than income producing property, or any duty to pay premiums on life insurance payable to the trust, and shall receive no fee for its services as Trustee based on any trust property other than income producing property.



SHIRLEY BERNSTEIN, Settlor and Trustee

**FIRST AMENDMENT TO
SHIRLEY BERNSTEIN TRUST AGREEMENT**

This First Amendment is dated this 18 day of Nov, 2008, and is between SHIRLEY BERNSTEIN of Palm Beach County, Florida referred to in the first person, as settlor, and SHIRLEY BERNSTEIN of Palm Beach County, Florida as trustee (referred to as the "*Trustee*," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SHIRLEY BERNSTEIN TRUST AGREEMENT (the "*Trust Agreement*," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke the said Trust Agreement, in whole or in part.

NOW THEREFORE, by executing this instrument, I hereby amend the Trust Agreement as follows:

1. I hereby delete Paragraph B. of Article II. in its entirety.
2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:

“Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("*TED*") and PAMELA B. SIMON ("*PAM*"), shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder.”

3. I hereby ratify and reaffirm the Trust Agreement as amended by this First Amendment.

=====

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first above written.

SETTLOR and TRUSTEE:



SHIRLEY BERNSTEIN

This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 18 day of Nov, 2008:



Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076



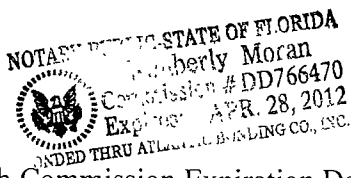
Print Name: Rachel Walker
Address: 100 Plaza Real South
apt 308
Boca Raton, FL 33432

STATE OF FLORIDA


SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 18 day of November, 2008, by SHIRLEY BERNSTEIN.



[Seal with Commission Expiration Date]



Signature - Notary Public-State of Florida

Print, type or stamp name of Notary Public

Personally Known or Produced Identification _____
Type of Identification Produced _____

N:\WPDATA\drt\Bernstein, Shirley & Simon\2008 Estate Planning\First Amendment to Shirley Bernstein Trust Agreement wpd [11 09 26 18 08]

EXHIBIT B

DONALD R. TESCHER, ESQ. LETTER DATED JANUARY 14, 2014

LAW OFFICES
TESCHER & SPALLINA, P.A.

BOCA VILLAGE CORPORATE CENTER I
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FLORIDA 33431

ATTORNEYS
DONALD R. TESCHER
ROBERT L. SPALLINA
LAUREN A. GALVANI

TEL: 561-997-7008
FAX: 561-997-7308
TOLL FREE: 888-997-7008
WWW.TESCHERSPALLINA.COM

SUPPORT STAFF
DIANE DUSTIN
KIMBERLY MORAN
SUANN TESCHER

January 14, 2014

VIA U.S. MAIL AND EMAIL

Ted S. Bernstein
880 Berkeley Street
Boca Raton, FL 33487

Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Lisa S. Friedstein
2142 Churchill Lane
Highland Park, IL 60035

Pamela B. Simon
950 North Michigan Ave.
Suite 2603
Chicago, IL 60606

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035

Re: Estates and Trusts of Shirley Bernstein and Simon Bernstein

Dear Ladies and Gentlemen:

It has been brought to my attention that a document was prepared in our office that altered the disposition of the Shirley Bernstein Trust subsequent to Simon Bernstein's death. Information provided to me appears to indicate that there were two versions of the First Amendment to the Shirley Bernstein Trust Agreement, both executed on November 18, 2008. Under one version the children of Pam Simon and Ted Bernstein would not be permissible appointees of Simon Bernstein's exercise of the power of appointment while under the second version that restriction was removed. As you all know, Simon Bernstein's dispositive plan, expressed to all of you during his lifetime on a conference call, was to distribute the Estate to all ten of his grandchildren. That was the basis upon which the administration was moving forward.

Under the Shirley Bernstein Trust, there is a definition of children and lineal descendants. That definition excluded Pam Simon, Ted Bernstein and their respective children from inheriting. The document also contained a special Power of Appointment for Simon wherein he could appoint the assets of the Trust for Shirley's lineal descendants. Based upon the definition of children and lineal descendants, the Power of Appointment could not be exercised in favor of Pam Simon, Ted Bernstein or their respective children, although we believe it was Simon Bernstein's wish to provide equally for all of his grandchildren.

On November 18, 2008, it does appear from the information that I have reviewed that Shirley Bernstein executed a First Amendment to her trust agreement. The document as executed appears to make only one relatively minor modification to her trust disposition by eliminating a specific gift to Ted

Bernstein Family
January 14, 2014
Page 2

Bernstein's stepson. In January of 2013 a First Amendment to the Shirley Bernstein Trust Agreement was provided to Christine Yates, Esq. who, at that time, was representing Eliot Bernstein. The document provided contained a paragraph number 2 which modified the definitional language in Shirley's document so as to permit, by deleting the words "and their respective lineal descendants" from the definition, an exercise of the power of appointment by Simon Bernstein over the Shirley Bernstein Trust to pass equally to all ten grandchildren rather than only six of the grandchildren.

By virtue of The Florida Bar Rules of Professional Conduct, I am duty bound to provide this information to you. Obviously, as a result of the issues and ramifications raised by the allegations, my firm must resign from further representation in all matters relating to the Estates and Trusts of Simon Bernstein and Shirley Bernstein. Furthermore, it is my intent, and I assume also the intent of Robert Spallina, to tender our resignations as personal representatives of the Simon Bernstein Estate and as trustees of the Simon Bernstein Trust. If the majority of the Bernstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity. With regard to the Simon Bernstein Estate, the appointment of the successor would require a court proceeding.

I am obviously upset and distraught over this chain of events and will do all that I reasonably can to correct and minimize any damages to the Bernstein family. As I believe you know, to date there has only been a modest funding of some, but not all, of the continuing trusts for the grandchildren emanating from Shirley's Trust assets.

Very truly yours,



DONALD R. TESCHER

DRT/km

cc: Alan Rose, Esq.

LAW OFFICES
TESCHER & SPALLINA, P.A.

BATES NO. EIB 003414
02/27/2017

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

PROBATE DIVISION IH
CASE NO. 502014CP003698XXXXNB

TED BERNSTEIN, AS TRUSTEE
OF SHIRLEY BERNSTEIN TRUST
AGREEMENT DATED MAY 20, 2008
AS AMENDED

Plaintiff

v.

ALEXANDRA BERNSTEIN; ET AL.

Defendants

ORDER DENYING ELIOT BERNSTEIN'S MOTION FOR NEW TRIAL

THIS MATTER came before the Court, in chambers, upon Eliot Bernstein's Motion for New Trial (Docket entry #113) filed with the Clerk of Court December 31, 2015. Upon review, it is hereby

ORDERED and ADJUDGED as follows:

Eliot Bernstein's Motion for New Trial is hereby **DENIED**.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 7th day of January, 2016.



THE FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA
ADMINISTRATIVE OFFICE OF THE COURT

JOHN L. PHILLIPS
Circuit Judge

Copies furnished to:

Alan B. Rose Esq. arose@pm-law.com

John Morrissey Esq. john@jmorrisseylaw.com

Brian M. O'Connell Esq. service@ciklinlubitz.com

Eliot Bernstein iviewit@gmail.com

Lisa Friedstein lisa.friedstein@gmail.com

Pamela Beth Simon psimon@stpcorp.com

Jill Iantoni jilliantoni@gmail.com

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

TED BERNSTEIN, AS TRUSTEE
OF THE SHIRLEY BERNSTEIN TRUST
AGREEMENT DATED MAY 20, 2008,
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

MOTION FOR NEW TRIAL

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

_____ /

Other Applicable Related Cases this Motion for Stay, Injunction and New Trial Should Apply to:

Case # 502012CP004391XXXXSB – Simon Bernstein Estate
Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
Case # 502014CP003698XXXXSB – Shirley Trust Construction
Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case
OLD CASE # 502014CA014637XXXXMB

_____ /

MOTION FOR NEW TRIAL

COMES NOW ELIOT BERNSTEIN BEING DULY SWORN WHO MAKES THIS AFFIDAVIT AND
MOTION IN SUPPORT OF A NEW TRIAL AND VACATING AND DECLARING LEGALLY VOID AND A
NULLITY THE TRIAL JUDGEMENT ORDER OF JUDGE PHILLIPS DATED DEC. 16, 2015 AS FOLLOWS:

1. THIS IS A MOTION FOR A NEW TRIAL UNDER FLORIDA RULES OF CIVIL PROCEDURE 1.530 FOR AN ALLEGED “TRIAL” HELD ON DEC. 15, 2015 IN THE NORTH BRANCH OF PALM BEACH COUNTY BEFORE JUDGE JOHN L. PHILLIPS ALLEGEDLY A VALIDITY TRIAL ON CERTAIN WILLS AND TRUST INSTRUMENTS IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN.
2. THIS MOTION IS TIMELY.

3. A NEW TRIAL WILL SERVE THE BEST INTERESTS OF JUSTICE WHILE DENIAL OF A NEW TRIAL WILL GREATLY PREJUDICE ELIOT I. BERNSTEIN AND HIS MINOR CHILDREN AS WELL AS THE ESTATES OF SIMON AND SHIRLEY BERNSTEIN AND THE TRUTH SEEKING PROCESS.
4. FOR ALL THE REASONS SET FORTH HEREIN AND FOR OTHER PENDING MOTIONS THE TRIAL AND THE JUDGMENT/ORDER AFTER TRIAL ALLEGEDLY ISSUED DEC. 16, 2015 MUST BE VACATED AND DECLARED A LEGAL NULLITY. SEE EXHIBIT 1 -, ATTACHED JUDGEMENT/ORDER OF DEC. 16, 2015.
5. IT IS NOTED FOR PURPOSES OF THIS MOTION THAT PETITIONER ELIOT I. BERNSTEIN WHO HAS BEEN DECLARED LEGALLY INDIGENT HAS BEEN FURTHER PREJUDICED AND HARMED BY BEING DENIED AND DELAYED ACCESS TO ACTUAL COURT EVIDENCE EXHIBITS AND TRANSCRIPTS OF PROCEEDINGS WHICH WOULD FURTHER AID THE FILING OF THIS MOTION AND THAT ELIOT I. BERNSTEIN RESERVES ALL RIGHTS TO AMEND THIS MOTION AS ALLOWED BY LAW AND FILE PROPER MOTIONS UPON RECEIPT OF ACTUAL TRIAL EXHIBITS, EVIDENCE AND TRANSCRIPTS AND UPON ANY OTHER BASIS UNDER LAW.

JUDGE JOHN L. PHILLIPS USED THE MACHINERY OF THE COURTS TO CONTINUE FRAUD IN THE PROCEEDINGS ON DEC. 15, 2015, FURTHER AIDING AND ABETTING ONGOING CRIMES AND ANY SUCH JUDGEMENT / ORDER MUST BE VACATED, STAYED AND DECLARED A LEGAL NULLITY

6. JUDGE JOHN L. PHILLIPS SITTING IN THE NORTH BRANCH OF PALM BEACH COUNTY HAD ACTUAL KNOWLEDGE THAT HE WAS ACTING OUTSIDE AND BEYOND HIS JURISDICTION BY EVEN CONDUCTING THE TRIAL ON DEC. 15, 2015 SINCE JUDGE PHILLIPS KNEW AND KNOWS THAT A LEGALLY SUFFICIENT MOTION FOR HIS MANDATORY DISQUALIFICATION HAD BEEN FILED BY PETITIONER ELIOT BERNSTEIN ON DECEMBER 04, 2015 AND THAT JUDGE PHILLIPS HAD TO MANDATORILY

DISQUALIFY UNDER LAW AND ACT NO FURTHER IN THE CASE(S). SEE, MANDATORY DISQUALIFICATION OF JUDGE PHILLIPS¹.

7. AS SET OUT IN THE LEGALLY SUFFICIENT MOTION FOR MANDATORY DISQUALIFICATION OF JUDGE JOHN L. PHILLIPS, JUDGE PHILLIPS HAS AND HAD ACTUAL KNOWLEDGE AS OF SEPT. 15, 2015 AT A CASE MANAGEMENT CONFERENCE THAT THE CASE WAS NOTICED FOR CONFERENCE IN THE ESTATE OF SIMON BERNSTEIN BEING FILED BY THE CURRENT PR IN THE ESTATE OF SIMON BERNSTEIN ATTORNEYS BRIAN O'CONNELL AND JOY FOGLIETTA OF THE CIKLIN LUBITZ MARTENS & O'CONNELL LAW FIRM. SEE EXHIBIT 2 - NOTICE FOR CASE MANAGEMENT CONFERENCE.
8. EVEN AS A MARGINALLY AND MINIMALLY COMPETENT JUDGE, JUDGE JOHN L. PHILLIPS HAD ACTUAL KNOWLEDGE AS OF SEPT. 15, 2015 THAT FLORIDA RULES OF CIVIL PROCEDURE 1.200: PRETRIAL PROCEDURE (A) CASE MANAGEMENT CONFERENCE PROVIDES IN PART: "THE MATTER TO BE CONSIDERED SHALL BE SPECIFIED IN THE ORDER OR NOTICE SETTING THE CONFERENCE".
9. AS THE TRANSCRIPT OF SEPT. 15, 2015² PROVIDES AND DEMONSTRATES, ELIOT I. BERNSTEIN ATTEMPTED TO CLARIFY THE CASE THAT WAS BEING HEARD ON THIS DATE BUT JUDGE PHILLIPS CONTINUALLY DENIED ELIOT BERNSTEIN A DUE PROCESS FAIR OPPORTUNITY TO BE HEARD IN A MEANINGFUL MANNER AT THE MEANINGFUL TIME DEMONSTRATING IMPERMISSIBLE BIAS AND PREJUDICE AGAINST ELIOT BERNSTEIN WHICH FURTHER MANDATED JUDGE PHILLIP'S DISQUALIFICATION RENDERING THE HOLDING OF ANY SUCH TRIAL ON DEC. 15, 2015 VOID AND A LEGAL NULLITY.

¹ December 04, 2015 Disqualification of Judge Phillips
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

² September 15, 2015 Hearing Transcript
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20Transcript%20-%20Estate%20of%20Simon%20Bernstein.pdf>

10. IN FACT A CLOSE AND CAREFUL REVIEW OF THE TRANSCRIPT OF THE CASE MANAGEMENT CONFERENCE BY ANY DETACHED, NEUTRAL PARTY AND/OR INVESTIGATIVE AUTHORITY WILL SHOW THE CLASSIC TEXTBOOK MODUS OPERANDI OF A JUDGE USING THE MACHINERY OF THE COURTS TO COMMIT AND FURTHER FRAUD AND CRIME AND KNOWING INTENTIONAL CONSTITUTIONAL VIOLATIONS THROUGH THE COURTS THEMSELVES.
11. IN ONE BREATH IN THIS COMPLEX CASE WHICH HAS A TOTAL OF 6-7 SEPARATE CASE NUMBERS FOR RELATED CASES, JUDGE JOHN PHILLIPS WOULD HAVE THE WORLD BELIEVE **BY HIS OWN WORDS** THAT HE IS ‘STUPID’ AND “NOT SMART” ALTHOUGH HE KNOWS HOW TO OCTOPUS WRANGLE, YET EACH AND EVERY TIME THAT ELIOT I. BERNSTEIN ATTEMPTED TO EXERCISE HIS CONSTITUTIONAL DUE PROCESS RIGHT AND OPPORTUNITY TO BE HEARD. BY REVIEWING THE TOTALITY OF THE TRANSCRIPT A DETACHED NEUTRAL INDEPENDENT REVIEWER CAN SEE THAT JUDGE JOHN L. PHILLIPS RUSHES TO CUT ELIOT BERNSTEIN OFF AND SHUT HIM DOWN KNOWINGLY AND INTENTIONALLY DENYING HIS DUE PROCESS OPPORTUNITY TO BE HEARD.
12. HOWEVER, AN INDEPENDENT, NEUTRAL, CONSTITUTIONALLY PROPER JUDGE WOULD SIMPLY SAY: THIS IS NOT RIGHT. THIS IS NOT RATIONALE? IF JUDGE PHILLIPS ACTUALLY DIDN’T KNOW WHAT WAS GOING ON IN THE CASE AND IS NOT THAT SMART AND IS STUPID BY HIS OWN WORDS, WHY DOES HE ONLY LET TED BERNSTEIN’S ATTORNEY ALAN ROSE SPEAK VOLUMES AT LENGTH WITHOUT INTERRUPTION AND YET CUT OFF ELIOT BERNSTEIN AT EACH STEP OF THE CONFERENCE WHEN A NEUTRAL DETACHED PROPER JUDGE TRYING TO BECOME BOTH EDUCATED AND GIVE EACH PARTY A FAIR AND PROPER OPPORTUNITY TO BE HEARD WOULD ALLOW ELIOT BERNSTEIN AND EACH PARTY FAIR OPPORTUNITY TO STATE THE FACTS AND LAW AND POSITION DURING THE CONFERENCE. THE TRANSCRIPTS CLEARLY SHOW OTHERWISE AND JUDGE PHILLIPS HAD TO BE DISQUALIFIED.

13. IT IS NOTED AGAIN FOR THE RECORD THAT WHEN JUDGE PHILLIPS IS PERMITTING TED BERNSTEIN'S ATTORNEY ALAN ROSE TO SPEAK VOLUMES REPEATEDLY AT LENGTH AT THE CONFERENCE ON SEPT. 15, 2015 IT WAS ATTORNEY ALAN ROSE WHO FILED A "LAST MINUTE" / "AFTER HOURS" MEMO WITH THE COURT ON THE "EVE OF THE CONFERENCE" AND FOR SOME REASON THIS APPEARS TO BE THE ONLY PART OF THE CASE JUDGE PHILLIPS IS FAMILIAR WITH DESPITE HAVING BEEN FILED AFTER HOURS THE NIGHT BEFORE.
14. FOR EXAMPLE, WHEN ELIOT BERNSTEIN BEGINS TO ANSWER WHY MORE THAN A DAY IS NEEDED FOR TRIAL HE BEGINS A DISCUSSION ABOUT WHY THE TRIAL SHOULD TAKE SEVERAL DAYS AND BEING A COMPLICATED CASE AND TED BERNSTEIN'S VALIDITY AS TRUSTEE AND THE CASE INVOLVING FRAUD YET JUDGE PHILLIPS SHUTS THIS DOWN, PRE-DETERMINES AND PREJUDGES THE MATTER. SEE, PAGES 23, STARTING AT LINES 23 AND PAGE 24, SEPT. 15, 2015 TRANSCRIPT ALREADY EXHIBITED HEREIN.
15. YET THE CASE IS COMPLEX, INVOLVES 6-7 DIFFERENT CASE NUMBERS, IS INTER-RELATED TO FEDERAL LITIGATION INVOLVING THE ESTATE OF SIMON BERNSTEIN BEING HEARD IN ILLINOIS, A DIFFERENT STATE AND HAS MULTIPLE OUTSTANDING MOTIONS AND PLEADINGS IN THE SEVERAL CASES PENDING AT THE TIME JUDGE PHILLIPS HOLDS THE CASE MANAGEMENT CONFERENCE ON SEPT. 15, 2015.
16. JUDGE PHILLIPS ACTUALLY KNOWS AND SHOULD HAVE KNOWN AS OF SEPT. 15, 2015 THAT THE ISSUE OF TED BERNSTEIN ACTING AS A VALID TRUSTEE TO EVEN HEAR AND DETERMINE A VALIDITY TRIAL ON THE INVOLVED INSTRUMENTS IS CRITICAL TO THE INTEGRITY OF PROCEEDINGS SINCE ACTUAL FRAUDED DOCUMENTS BY TED BERNSTEIN AS ALLEGED FIDUCIARY ALONG WITH HIS OWN ATTORNEYS TESCHER AND SPALLINA AND A PARALEGAL ACTING AND WORKING FOR TESCHER AND SPALLINA HAD ALREADY BEEN EXPOSED IN JUDGE COLIN'S COURT AND YET THE ATTORNEYS

INVOLVED WITH THE FRAUD TESCHER AND SPALLINA WERE STILL HOLDING ONTO ORIGINAL DOCUMENTS NEARLY TWO YEARS LATER WITHOUT TED BERNSTEIN AS ALLEGED “TRUSTEE” OR THE COURT OR THE PALM BEACH SHERIFF’S DEPARTMENT SEIZING AND IMPOUNDING THE DOCUMENTS FROM TESCHER AND SPALLINA FOR FORENSIC EXAMINATION.

17. IT IS ABSOLUTELY CLEAR AND UNDENIABLE THAT JUDGE PHILLIPS HAD ACTUAL KNOWLEDGE OF AT LEAST SOME OF THIS BACKGROUND AS OF SEPT. 15, 2015 SINCE AT THE PRIOR STATUS CONFERENCE IN JULY OF 2015 IT IS BROUGHT UP ON THE RECORD FIRST BY ELIOT BERNSTEIN AND THEN BY JUDGE PHILLIPS HIMSELF AT THE CLOSE OF THE STATUS CONFERENCE THAT ELIOT BERNSTEIN’S OBJECTIONS TO THE CASE EVEN MOVING FORWARD WOULD BE HEARD AT THE NEXT CONFERENCE SINCE A PETITION FOR ALL WRITS WAS PENDING AT THE FLORIDA SUPREME COURT SPECIFICALLY SEEKING MANDAMUS AND PROHIBITION AGAINST THE PRIOR JUDGE MARTIN COLIN AS A NECESSARY AND MATERIAL FACT WITNESS TO THE FRAUDS IN THE COURT AND SEEKING THE VOIDING OF ALL HIS ORDERS.

18. YET DESPITE JUDGE PHILLIPS HAVING STATED ON THE RECORD AT THE STATUS CONFERENCE IN JULY 2015 THAT THE OBJECTIONS TO THE CASE MOVING FORWARD BASED ON THE ALL WRITS PETITION BY ELIOT BERNSTEIN WOULD BE HEARD AT THE NEXT CONFERENCE, IT IS ABSOLUTELY UNDENIABLY CLEAR THAT JUDGE PHILLIPS PREJUDICED THE ENTIRE CASE AND PRE-JUDGED THE CASE AT LEAST BY SEPT. 15, 2015 AS HE COMPLETELY AND WHOLLY DENIES ELIOT BERNSTEIN AN OPPORTUNITY TO BE HEARD ON THE WRIT DESPITE THE FACT THAT JUDGE COLIN HIMSELF IS A NECESSARY MATERIAL FACT WITNESS WHICH DIRECTLY RELATED TO JUDGE PHILLIPS QUESTION OF HOW LONG A TRIAL WOULD TAKE SINCE JUDGE COLIN WOULD ALSO HAVE TO BE A WITNESS YET JUDGE PHILLIPS SHUTS THIS ALL DOWN IN BIASED, PREJUDGING PREJUDICIAL MANNER CREATING

REASONABLE FEAR THAT A FAIR TRIAL WOULD NOT BE HELD WHICH MEANS JUDGE PHILLIPS HAD TO DISQUALIFY BEFORE THE TRIAL EVEN BEGAN.

19. AS SET OUT IN THE LEGALLY SUFFICIENT DISQUALIFICATION MOTIONS AGAINST JUDGE PHILLIPS, JUDGE PHILLIPS FURTHER PREJUDICED AND BIASED THE PROCEEDINGS ON SEPT. 15, 2015 BY NOT ONLY NOT PERMITTING ELIOT BERNSTEIN TO BE HEARD ON THE WRITS AND JUDGE COLIN AS A NECESSARY AND MATERIAL FACT WITNESS BUT FURTHER BY DECLARING ACTUAL “LOVE” FOR JUDGE COLIN AND FURTHER STATING HE WOULD MAKE NO FINDING THAT ANYTHING WAS DONE WRONG BY COLIN. SEE, TRANSCRIPTS AND DISQUALIFICATION MOTIONS.
20. MORE EGREGIOUS, HOWEVER, IS THE FACT THAT MOST EVERY ONE OF THESE ISSUES WHOLLY DISREGARDED INTENTIONALLY BY JUDGE PHILLIPS USING THE MACHINERY OF THE COURTS TO FURTHER FRAUD UNDER THE DISGUISE OF BEING A STUPID, NOT SMART OCTOPUS WRANGLER BY HIS OWN WORDS WERE PREVIOUSLY FILED IN THE COURT OF JUDGE COLIN AND THUS WERE IN THE CASE FILES THAT JUDGE PHILLIPS SHOULD HAVE BEEN REVIEWING IN ADDITION TO ALAN ROSE’S LAST MINUTE AFTER HOURS MEMO OF SEPT. 14, 2015.
21. FOR EXAMPLE, A MAY 6, 2013 EMERGENCY MOTION TO JUDGE COLIN EXPOSING THE FRAUDS IN THE COURT BY TESCHER SPALLINA KIMBERLY MORAN AND TED BERNSTEIN IS BUT ONE MOTION NEVER FULLY HEARD TO THIS DAY AND NOT HEARD OR ALLOWED TO BE PRESENTED BY JUDGE PHILLIPS ON SEPT. 15, 2015 EVEN THOUGH THE ISSUES IN SUCH MOTION ESPECIALLY THE FRAUD SHOULD HAVE BEEN GUIDING THE CASE MANAGEMENT AND CERTAINLY ANY TRIAL.
22. THUS FROM A RATIONALE BASIS PERSPECTIVE FROM A NEUTRAL DETACHED CONSTITUTIONALLY PROPER REVIEWER, IF JUDGE PHILLIPS WAS NOT AWARE OF THE SERIOUSNESS AND COMPLEXITY OF THESE PLEADINGS AND MOTIONS, THEN THERE IS NO WAY AS A NEUTRAL JUDGE HE WOULD SIMPLY SHUT DOWN ELIOT BERNSTEIN EACH TIME HE SPOKE WITHOUT PERMITTING A FAIR OPPORTUNITY TO

BE HEARD AS JUDGE PHILLIPS WOULD HAVE SOUGHT TO BECOME KNOWLEDGEABLE AND EDUCATED ON THE CASE BUT INSTEAD THE CLEAR EVIDENCE SHOWS HE PREJUDGED THE CASE AND PREJUDGED THE TRIAL ITSELF AS OF SEPT. 15, 2015 PARTICULARLY BY LIMITING THE TRIAL TO ONE DAY AND ANY SUCH TRIAL JUDGEMENT ORDER MUST NOW BE VACATED AS A NULLITY AND FRAUD.

23. JUST UNDER RULE 1.200 THE TRIAL JUDGMENT ORDER SHOULD BE VACATED AND DECLARED A LEGAL NULLITY AS JUDGE PHILLIPS HAS ACTUAL KNOWLEDGE AND KNOWS THE TRIAL WAS SET IN THE SHIRLEY BERNSTEIN CASE WHICH WAS NOT NOTICED TO BE HEARD ON SEPT. 15, 2015 AND THUS THIS RULE WAS KNOWINGLY VIOLATED BY JUDGE PHILLIPS IN WHAT IS A PRE-DETERMINED PRE-JUDGE PLAN TO FURTHER AID AND ABET ONGOING FRAUD AND COVER FRAUD UP HOPING ELIOT BERNSTEIN WILL SIMPLY CAVE FROM THE WAR OF FRAUDULENT ATTRITION.

24. HAD JUDGE PHILLIPS MARGINALLY AND COMPETENTLY REVIEWED ANY OF THE PRIOR PLEADINGS AND THE TRANSCRIPT HE WOULD HAVE SEEN THAT TED BERNSTEIN WAS IN FACT KNOWINGLY INVOLVED IN THE FRAUD AND INTERTWINED WITH TESCHER SPALLINA AND JUDGE COLIN BY THE APPEARANCE ON SEPT. 13, 2013 WHEN THE FRAUD IS FINALLY ADDRESSED IN A VERY MINIMAL PARTIAL DEFICIENT MANNER BY JUDGE COLIN ON THE RECORD AND YET TED BERNSTEIN STANDS SILENT BEFORE JUDGE COLIN WHEN AN APRIL 9, 2012 DOCUMENT IS REFERENCED WHICH WAS CLEARLY FRAUDED BY SPALLINA AND FILED IN JUDGE COLIN'S COURT AFTER SIMON BERNSTEIN'S DEATH, BY SIMON AS IF HE WAS ALIVE AND YET TED BERNSTEIN HAD TO KNOW THIS WAS FRAUD AS IT REFERRED TO WAIVERS HE ALLEGEDLY SIGNED BUT TED BERNSTEIN KNEW THE WAIVERS HAD NOT BEEN SIGNED YET AND INSTEAD STOOD SILENT BEFORE COLIN.

25. MORE EGREGIOUSLY ON THIS DATE SEPT. 13, 2013 WHICH IS WHY JUDGE COLIN HAS TO BE A MATERIAL FACT WITNESS NECESSARY FOR INTEGRITY AND TRUTH AND THUS A NEW TRIAL GRANTED WHERE HE IS A WITNESS IS THAT TED BERNSTEIN ANNOUNCES HE IS THERE WITH SPALLIN

AS THE TRUSTEE / PR OF THE SHIRLEY BERNSTEIN ESTATE AND YET JUDGE COLIN KNOWS THIS IS THE ESTATE HE HIMSELF AS JUDGE CLOSED ILLEGALLY IN JAN. 2013 ON FRAUDED DOCUMENTS BY TESCHER SPALLINA AND MORAN FILED BY SIMON WHILE DECEASED AND YET JUDGE COLIN NEVER ASKS TED BERNSTEIN WHEN HE BECAME TRUSTEE OR PR AND IF HE WAS WHY HE SIMPLY DIDN'T MOVE TO CLOSE THE ESTATE HIMSELF AND INSTEAD HAS PERMITTED HIS ATTORNEYS TESCHER SPALLINA TO CLOSE HIS MOTHER'S ESTATE FRAUDULENTLY USING HIS DECEASED FATHER TO DO SO, ALL LEADING TO JUDGE COLIN BEING FORCED TO REOPEN SHIRLEY BERNSTEIN'S ESTATE DUE TO THE FRAUDULENT CLOSURE BY TED AS FIDUCIARY, ALONG WITH HIS RETAINED COUNSEL TESCHER AND SPALLINA.

26. AS JUDGE PHILLIPS CLEARLY SHOULD HAVE DISCERNED FROM THE RECORD, INSTEAD OF JUDGE COLIN ASKING ANY OF THESE QUESTIONS OF TED BERNSTEIN IN SEPT. 2013, HE CONTINUES TO ALLOW THE FRAUDULENTLY ACTING ATTORNEYS TESCHER SPALLINA TO CONTINUE TO ACT FOR MANY MORE MONTHS UNTIL JAN. OF 2014 AND THEN GIVES FURTHER TIME FOR THE TESCHER SPALLINA FIRM TO "PREP" THEIR FILES BY GIVING THEM MONTHS TO TURN FILES OVER WHEN IN FACT ALL FILES SHOULD HAVE BEEN IMPOUNDED AS OF THE MAY 2013 EMERGENCY MOTION FILING WHICH IS WHAT ANY PROPER COURT WOULD BE DOING AT THIS TIME AND CERTAINLY AFTER THE SEPTEMBER 13, 2013 HEARING WHERE TED, TESCHER, SPALLINA AND OTHERS WERE INFORMED BY JUDGE COLIN THAT HE HAD ENOUGH EVIDENCE AT THAT TIME TO READ THEM ALL THEIR MIRANDA RIGHTS FOR TWO SEPARATE AND DISTINCT FRAUDS ON THE COURT HE DISCOVERED THAT DAY.

27. THIS IS NOT JUST AN AVERAGE FRAUD AND FRAUD ON THE COURT CASE AND JUDGE PHILLIPS HAD ACTUAL KNOWLEDGE OF THIS WHEN HE ILLEGALLY SCHEDULED THE TRIAL IN THE CASE THAT WAS NOT NOTICED FOR THE CONFERENCE ON SEPT. 15, 2015.

28. THIS IS A CASE THAT BEGAN IN PART IN SEPT. 2012 WITH TED BERNSTEIN ALLEGING POSSIBLE MURDER OF HIS FATHER SIMON BERNSTEIN AND HOSPITAL PERSONNEL BLOCKING PETITIONER OUT OF THE ICU PRIOR TO HIS PASSING WHERE IT WAS ALLEGED MY FATHER SIMON BERNSTEIN HAD BEEN POISONED AND WHERE TED BERNSTEIN GOES ON TO CLAIM HE HAS LAWYERS TO DEAL WITH THE SHERIFF'S AND AUTHORITIES AND IS ASKING FOR AN AUTOPSY AND THE BODY OF SIMON BERNSTEIN IS CLAIMED TO BE IN MIAMI, FL WHILE I DISCOVERED ALL OF SIMON BERNSTEIN'S COMPUTER FILES WERE "WIPE CLEAN" ON THE NIGHT OF HIS PASSING.

29. THIS THEN TURNS INTO A SCENARIO WHERE TED BERNSTEIN'S ATTORNEYS TESCHER AND SPALLINA ARE NOT TURNING OVER DOCUMENTS FOR MONTHS AND IN SOME CASES YEARS ONLY TO COME TO FIND OUT THAT TESCHER AND SPALLINA USED FRAUDULENT DOCUMENTS IN THE CASE TO CLOSE SHIRLEY BERNSTEIN'S ESTATE BEFORE JUDGE COLIN USING SIMON AS IF HE WAS ALIVE WHEN TED BERNSTEIN IS LATER PURPORTING TO BE THE FIDUCIARY OF THE CLOSED ESTATE OF HIS MOTHER TO LATER FIND OUT NOT ONLY WERE FRAUDULENT DOCUMENTS USED BUT KIMBERLY MORAN WHO WAS CONSPICUOUSLY ABSENT FROM THE VALIDITY TRIAL AND SHOULD HAVE BEEN A NECESSARY WITNESS DEMANDED TO ATTEND BY JUDGE PHILLIPS LATER ADMITS TO ACTUALLY FORGING SOME OF THE DOCUMENTS BY PLACING FALSE SIGNATURES ON DOCUMENTS AFTER TRACING PRIOR SIGNATURES AND THUS JUDGE PHILLIPS ACTUALLY KNEW AND SHOULD HAVE KNOWN FORENSIC EXPERTS WERE NECESSARY FOR THE TRIAL AND TED BERNSTEIN AS TRUSTEE SHOULD HAVE ARRANGED FOR THIS YET TED BERNSTEIN WAS NOT A PROPER TRUSTEE BY THE LANGUAGE OF THE DOCUMENTS AND IS INVOLVED IN THE FRAUDS THEMSELVES AND THUS SHOULD HAVE BEEN REMOVED WITH ALL PARTIES WHO WERE INVOLVED IN THE MULTIPLE FRAUDS ON THE COURT AND BENEFICIARIES.

30. YET AS JUDGE PHILLIPS ACTUALLY KNEW AND SHOULD HAVE KNOWN, THERE ARE MISSING TRUSTS AND ORIGINAL DOCUMENTS FROM THE ILLINOIS FEDERAL LITIGATION, AND THEN “OTHER” ORIGINALS IN THE OPPENHEIMER AND SHIRLEY CASES MAGICALLY POPPING UP IN THE POSSESSION OF TED’S ATTORNEY ALAN ROSE YEARS LATER WHICH IS WHY ALAN ROSE HAD TO BE DISQUALIFIED NOW AS A NECESSARY MATERIAL FACT WITNESS FOR TRIAL (ALAN ROSE IS ALSO ALREADY A SERVED COUNTER DEFENDANT IN THE COUNTER COMPLAINT FILED IN THE SHIRLEY TRUST CASE) AND SHOULD HAVE BEEN A WITNESS FOR TRIAL BUT ONLY AFTER PROPER PRE-TRIAL PROCEDURES IN THIS COMPLEX LITIGATION WHERE DEPOSITIONS AND DISCOVERY WERE COMPLETED PROPERLY BEFORE TRIAL.

31. JUDGE PHILLIPS ACTUALLY KNEW AND SHOULD HAVE KNOWN THAT THE “OTHER” “ORIGINALS” WERE RELEVANT BOTH FROM CHAIN OF CUSTODY OF THE EVIDENCE BUT ALSO FOR COMPARISON PURPOSES THAT ANY EXPERT WOULD WISH TO REVIEW WHEN BLATANT IRREGULARITIES ARE CLEAR TO THE NAKED HUMAN EYE OF THE ORDINARY PERSON AND THUS JUDGE PHILLIPS KNEW WHEN HE WAS ILLEGALLY SCHEDULING THIS TRIAL FOR ONE DAY ONLY IN A CASE NOT NOTICED FOR THE CONFERENCE THAT HE HAD IN FACT ENTIRELY PRE-DETERMINED AND PRE-JUDGED THE ACTUAL TRIAL ITSELF AND IN FACT IS FOUND “DOODLING” DURING THE TRIAL WHILE THE ONLY WITNESS TO VERIFY AND VALIDATE DOCUMENTS IS ROBERT SPALLINA WHO WAS PLED GUILTY OF INSIDER TRADING AND BREACH OF FIDUCIARY DUTIES IN AN ALLEGED UNRELATED CASE BY THE US SECURITIES AND EXCHANGE COMMISSION IN THE MONTHS PRIOR TO TRIAL AND WHO HAD ADMITTED TO ALTERING THE SHIRLEY TRUST TO THE PALM BEACH SHERIFF’S AND EVEN ADMITTED AT TRIAL TO USING THE MAILS TO MAIL THE FRAUDULENT SHIRLEY TRUST DOCUMENT THAT HE CREATED AND YET ELIOT BERNSTEIN WAS LEFT AS A PRO SE LITIGANT WHO SHOULD HAVE HAD TRUST FUNDS TO FUND COUNSEL FOR HIMSELF AND MINOR CHILDREN BUT INSTEAD LEFT WITHOUT

AN ATTORNEY WHERE EVEN THE PR OF THE SIMON BERNSTEIN ESTATE BRIAN O'CONNELL AND JOY FOGLIETTA ABANDONED THEIR INVOLVEMENT IN THE TRIAL LAST MINUTE AND DID NOT APPEAR DESPITE HAVING RAISED DEFENSES THAT TED BERNSTEIN IS NOT A VALID TRUSTEE AND BEING FURTHER INTERTWINED WITH ALAN ROSE AS NECESSARY WITNESSES IN THE CUSTODY POSSESSION AND CONTROL OF OPERATIVE ORIGINAL DOCUMENTS AND OTHER RECORDS.

32. JUDGE PHILLIPS ACTUALLY KNEW THAT HE TOOK NO STEPS TO FOLLOW THE PRE-TRIAL RULES OF 1.200 AND DENIED DUE PROCESS BY NOT PERMITTING ELIOT BERNSTEIN TO BE HEARD ON OUTSTANDING DISCOVERY, NEED FOR DEPOSITIONS, NEED FOR EXPERT WITNESSES AND OTHER WITNESSES TO THE OPERATIVE DOCUMENTS THEMSELVES LIKE TRACI KRATISH AND THE OTHER WITNESSES TO THE ALLEGED EXECUTION OF THESE DOCUMENTS WHICH CLEARLY WOULD HAVE TAKEN THE TRIAL PAST ONE DAY AS THERE WAS NOT EVEN SUFFICIENT TIME FOR THE BARE MINIMUM WITNESSES CALLED AND THAT DOES NOT EVEN CONTEMPLATE THAT THE ESTATE OF SIMON BERNSTEIN SHOULD HAVE HAD UNCONFLICTED COUNSEL AND REPRESENTATION AT THE TRIAL BUT INSTEAD WAS UNREPRESENTED.

33. TRACI KRATISH HAD ALREADY GIVEN STATEMENTS TO THE PALM BEACH COUNTY SHERIFF'S WHICH CONTRADICTS ONE OF THE OPPENHEIMER DOCUMENTS MAGICALLY FOUND BY TED BERNSTEIN'S COUNSEL ALAN ROSE WHO MUST BE DISQUALIFIED AS A NECESSARY WITNESS AND THUS JUDGE PHILLIPS KNEW ONE DAY WOULD NEVER SUFFICE FOR THESE TWO ADDITIONAL WITNESSES AND SHOULD HAVE ALLOWED OTHER TIME FOR MORE WITNESSES SUCH AS THOSE SHOWING THE GOVERNOR'S OFFICE HAD FOUND SIMON BERNSTEIN'S WILL IMPROPERLY EXECUTED AND OTHERS SUCH AS WILLIAM STANSBURY WHO WAS FAMILIAR WITH SHIRLEY AND SIMON BERNSTEIN.

34. JUDGE PHILLIPS KNEW AND SHOULD HAVE KNOWN THE MISSING DISCOVERY AND BUSINESS RECORDS NOT PRODUCED WERE RELEVANT TO CLAIMS OF UNDUE INFLUENCE AGAINST SIMON

BERNSTEIN AND THE OVERALL PICTURE OF THE ALLEGED ESTATE PLANNING BY TESCHER AND SPALLINA AND AGAIN JUDGE PHILLIPS KNEW IT WAS IMPROPER TO FIRST SCHEDULE THIS TRIAL IN THIS MANNER AND THEN PROCEED TO HOLD SUCH TRIAL UNDER THESE CIRCUMSTANCES INCLUDING THAT HE WAS ACTING BEYOND AND OUTSIDE HIS AUTHORITY AND IN THE CLEAR ABSENCE OF JURISDICTION BEING SOMEONE WHO MANDATORILY HAD TO BE DISQUALIFIED BEFORE THE TRIAL COMMENCED.

35. JUDGE PHILLIPS KNEW HE WAS ACTING PREJUDICIALLY AND IMPROPER FURTHER FOR ALL THE REASONS SET FORTH IN THE NEW LEGALLY SUFFICIENT MOTION TO DISQUALIFY POST TRIAL WHICH IS INCORPORATED BY REFERENCE AND ATTACHED HERETO. SEE, DISQUALIFICATION POST TRIAL³.

36. JUDGE PHILLIPS FURTHER KNOWS IT WAS IMPROPER TO DENY A CONTINUANCE FOR ATTORNEY CANDICE SCHWAGER TO BE ADMITTED PRO HAC VICE TO REPRESENT THE INTERESTS OF MY MINOR CHILDREN AND MY INTERESTS TO THE EXTENT NOT CONFLICTED AND THAT ATTORNEY SCHWAGER SOUGHT A VOLUNTARY CONTINUANCE FROM ALAN ROSE WHO SHOULD BE DISQUALIFIED AS A NECESSARY AND MATERIAL FACT WITNESS IN ANY EVENT AND JUDGE PHILLIPS FURTHER ACTUALLY KNOWS HE INTENTIONALLY MISSTATED THE LAW TO MYSELF AS A PRO SE PARTY ON THE DAY OF THE ILLEGALLY SCHEDULED TRIAL OF DEC. 15, 2015 BY DECLARING MY MOTION FOR CONTINUANCE TO HAVE COUNSEL SCHWAGER ADMITTED PRO HAC VICE AS UNTIMELY WHEN THE LAW ALLOWS FOR THE MOTION TO EVEN BE MADE ORALLY AT TRIAL AND INSTEAD WAS FILED WITH THE COURT IN WRITING BEFORE THE ILLEGAL TRIAL COMMENCED.

37. JUDGE PHILLIPS FURTHER KNOWS UNDER THE CIRCUMSTANCES AND THE COMPLEXITY OF THE CASE AND THE EXISTENCE OF OTHER ‘ORIGINALS’ AND PROVEN FRAUD ON DOCUMENTS DEPOSITED INTO

³ December 28, 2015 - 2nd Disqualification Motion Judge Phillips
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%202015,%202015%20ECF%20STAMPED%20COPY.pdf>

THE COURT INCLUDING ACTUAL FORGERY OF SIGNATURES ON THE DOCUMENTS AND THE NEED FOR FORENSIC EXAMINATION THAT THE TESTIMONY OF A BARE WITNESS BEING ONE WHO ADMITTED TO COMMITTING FRAUD UPON THE COURT AND FURTHER VALIDATING THE SIGNATURE OF THE NOTARY WHO ALSO ADMITTED TO FRAUD IN THIS ACTUAL CASE WAS LEGALLY INSUFFICIENT AS A WHOLE TO DETERMINE OR DECLARE THE VALIDITY OF ANY OF THE DOCUMENTS AND INSTRUMENTS HEREIN.

38. JUDGE PHILLIPS FURTHER KNOWS THAT DURING THE TRIAL HE DENIED ELIOT BERNSTEIN PROPER TIME TO INSPECT ANY OF THE EVIDENCE AND EXHIBITS BEING OFFERED AND TO OBJECT THERETO AND WHILE "DOODLING" DURING THE SPALLINA TESTIMONY SOUGHT TO LATER REMOVE CANDICE BERNSTEIN WHO HAD BEEN SERVED IN THE CASE AND WAS ASSISTING ME PRO SE DURING THE TRIAL AS MY WIFE AND LEGAL GUARDIAN OF OUR THREE MINOR CHILDREN AND FURTHER DENIED AN OPPORTUNITY TO EVEN REVIEW THE IMPROPER PROPOSED ORDER HANDED TO JUDGE PHILLIPS AT THE CLOSING OF THE TRIAL BY ALAN ROSE WHO SHOULD HAVE BEEN AND SHOULD BE DISQUALIFIED AS A NECESSARY AND MATERIAL FACT WITNESS.

39. FOR ALL THE REASONS HEREIN THE TRIAL ORDER AND JUDGMENT OF DEC. 16, 2015 MUST BE VACATED AND DECLARED VOID AND A LEGAL NULLITY WHILE JUDGE PHILLIPS MUST MANDATORILY DISQUALIFY AND THE CASE RESET FOR FRAUD AND EVIDENCE AND DOCUMENTS IMPOUNDED FOR PROPER AUTHORITIES TO INVESTIGATE AND FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE JUST AND PROPER.

WHEREFORE, IT IS RESPECTFULLY PRAYED FOR AN ORDER DECLARING THE TRIAL JUDGEMENT AND ORDER INVALID AND VOID AS A LEGAL NULLITY, VACATING SUCH ORDER AND JUDGE PHILLIPS DISQUALIFYING HIMSELF FROM FURTHER PROCEEDINGS HEREIN AND FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE JUST AND PROPER.

Dated: December 31, 2015

/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 31st day of December, 2015.

By: /s/ Eliot Ivan Bernstein

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

SERVICE LIST - DEFENDANTS, RESPONDENTS, COUNTER DEFENDANTS

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

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

<p>2142 Churchill Lane Highland Park, IL 60035 lisa.friedstein@gmail.com lisa@friedsteins.com</p>	<p>Executive Vice President and General Counsel Oppenheimer & Co. Inc. Corporate Headquarters 125 Broad Street New York, NY 10004 800-221-5588 Dennis.mcnamara@opco.com info@opco.com</p>
<p>Dennis G. Bedley Chairman of the Board, Director and Chief Executive Officer Legacy Bank of Florida Glades Twin Plaza 2300 Glades Road Suite 120 West – Executive Office Boca Raton, FL 33431 info@legacybankfl.com DBedley@LegacyBankFL.com</p>	<p>Hunt Worth, Esq. President Oppenheimer Trust Company of Delaware 405 Silverside Road Wilmington, DE 19809 302-792-3500 hunt.worth@opco.com</p>
<p>James Dimon Chairman of the Board and Chief Executive Officer JP Morgan Chase & CO. 270 Park Ave. New York, NY 10017-2070 Jamie.dimon@jpmchase.com</p>	<p>Neil Wolfson President & Chief Executive Officer Wilmington Trust Company 1100 North Market Street Wilmington, DE 19890-0001 nwolfson@wilmingtontrust.com</p>
<p>William McCabe Oppenheimer & Co., Inc. 85 Broad St Fl 25 New York, NY 10004 William.McCabe@opco.com</p>	<p>STP Enterprises, Inc. 303 East Wacker Drive Suite 210 Chicago IL 60601-5210 psimon@stpcorp.com</p>
<p>Charles D. Rubin Managing Partner Gutter Chaves Josepher Rubin Forman Fleisher Miller PA Boca Corporate Center 2101 NW Corporate Blvd., Suite 107 Boca Raton, FL 33431-7343 crubin@floridatatax.com</p>	<p>Ralph S. Janvey Krage & Janvey, L.L.P. Federal Court Appointed Receiver Stanford Financial Group 2100 Ross Ave, Dallas, TX 75201 rjanvey@kjllp.com</p>
<p>Kimberly Moran Tescher & Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 kmoran@tescherspallina.com</p>	<p>Lindsay Baxley aka Lindsay Giles Life Insurance Concepts 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 lindsay@lifeinsuranceconcepts.com</p>
<p>Gerald R. Lewin CBIZ MHM, LLC 1675 N Military Trail Fifth Floor Boca Raton, FL 33486</p>	<p>CBIZ MHM, LLC General Counsel 6480 Rockside Woods Blvd. South Suite 330 Cleveland, OH 44131</p>

	<p>ATTN: General Counsel generalcounsel@cbiz.com (216)447-9000</p>
<p>Albert Gortz, Esq. Proskauer Rose LLP One Boca Place 2255 Glades Road Suite 421 Atrium Boca Raton, FL 33431-7360 agortz@proskauer.com</p>	<p>Heritage Union Life Insurance Company A member of WiltonRe Group of Companies 187 Danbury Road Wilton, CT 06897 estroup@wiltonre.com</p>
<p>Estate of Simon Bernstein Brian M O'Connell Pa 515 N Flagler Drive West Palm Beach, FL 33401 boconnell@ciklinlubitz.com</p>	<p>Counter Defendant Steven Lessne, Esq. Gray Robinson, PA 225 NE Mizner Blvd #500 Boca Raton, FL 33432 steven.lessne@gray-robinson.com</p>
<p>Byrd F. "Biff" Marshall, Jr. President & Managing Director Gray Robinson, PA 225 NE Mizner Blvd #500 Boca Raton, FL 33432 biff.marshall@gray-robinson.com</p>	<p>Steven A. Lessne, Esq. Gunster, Yoakley & Stewart, P.A. 777 South Flagler Drive, Suite 500 East West Palm Beach, FL 33401 Telephone: (561) 650-0545 Facsimile: (561) 655-5677 E-Mail Designations: slessne@gunster.com jhoppel@gunster.com eservice@gunster.com</p>
<p>T&S Registered Agents, LLC Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com</p>	<p>David Lanciotti Executive VP and General Counsel LaSalle National Trust NA CHICAGO TITLE LAND TRUST COMPANY, as Successor 10 South LaSalle Street Suite 2750 Chicago, IL 60603 David.Lanciotti@ctt.com</p>
<p>Joseph M. Leccese Chairman Proskauer Rose LLP Eleven Times Square New York, NY 10036 jleccese@proskauer.com</p>	<p>Brian Moynihan Chairman of the Board and Chief Executive Officer 100 N Tryon St #170, Charlotte, NC 28202 Phone:(980) 335-3561</p>

EXHIBIT 1 - ATTACHED JUDGEMENT/ORDER OF DEC. 16, 2015

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

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the
Simon L. Bernstein Trust Dtd 9/13/12, and on
behalf of his minor children D.B., Ja. B. and Jo. B.;
JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;
LISA FRIEDSTEIN, Individually, as Trustee f/b/o
Max Friedstein and C.F., under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of her
minor child, C.F.,

Defendants.

FINAL JUDGMENT ON COUNT II OF THE AMENDED COMPLAINT

This cause came before the Court for trial on December 15, 2015, pursuant to the Court's
ORDER SETTING TRIAL on AMENDED COMPLAINT (DE 26) COUNT II dated September 24,
2015. The Court, having received evidence in the form of documents and testimony of witnesses,

having heard argument of counsel and *pro se* parties who wished to argue, and being otherwise fully advised of the premises, hereby enters a Final Judgment as to Count II of the Amended Complaint:

1. This is an action for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- A. Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust", attached to the Amended Complaint as Exhibit A~~3~~, *EX. P2 AT TRIAL*) *JB*
- B. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 ("Shirley First Amendment", attached to the Amended Complaint as Exhibit B~~3~~, *EX. P3 AT TRIAL*) *JB*
- C. Will of Simon L. Bernstein dated July 25, 2012 ("Simon Will", attached to the Amended Complaint as Exhibit C~~3~~, *EX. P4 AT TRIAL*) *JB*
- D. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust", attached to the Amended Complaint as Exhibit D~~3~~, *EX. P5 AT TRIAL*), *and* *JB*
- E. Will of Shirley Bernstein dated May 20, 2008 ("Shirley Will", attached to the Amended Complaint as Exhibit E~~3~~, *EX. P1 AT TRIAL*) *JB*

(collectively, the "Testamentary Documents").

2. Based upon the evidence presented during the trial, the Court finds that the Testamentary Documents, as offered in evidence by Plaintiff, are genuine and authentic, and are valid and enforceable according to their terms.

3. The Court finds that Simon's Testamentary Documents were signed by Simon and Shirley's Testamentary Documents were signed by Shirley, in the presence of two attesting witnesses who signed in the presence of the testator and in the presence of each other. § 732.502, Fla. Stat.; § 736.0403(2)(b), Fla. Stat.

4. The Court finds the Testamentary Documents meet the requirements for self-proof, as specified in §732.503, Fla. Stat. Alternatively, the Testamentary Documents were properly admitted based upon the testimony of at least one of the attesting witnesses, which occurred. §733.201, Fla. Stat.

5. Based on the evidence presented, the Court finds that Plaintiff, Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents. ~~Indeed,~~ Ted S. Bernstein had never seen the documents before his father's death. ~~Moreover,~~ Ted S. Bernstein played no role in any questioned activities of the law firm Tescher & Spallina, PA, who represented Simon and Shirley while they were alive. There is no evidence to support the assertions that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided and abetted others in forging or fabricating documents. ~~Thus,~~ Ted Bernstein played no role in the preparation of any improper documents; the presentation of any improper documents to the Court; or any other improper act, contrary to the allegations of Eliot Bernstein, ~~made in the pleadings in this case or in various blogs and websites in which Eliot Bernstein has attacked the actions of Ted Bernstein.~~ *The evidence shows*

ELIOT BERNSTEIN

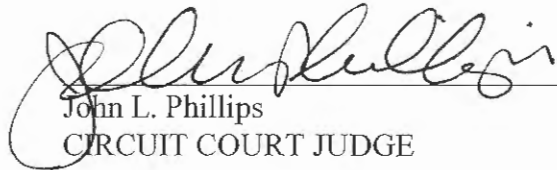
ju
ju
ju
ju
ju

6. Based on the evidence presented, the Court finds that an unauthorized version of the First Amendment to Shirley Bernstein Trust Agreement was prepared sometime after Simon died. This document (Pl. Ex. 6) was not signed by Shirley Bernstein and, therefore, is not an operative document.

7. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure, determining the validity of Testamentary Documents, denying any objection to the probate of Shirley's and Simon's Wills or the validity of the Trust Agreements, and determining which persons are entitled to receive distributions from these trusts and estates.

8. Based upon the rulings made by the Court in this trial of Count II, the Court reserves jurisdiction to determine the remaining issues in this action.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 16 day of December, 2015.


John L. Phillips
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (jviewit@jviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her
children, and as natural guardian for M.F. and
C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

JOHN L. PHILLIPS
CIRCUIT JUDGE
NORTH COUNTY COURTHOUSE
3188 PGA BOULEVARD
PALM BEACH GARDENS, FL 33410



Eliot I. Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434

33434345353

BATES NO. EIB 003441
02/27/2017



BATES NO. EIB 003442
02/27/2017

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

PROBATE DIVISION IH
CASE NO. 502014CP003698XXXXNB

TED BERNSTEIN, AS TRUSTEE
OF THE SHIRLEY BERNSTEIN TRUST
AGREEMENT DATED MAY 20, 2008
AS AMENDED
Plaintiff

v.
ALEXANDRA BERNSTEIN; ET AL.
Defendants

COPY

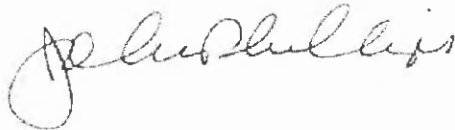
ORDER CONFIRMING DENIAL OF DISQUALIFICATION MOTION

This matter came before the Court at the close of trial December 15, 2015, when defendant Elliott Bernstein orally moved for recusal of the undersigned. The Court adjourned for 5 minutes to allow Mr. Bernstein to put his motion into written form. Mr. Bernstein then presented the "Verified Sworn Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Circuit Judge John L Phillips", and "Notice of Correction to Verified Sworn Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Circuit Judge John Phillips", both dated December 4, 2015. These documents had previously been presented to the Court seeking disqualification of the undersigned (see Docket Entries 94 and 98) and were denied as legally insufficient by Order entered December 8, 2015 (Docket Entry 98).

In an abundance of caution, on December 15, 2015, the undersigned entered a handwritten Order denying this new presentation of the already-ruled-upon request for disqualification. Whereupon, it is **ORDERED AND ADJUDGED:**

1. The handwritten Order dated December 15, 2015, denying defendant Elliott Bernstein's previously-ruled-upon requests for disqualification, described above, is hereby **CONFIRMED**.
2. The above-described requests for disqualification are legally insufficient, and are properly **DENIED**.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 16th day of December, 2015.



Circuit Judge

Copies furnished to:

Alan B. Rose Esq. arose@pm-law.com
John Morrissey Esq. john@jmorrisseylaw.com
Brian M. O'Connell Esq. service@ciklinlubitz.com
Eliot I. Bernstein 2753 N.W. 34th Street, Boca Raton FL, 33434
Lisa Friedstein 2142 Churchill Lane, Highland Park IL, 60035
Pamela Beth Simon 303 E. Wacker Drive, Suite 2725, Chicago IL, 60601
Jill Iantoni 2101 Magnolia Lane Highland Park IL, 60035

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

TED BERNSTEIN, AS TRUSTEE
OF THE SHIRLEY BERNSTEIN TRUST
AGREEMENT DATED MAY 20, 2008,
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

Disqualification motion is DENIED as legally insufficient - already ruled upon in order of 12-8-15

Other Applicable Related Cases this Disqualification of Circuit Judge John L. Phillips, Should

Apply to:

- Case # 502012CP004391XXXXSB – Simon Bernstein Estate
- Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
- Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- Case # 502014CP003698XXXXSB – Shirley Trust Construction
- Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case
- OLD CASE # 502014CA014637XXXXMB

*DE #98
- identical to motion filed by defendant on 12-4-2015 at DE's #94 & #98
DONE & ORDERED
12-15-15*

VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L. PHILLIPS

COMES NOW Eliot Bernstein (“Eliot” or “Petitioner”) and files under information and belief this Verified Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Judge John L. Phillips, pursuant to Fla R. Admin P. 2.330 and section 38.10, Florida Statutes, for the following grounds and reasons:

Rule 2.330 (a) Application. This rule applies only to county and circuit judges in all matters in all divisions of court.

EXHIBIT 2 - NOTICE FOR CASE MANAGEMENT CONFERENCE

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION

IN RE: ESTATE OF

File No. 502012CP4391XXXXNB IH

SIMON L. BERNSTEIN

Deceased.

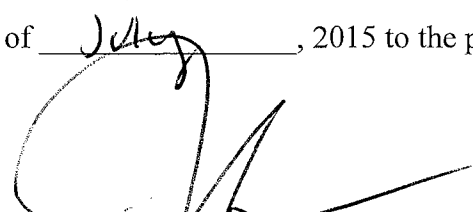
NOTICE OF HEARING

TO: ALL PARTIES ON CERTIFICATE OF SERVICE ATTACHED

YOU ARE HEREBY NOTIFIED that the undersigned will call up for hearing before the Honorable JOHN PHILLIPS, Judge of the above court, in the Judge's chambers in the Palm Beach North County Courthouse, 3188 PGA Blvd, Courtroom 3, Palm Beach Gardens, FL 33410 on **September 15, 2015 at 9:30 AM (one hour set aside):**

CASE MANAGEMENT CONFERENCE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by e-mail service or U.S. Postal Service on the 31st day of July, 2015 to the parties on the attached Service List.


BRIAN M. O'CONNELL
Florida Bar No: 308471
ASHLEY N. CRISPIN
Florida Bar No: 037495
JOIELLE A. FOGLIETTA
Florida Bar No: 094238
Ciklin Lubitz & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
Telephone: 561-832-5900 Facsimile: 561-833-4209
primary e-mail: service@ciklinlubitz.com
secondary e-mail: slobdell@ciklinlubitz.com

SERVICE LIST

<p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, PA. 505 S. Flagler Dr., Suite 600 West Palm Beach, FL 33401 (561) 355-6991 arose@mrachek-law.com mchandler@mrachek-law.com Attorney for Ted S. Bernstein</p>	<p>John P. Morrissey, Esq. 330 Clematis St., Suite 213 West Palm Beach, FL 33401 john@jmorrisseylaw.com Attorney for Molly Simon et al</p>	<p>Donald R. Tescher, Esq. Robert L. Spallina, Esq. 925 S. Federal Highway, Suite 500 Boca Raton, FL 33432 Dtescher@tescherlaw.com ddustin@tescherlaw.com rspallina@tescherspallina.com kmoran@tescherspallina.com</p>
<p>Peter Feaman, Esq. Peter M. Feaman, P.A. 3695 Boynton Beach Blvd., Suite 9 Boynton Beach, FL 33436 pfeaman@feamanlaw.com</p>	<p>Shendell & Pollock, P.L. 2700 N. Military Trail, suite 150 Boca Raton, FL 33431 241-2323 Fax: 241-2330 Gary R. Shendell, Esq. gary@shendellpollock.com estella@shendellpollock.com grs@shendellpollock.com Kenneth S. Pollock, Esq. ken@shendellpollock.com britt@shendellpollock.com grs@shendellpollock.com Attorney for Tescher and Spallina</p>	<p>Max Friedstein 2142 Churchill Lane Highland Park, IL 60035 Beneficiary</p>
<p>Eliot Bernstein and Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 N.W. 34th St. Boca Raton, FL 33434 iviewit@iviewit.tv</p>	<p>Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	<p>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</p>
<p>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</p>		

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

TED BERNSTEIN, AS TRUSTEE
OF THE SHIRLEY BERNSTEIN TRUST
AGREEMENT DATED MAY 20, 2008,
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXNB

PLAINTIFF,

**ELIOT BERNSTEIN'S MOTION FOR STAY &
CONTINUANCE OF TRIAL**

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

_____/

Other Applicable Related Cases this Disqualification of Circuit Judge John L. Phillips, Should

Apply to:

Case # 502012CP004391XXXXSB – Simon Bernstein Estate
Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
Case # 502014CP003698XXXXSB – Shirley Trust Construction
Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case
OLD CASE # 502014CA014637XXXXMB

- _____/
1. I am presently acting pro se and have a Texas attorney seeking admission Pro hac vice and file this motion for a Stay and Continuance of a Trial and said motion should be heard at the Commencement of proceedings on Dec. 15, 2015 at 9:30 am EST.
 2. The Trial should be stayed and continued as this court is without proper jurisdiction as this Court should be mandatorily Disqualified and I hereby renew and refile the Disqualification¹.

¹ See,

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L.%20Phillips.pdf>

3. The Trial should be stayed and continued since I have a Texas licensed attorney Candice Schwager who has been preliminarily retained and who has filed a Notice of Abatement letter with the Court and Letter to Alan Rose seeking a voluntary stay for this attorney to be admitted Pro Hac Vice².
4. This attorney is seeking to represent the Minor Children in this action and Trustee Ted Bernstein, Alan Rose and the Estate have denied funds to represent the Minor children who have interests herein and even refused to voluntarily stay the proceeding pending her admission to this Court. The Trial should be stayed and continued so these Minor children have Counsel and due process provided.
5. This attorney has indicated she will also represent my interests if upon completion of her review of all necessary documents she can determine that this representation will not have irreconcilable conflicts of interest.
6. The Trial should thus be stayed and continued at least 30 days according to this attorney seeking to be admitted Pro Hac Vice.
7. The Trial should be stayed and continued under due process as it was not properly Noticed for the Case Management Conference that set the Trial date and Alan Rose either mistakenly or knowingly mislead this Court by claiming otherwise.

Improperly NOTICED Trial

8. Simply reviewing the Notice that I, Eliot Bernstein was sent from the PR Brian O'Connell's office clearly shows the Case was Noticed to be heard in the Estate of Simon Bernstein.

²See, <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20ECF%20Filing%20Stamped%20Copy.pdf>

RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference, provides in part: **“The matter to be considered shall be specified in the order or notice setting the conference.”**

9. A simple review of the Transcript from the Case Management Conference Noticed in the Estate of Simon Bernstein before Judge Phillips on Sept. 15, 2015 shows that Alan Rose who represents the alleged Trustee Ted Bernstein either Mistakenly or Knowingly presented False Information before the Court claiming that All 4 Cases were Noticed.
10. The Transcript further shows that neither Florida Licensed attorneys Brian O’Connell, nor Joy Foglieta, who were both present and who had sent the NOTICE for the Conference stood up to Correct the Record on this day and instead went along moving in the Shirley Bernstein case when the case was only Noticed for Simon Bernstein Estate.
11. The Trial should be stayed and continued for further due process denial by failing to determine the standard Case Management issues according to the Rules as set out herein.

Case - Management and Due-Process Issues:

12. Due process is violated where almost None of the Standard Pre-Trial Case Management Rules have been followed or even allowed to be Discussed by myself on Sept. 15, 2015 creating a further basis to Stay the current Trial.
13. These Rules include items such as:

RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference:

[http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/\\$FILE/Civil.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/$FILE/Civil.pdf)

“At such a conference the court may:

- (1) schedule or reschedule the service of motions, pleadings, and other papers;

(2) set or reset the time of trials, subject to rule 1.440(c); (3) coordinate the progress of the action if the complex litigation factors contained in rule 1.201(a)(2)(A)–(a)(2)(H) are present; (4) limit, schedule, order, or expedite discovery; (5) consider the possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, and stipulations regarding authenticity of documents and electronically stored information; (6) consider the need for advance rulings from the court on the admissibility of documents and electronically stored information; (7) discuss as to electronically stored information, the possibility of agreements from the parties regarding the extent to which such evidence should be preserved, the form in which such evidence should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources; (8) schedule disclosure of expert witnesses and the discovery of facts known and opinions held by such experts; (9) schedule or hear motions in limine; (10) pursue the possibilities of settlement; (11) require filing of preliminary stipulations if issues can be narrowed; (12) consider referring issues to a magistrate for findings of fact; and (13) schedule other conferences or determine other matters that may aid in the disposition of the action. (b) Pretrial Conference. After the action is at issue the court itself may or shall on the timely motion of any party require the parties to appear for a conference to consider and determine: (1) the simplification of the issues; (2) the necessity or desirability of amendments to the pleadings; (3) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof; (4) the limitation of the number of expert witnesses; (5) the potential use of juror notebooks; and (6) any matters permitted under subdivision (a) of this rule

14. Nowhere in the Sept. 15, 2015 Conference Transcript is there any Discussion or

Determination by the Court on: 1) Outstanding Discovery including requests for Production by Eliot Bernstein; 2) the need for Pre-Trial Depositions; 3) Disclosure of Expert Witnesses particularly in a case that already has Admitted Document Fraud in Documents filed with the Court where Forensic Experts are likely necessary; 4) and many other pre-trial issues as outlined in the Case Management rules.

15. Based on the proven history of fraud, both the minor children and myself should have access to Trust and Estate funds for hiring of proper forensic experts. Ted Bernstein's failure to obtain such as alleged Trustee is a further breach of his fiduciary duties creating further

conflict with his proceeding forward in this Trial which should be stayed and continued at this time.

16. Alan Rose must be Disqualified as a necessary and material fact witness based upon his May 20, 2015 Email about alleged “Original” Documents in a related Oppenheimer Trust and his subsequent June 4, 2015 letter issued upon his Law Firm Letterhead apparently providing further information on “Original” (actually claimed as “Duplicate Original”) documents in his Possession.
17. Conspicuously absent from these letters and emails is a Sworn Affidavit detailing the *entire links in the Chain of Custody* for this “Original” Best Evidence and thus Alan Rose must be Disqualified under Florida ***RULE 4-3.7 LAWYER AS WITNESS*** grounds as he and the PRs and are intertwined in the Chain of Custody and Possession of these Originals and other items with the PR Brian O’Connell and attorney Joy Foglietta and other staff at the Ciklin law firm.
18. These parties should be available at pre-Trial Deposition and should have to Testify at Trial to establish a proper chain of custody of these items of evidence. These other “originals” are also important for purposes of viewing and comparison and analysis pre-trial which is what should have been scheduled previously.
19. Alan Rose necessary intertwines himself with the PRs and with items that were allegedly Inventoried and yet still claims to make the magical Discovery of these “original” documents. See, Email May 20, 2015:

“From: Alan Rose [<mailto:ARose@mrachek-law.com>]
Sent: Wednesday, May 20, 2015 2:14 PM
To: Lessne, Steven; Eliot Ivan Bernstein; Eliot Ivan Bernstein
Cc: Ted Bernstein; O’Connell, Brian M.; Foglietta, Joy A
Subject: Original signed "Oppenheimer" Trusts

Mr. Lessne and Mr. Eliot Bernstein:

I am writing to advise that we located some files in drawers in Simon's private office in his home at Lions Head, as we were trying to assess the complexity of things that must happen between now and the closing of Lions Head. My primary reason was to visually inspect the three chandeliers that have been the subject of PR emails in the past few days.

In any event, and although these files likely were examined and discounted as unimportant by the PRs after Simon's death and likely meant nothing if and when they were catalogued or viewed during the O'Connell as PR re-appraisal/re-inspection, I noticed a folder marked as the Jake Bernstein trust. Looking more closely, there were three green folders labeled with Eliot's children's names and inside are what appear to be the original signed Irrevocable Trust Agreements for the Trusts which Oppenheimer formerly served. **These may be relevant or important to the ongoing Oppenheimer case, so I bring them to your attention.** There also are what appears to be some tax returns and Stanford Account Statements. Simply because I have attended some of the Oppenheimer hearings, I understand that Eliot claims at least one of the Trusts does not exist. As an officer of the court, and because these may be relevant, I have taken temporary custody of the documents. I will hold them pending joint instructions or a court order, but would prefer to deliver them to Steve Lessne as Oppenheimer's counsel. These have no economic value and have no bearing on the estate, so I doubt Brian O'Connell would want them, but I did not want to see them lost or discarded in the impending move. To facilitate your review, I have scanned the first and last page of each trust, and scanned the first page of the ancillary documents, and attach that in .pdf format.

I am sure that people have looked through these files before, and there did not appear to be anything else of significance. (I did notice a few folders with other grandchildren's names, not Eliot's kids, but left those papers in place because I understand that everyone except Eliot has fully cooperated with Oppenheimer in resolving these matters.)

I also have had occasion to re-look through a small box of trust documents which I have been holding, which came from Simon's former work office. Inside file folders in a desk drawer, Simon retained duplicate originals of the trust agreements relevant to my cases. When I was looking to reexamine these documents – duplicate originals of the 2008 Trusts and the 2012 Trust (the true originals remain with Tescher & Spallina who drafted them) – I noticed a copy of the three separate irrevocable trust documents. Again, these would not have caught my eye originally because I would have never guessed that Eliot would claim the trusts were not valid. I only recently had occasion to notice these in

looking for the duplicate trust originals for Simon and Shirley. The three Irrevocable Trusts appear to be signed and witnessed on page 17, but the individual pages are not initialed. Again, these were only copies, but now having looked at the originals included in the attached scan, I note (although not a handwriting expert) that the attached copies appear to be absolutely identical to the originals just found in Simon's personal office.

These copies include IRS forms under which Traci Kratish PA, as Trustee appears to have applied for and obtained a Taxpayer ID number for each trust, and obviously she provided these to Simon. Each of the Trust documents is signed by Simon Bernstein, as Settlor, and by Traci Kratish PA as the initial Trustee, and the signatures are witnessed by two people. Simon's is witnessed by Jocelyn Johnson and someone else. I am advised that Jocelyn was an employee of Simon's, as presumably was the second witness and also the initial Trustee, Traci Kratish, who was in house counsel for the companies Simon owned part of.

Although this was long before any involvement on my part, Traci Kratish appears to have been the initial trustee (there is a typo elsewhere naming Steven Greenwald). I do not know Steven Greenwald, but I have confirmed that that these trusts were not created by Tescher & Spallina. If they had been, I'm sure they would have retained the original and given Simon duplicate originals as they did for all of the trust documents for the 2008 and 2012 Trusts they prepared. I do not know if Greenwald prepared these and made a typo leaving his name on a later section, or if Kratish prepared these from a boilerplate Greenwald form and made the typo. Either way, and it does not matter to me, the fact that this was a simple and ordinary typo should be obvious to all.

Eventually, Traci Kratish left the employ as the in-house counsel for the companies. Sometime before or at the time of her leaving, she resigned and appointed someone else, and eventually these trusts accounts along with similar trusts for Simon's other seven grandchildren and much of Simon's personal wealth, were moved to Stanford. After Stanford's collapse amid word that it was a Ponzi scheme -- Simon lost upwards of \$2 million of his own funds in the Ponzi scheme -- Simon directed the transfer of the his and these trust accounts to Oppenheimer. Simon selected Oppenheimer; paid Tescher's firm to do the necessary documents to appoint Oppenheimer as successor trustee; took the documents from Tescher and had them signed by all children, including Eliot and Candice; and returned the documents to Tescher for filing. I presume that Simon paid all of these legal fees, because that is the right thing to do from an estate planning strategy and as a favor to his grandkids. I now have seen copies of the filed Petitions, and again without being a handwriting expert, it certainly looks like Eliot's and Candice's signature on them, regardless of whether they had ever met Tescher or Spallina before their parents' deaths.

Eliot and Candice reaped the benefits of Oppenheimer's services, and in any event there is no reason to believe that Candice and Eliot did not sign these Petitions for the benefit of their children. If Eliot now suggests that his and his wife's signatures do not appear on the June 2010 Petitions appointing Oppenheimer 2010 allegation, which is highly doubtful just looking at the three sets of signatures, that would mean Eliot is accusing Simon of being a forger. Eliot already is supportive of Bill Stansbury, who accuses Simon of committing a fraud on Stansbury. I would be shocked by any accusation that Simon did not obtain from Eliot and Candice their genuine signatures on the June 2010 Petitions, and particularly shocked that Eliot, who received so much of his father's (and mother's) largesse during their lifetimes, would now malign Simon's name in such a manner.

Anyway, I'm not sure if either of you needs these any longer, but if you do, here they are.

Alan B. Rose, Esq.
arose@Mrachek-Law.com
561.355.6991
505 South Flagler Drive
Suite 600
West Palm Beach, Florida 33401
561.655.2250 Phone
561.655.5537 Fax"

20. The Trial should be stayed and continued as TED is Invalid as a Trustee and is acting contrary to his fiduciary duties in failing to get proper forensic examinations of documents and Trust and Will Agreements.

21. Simon Bernstein's business and other records which have been denied in Discovery and should have been addressed Pre-trial are necessary to assist in the determination of whether he was Unduly Influenced in any alleged signing of any of the Trust and Will instruments herein.

Wherefore it is respectfully prayed for an Order Staying and Continuing the Trial herein upon terms that are just, proper and reasonable under the facts, circumstances and the law.

Respectfully Submitted on December 15, 2015,

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

CERTIFICATE OF SERVICE

Petitioner does hereby certify that the foregoing Petition was served on all parties by e-file with the clerk of the court this 15th day of December, 2015.

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

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

CASE NO. 502014CP003698XXXXSB
PROBATE DIVISION

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended

Honorable Martin Colin

Petitioner,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the
Simon L. Bernstein Trust Dtd 9/13/12, and on
behalf of his minor children D.B., Ja. B. and Jo. B.;
JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;
LISA FRIEDSTEIN, Individually, as Trustee f/b/o
Max Friedstein and C.F., under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of her
minor child, C.F., Respondents,

ANSWER

COMES NOW, PRO SE, Eliot Ivan Bernstein ("Eliot") as Beneficiary and Interested Party both for himself personally and as Guardians for his three minor children of the alleged "Shirley Bernstein Trust dated May 20, 2008, as amended" ("Shirley Trust") and as Trustee of the "Eliot Bernstein Family Trust dated 5/20/2008" and hereby files this "ANSWER" and in support thereof states, on information and belief, as follows:

ANSWER

ANSWER

Tuesday, September 2, 2014

Page 1 of 66

1. Plaintiff Ted Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is the Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, under Article IV.C.1 of the Trust ("Trustee.").

ANSWER – Deny. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The alleged Shirley Trust and the admitted fraudulently altered amendment have been challenged due to evidence of fraud, forgery and more. The crimes of admitted forgery, proven fraudulent notarizations, proven Fraud on the Court, admitted improper and illegal distributions, and admitted fraudulently altered trust documents have already been proven and admitted in the Probate actions of the Estates and Trusts of Shirley and Simon Bernstein. In part, these crimes were committed by the alleged Trustee of the Shirley Trust, Theodore Bernstein and his former counsel, Robert Spallina, Esq. and Donald Tescher, Esq. primarily.

Spallina and Tescher not only acted as Theodore's counsel in Shirley's Estate and Trust but also acted as Co-Personal Representatives, Co-Trustees and Counsel for themselves in Simon's Estate and Trusts.

Theodore Bernstein, due to his direct involvement in the crimes and being the primary party benefiting from the crimes and other reasons before this Court in the Probate actions is not now or ever qualified to act in any fiduciary capacities in the Estates and Trusts of both Shirley and Simon Bernstein.

Theodore has advanced fraudulent schemes that benefited him directly and primarily. These schemes were aided and abetted by his Attorneys at Law who are also his close personal friends and business associates, Tescher and Spallina, who together have all caused intentional interference with expectancy of inheritances, committed thefts and a multitude of other criminal acts.

4
ANSWER
Tuesday, September 2, 2014
Page 2 of 66

That there is language in the Shirley Trust and the Simon Trust that specifically precludes Theodore from acting as Trustee, as he is considered dead for ALL purposes of the Shirley Trust and Simon Trust and distributions made thereunder.

ARTICLE III. GENERAL

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "child," "children" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person.

Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, [emphasis added] however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.

2. Shirley Bernstein died on December 10, 2010, and at the time of her passing was a resident of Palm Beach County, Florida.

ANSWER – Deny, Shirley Bernstein died on December 08, 2010. That it is insulting that Shirley's son Theodore and his counsel have repeatedly misstated the day she died, despite repeated corrections.

3. Prior to her death, Shirley Bernstein created a trust known as the Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley's Trust").


ANSWER

Tuesday, September 2, 2014

Page 3 of 66

ANSWER – Deny. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. There is not enough information at this time to determine if the Shirley Trust is a valid document created on that day or if it is another fraudulent document in a series of documents in both the Estates and Trusts of Simon and Shirley that have been fraudulently notarized, forged and more. That fraudulent documents were distributed by the Fiduciaries and Attorneys at Law to the beneficiaries and others and further posited with Court. The crimes were done by Officers of this Court, Attorneys at Law and Fiduciaries who used this Court in order to illegally seize Dominion and Control of the Estates and Trusts of Simon and Shirley by putting in place imposter Personal Representatives/Executors and Trustees and then once in control committing hosts of further alleged crimes. That the original Shirley Trust document is missing, along with other dispositive documents and has been suppressed and denied by the fiduciaries despite repeated requests to inspect and review it for evidence of further fraudulent activity. The former acting Attorney at Law, Co-Personal Representative, Co-Trustee of Simon’s Estate and Trusts, Manager of certain Bernstein family entities, Robert Spallina, Esq., has already admitted to Palm Beach County Sheriff Investigators¹ to having fraudulently altered a Shirley Trust document that attempted to change beneficiaries to benefit his client Theodore’s family which had no interests in the Shirley Trust and Simon Trust at the expense of beneficiaries that he is alleged fiduciary for. Spallina stated to Investigators, “That against his better judgment he altered the first page of the first amendment to the Shirley Bernstein trust agreement, before he turned it over to Yates [Eliot and his minor children’s counsel].”

The Court will remember that in addition to this fraudulent alteration of a trust document, Shirley’s Estate was also closed by a DEAD Personal Representative, Simon, who while DEAD was used by Spallina to submit false instruments to the Court that included illegally notarized and forged

¹ Palm Beach County Sheriff Report at [www.iviewit.tv/Sheriff Reports.pdf](http://www.iviewit.tv/Sheriff%20Reports.pdf)

documents and acted alive while dead for months. This fraud on the Court illegally enabled Shirley's Estate to be closed fraudulently and changes made to her Estate by Simon acting as the PR/Executor POST MORTEM. These crimes are why Your Honor reopened the Shirley Estate and in part what led to Tescher and Spallina's removal from these matters in all fiducial and legal capacities in both the Estates and Trusts of both Simon and Shirley.

4. Shirley Bernstein was a resident of Palm Beach County, Florida when she created Shirley's Trust.

ANSWER – Admit in Part. Shirley was a resident of Palm, Beach County, Florida. Deny in part. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot cannot be sure that Shirley created the alleged Shirley Trust or if this is a further fraudulent document and evidence exists that it may be fraudulent and this evidence has been presented to the Court in the Probate cases before the Court currently for both Simon and Shirley were evidence of criminal misconduct has occurred in both.

5. An authentic copy of Shirley's Trust is attached as Exhibit "A".

ANSWER – Deny. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The alleged Trustee is aware of the fraudulent activity and to date has failed to take any actions to inspect or allow others to inspect the alleged documents, further suppressing and denying them so that it cannot be stated that this is an authentic copy of the original Shirley Trust. The Shirley Trust is also not complete as there are Schedules and Addendums referenced in the alleged Shirley Trust that are wholly missing and not attached to the Shirley Trust. These suppressed and denied Schedules and Addendums would allow the beneficiaries to see the corpus or Trust Res of the Shirley Trust. Without these items, the attached Shirley Trust is not an authentic copy of the Shirley Trust and all of its parts and what property was made a part of it.

6. Shirley's Trust, Exhibit A, is clear and unambiguous.

ANSWER
Tuesday, September 2, 2014
Page 5 of 66

ANSWER – Deny. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The alleged Shirley Trust, along with all other dispositive documents in both Simon and Shirley’s Estates and Trusts, are not known to be authentic at all despite the alleged clarity and unambiguity of any language in them. Due to the fraud already committed, proven and admitted and other recently discovered evidence that shows the alleged Shirley Trust is a fraud, the whole document is challenged before the Court as being a part of a larger fraud to alter illegally the beneficiaries of the alleged Shirley Trust, Post Mortem. Changes attempted to be made years after the beneficiary class was irrevocably established. There are reasons to believe the Shirley Trust document also has been altered to add Theodore Bernstein as a Successor Trustee fraudulently, as part of the larger fraud to seize illegally Dominion and Control of the Shirley Trust and Estate. In fact, the language that states that Theodore is the alleged Successor Trustee, which is oxymoronic and contradicts other very specific language that states that for ALL purposes of the Shirley Trust and distributions made thereunder Theodore is considered DEAD. Why then would Shirley then make him a Successor Trustee, leaving the document both unclear and ambiguous?

7. Shirley Bernstein was survived by her husband, Simon L. Bernstein.

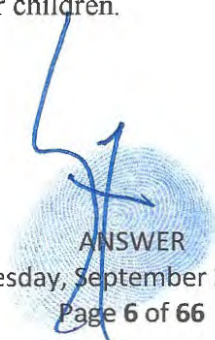
ANSWER – Admit.

8. The marriage between Shirley and Simon L. Bernstein was the first and only marriage for each of them.

ANSWER – Admit.

9. The marriage lasted 52 years, and during that time Shirley and Simon had five natural born children. Neither Simon nor Shirley had any other children.

ANSWER – Admit.


ANSWER
Tuesday, September 2, 2014
Page 6 of 66

10. The five children of Shirley and Simon are Plaintiff Ted Bernstein, and Defendants Pamela B.

Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein, each of whom is living, over the age of 18 and a lineal descendant of Shirley.

ANSWER – Admit in part and deny in part. Admit to the names of the five children of Shirley.

Deny the remainder. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that the alleged Shirley Trust became irrevocable after her death and has specific language that has removed both Theodore and Pamela and their lineal descendants from her definition of lineal descendant in the alleged Shirley Trust document. That Theodore and Pamela, and their lineal descendants, are considered PREDECEASED for all purposes of the purported Shirley Trust and for distributions made thereunder, making Theodore and Pamela currently for the purposes of the Shirley Trust no longer defined as living lineal descendants. The alleged language states clearly and unambiguously as follows;

ARTICLE III. GENERAL

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "child," "children" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person.

Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, [emphasis added] however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal

ANSWER

Tuesday, September 2, 2014

Page 7 of 66

descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.

That the alleged Trustee and his counsel are aware of this language in the alleged Shirley Trust and yet file an improper pleading with misinformation to this Court, despite language that clearly and unambiguously predeceases Theodore for all purposes of the alleged Shirley Trust and dispositions made thereunder, disqualifying him to be the alleged Trustee and make any distributions. That for this reason alone the alleged Trustee should instantly be removed and this complaint stricken other than allowing Eliot's Counter Complaint. Despite repeated requests for the alleged Trustee to resign, in light of this language and a long list of other reasons currently before the Court that make him unfit, the alleged Trustee Theodore continues to act despite knowing that he is not qualified at this time to be a fiduciary or make distributions thereunder. More astonishingly is that his Attorneys at Law have allowed their client to continue to act despite knowing that he is considered dead for all purposes of the Shirley Trust. The Court should also take note that similar language exists that predeceases Theodore in Simon's Trust. Again, Theodore, who is not named in the alleged Simon Trust as a Successor has now been illegally appointed Successor by his former counsel Tescher and Spallina who passed the baton to their close personal friend and business associate Theodore. This illegal and prohibited transfer to an unqualified party who was part of advancing their fraudulent schemes and benefitted their client Theodore set up a Successorship of Criminals. This illegal appointment that defies the language in the alleged Simon Trust has further illegally stymied and delayed inheritances and the administration of the Estate and Trusts of Simon, similar to what is occurring in the administration of Shirley's Estates and Trusts. This criminal Successorship committed by Tescher and Spallina who drafted the alleged Simon Trust and knew that Theodore was considered predeceased for ALL purposes of the Simon Trust and dispositions made thereunder and thus could not become a Successor Trustee.

ANSWER

Tuesday, September 2, 2014

Page 8 of 66

11. Shirley Bernstein was the original sole trustee of Shirley's Trust and, upon her death, was succeeded as sole trustee by Simon L. Bernstein.

ANSWER – Deny. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Again, due to the fraudulent documents and forgeries already proven and admitted in these matters can now be forensically analyzed and the originals produced for inspection, this alleged Shirley Trust is alleged to be part of a series of fraudulent documents and amendments that may be legally void.

12. Simon L. Bernstein died on September 13, 2012.

ANSWER – Admit.

13. Simon L. Bernstein was succeeded as sole trustee of Shirley's Trust by son Ted Bernstein, who presently serves as sole trustee of Shirley's Trust.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot disagrees that Theodore could in fact be a Successor Trustee, as Shirley removed Theodore and considered him PREDECEASED for all purposes of the alleged Shirley Trust and distributions made thereunder. That for Shirley to have used that language explicitly to then construct the document to make Theodore an alleged Trustee to make distributions thereunder contradicts her explicit language and definitions that remove Theodore for ALL purposes, including making distributions and this reeks of further alteration of documents. In light of the many fraudulent and forged documents already uncovered, this oxymoronic contradiction of the alleged Shirley Trust terms, indicates that Theodore may have been inserted fraudulently into a copy of the original document in efforts to illegally seize Dominion and Control of the Shirley Trust. This document tampering aided and abetted by his former Attorneys at Law, Tescher and Spallina, who have already been removed for admittedly altering Shirley Trust documents to benefit their client Theodore and whose offices were

ANSWER

Tuesday, September 2, 2014

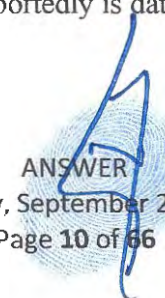
Page 9 of 66

involved in Notarization Fraud, Forgery, Fraud on the Court and Fraud on the beneficiaries and more already. Simon and Shirley had mirror estate plans. Eliot believes the Successor Trustee to Shirley's trust was Bill Stansbury, mirroring the original Simon Trust (recently uncovered and suppressed and denied until May 06, 2014 when it was turned over to the Curator Ben Brown) that named Bill Stansbury as Successor Trustee. Evidence suggests that Theodore was fraudulently inserted into the Shirley Trust in direct contradiction to the terms of the Shirley Trust that state that he is deceased for ALL purposes of the Shirley Trust and distributions made thereunder.

14. It is believed that Shirley Bernstein amended Shirley's Trust by executing a document titled "First Amendment to Shirley Bernstein Trust Agreement" dated November 18, 2008. An authentic copy of the First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 is attached as Exhibit "B". This First Amendment has no bearing on the issue in this case.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That the original of this alleged First Amendment document has also been repeatedly requested and denied to the beneficiaries. That Eliot states that this document has a MASSIVE BEARING on this case as it is a central component of the admitted fraudulent alteration of a Shirley Trust document committed and admitted to being altered by the alleged Trustee Theodore's former counsel, Spallina. Robert Spallina, Esq. admitted to the Palm Beach County Sheriff Department that he fraudulently altered this alleged First Amendment. This statement is further misinformation provided in this action to this Court to try to deny the importance of the fraud that has taken place by the Fiduciary Theodore and his minion of Attorneys at Law and attempt to cover up and gloss over the truth.

15. There is another document which purports to have the same title, "First Amendment to Shirley Bernstein Trust Agreement", which also purportedly is dated November 18, 2008. Such document,


ANSWER
Tuesday, September 2, 2014
Page 10 of 66

which the Trustee first learned of in mid-January 2014, is not a valid amendment to the Shirley's Trust, and has no bearing on this issue in this case.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That the original of this alleged second First Amendment document has also been repeatedly requested and denied. Eliot states that this document has MASSIVE BEARING on this case, as it is central to the admitted fraud committed by the alleged Trustee's former counsel Robert L. Spallina, Esq. and was altered to include language that benefited Theodore's family directly by circumventing the Shirley Trust language that predeceased Theodore's lineal descendants. Spallina's admits to altering the alleged first Amendment to Palm Beach County Sheriff Investigators and states to them,

That against his better judgment he [Spallina] altered the first page of the first amendment to the Shirley Bernstein Trust agreement, before he turned it over to Yates [Yates is Christine Yates, Esq. of the law firm Tripp Scott who was acting on behalf of Eliot's minor children]... Spallina said that they noticed that the first page of the document skipped from one to three, so he took it upon himself to add in number two, before sending it to Yates. The change that number two made to the trust, amended paragraph E of Article III, making it read that only Ted and Pam were considered predeceased, not their children. He said the original trust states that Ted, Pam and their children are deemed predeceased. Spallina said he did this at this office in Boca Raton.

This fraudulent alteration of a Shirley Trust document done Post Mortem was used in addition to other fraudulently notarized and forged documents proven and admitted already in the Shirley Estate that his law firm, Tescher and Spallina, P.A. also illegally created for six parties, including one for Simon Post Mortem to advance the fraud with Yates and others. These crimes all worked to benefit the alleged Trustee Theodore and his respective lineal descendants by reinserting his lineal descendant back into the Shirley Trust illegally in order to then make illegal distributions of Shirley Trust properties that benefited Theodore and Pamela. The admitted alteration was done at the expense of the named and proper beneficiaries as defined in the irrevocable beneficiary class of the

ANSWER
Tuesday, September 2, 2014
Page 11 of 66

alleged Shirley Trust and set in stone with her death three years earlier, which wholly excluded Theodore, Pamela and their lineal descendants from the Shirley Trust. This fraudulent alteration of a Shirley Trust document and claim by the Trustee that is not relevant to this actions is yet another example of Theodore and his counsel further misinforming this Court of the truth.

Ted was aware of this document prior to Jan of 2014 or else he could have never seen language that included his children in the Shirley Trust as he claimed to PBSO investigators in January 2014, as that language does not exist other than in the fraudulent amendment. Ted telling PBSO Investigators,

Ted stated that he did not read all of Shirley's Trust documents and that Spallina and Tescher had both told him several times how Shirley's Trust was to be distributed. Ted said that he did read in the documents where the 10 grandchildren were to receive the assets from the trust.

Ted retained Spallina and paid for his services as counsel to Ted in his alleged role as Trustee of the Shirley Trust and Spallina was providing legal advice to Ted. If Ted's counsel had knowledge of the fraudulently altered document and fraudulent language that permitted distributions to 10 grandchildren, then Ted had knowledge. Therefore, both Ted and Spallina were acting under this altered document language far before Spallina claims to have altered it in January 2013 and began selling assets and making distributions to improper parties as if the altered document existed. Again, NOWHERE in the alleged Shirley Trust is there any reference to 10 grandchildren getting distributions of the Shirley Trust as four of them were considered predeceased with their parents for ALL purposes of the Shirley Trust and distributions made thereunder.

16. With regard to the Shirley Trust, the only genuine and authentic trust documents signed by Shirley during her lifetime are Exhibits "A" and "B".

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Exhibits "A" and "B" are only copies and no original documents have been provided in four years to the

ANSWER
Tuesday, September 2, 2014
Page 12 of 66

beneficiaries and have been denied, suppressed and withheld despite repeated requests to produce them for inspection and to forensically analyze their authenticity.

17. Pursuant to Shirley's Trust, upon Shirley's death, a "Family Trust" is created pursuant to Article II, ¶ C.1.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. No copies of this alleged Family Trust have been provided to beneficiaries despite repeated requests for it, in violation of Probate and Trust Rules and Statutes.

18. Pursuant to Shirley's Trust, no "Marital Trust" is created, as that term is used in Article II of Shirley's Trust.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

19. Article II, ¶ E. 1. of Shirley's Trust granted to Shirley's surviving spouse, Simon L. Bernstein, a limited or special power of appointment over the Family Trust to or for the benefit of Shirley Bernstein's "lineal descendants and their spouses."

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot does not know what a "special" power of appointment is as it does not appear mentioned in the alleged Shirley Trust. What is special is that lineal descendants according to the alleged Shirley Trust definition provided already herein, are only Eliot, Lisa and Jill and their spouses, as again, Theodore, Pamela, their lineal descendants and spouses are considered predeceased for **all** purposes of the alleged Shirley Trust and distributions made thereunder, including any trusts created thereunder. The term "beneficiary" is clearly defined to be Family Trusts created for Eliot, Lisa and Jill and include the "Eliot Bernstein Family Trust Created on May 20, 2008" which was created, along with similar

Family Trusts for Jill and Lisa. NO Family trusts were created for Theodore and Pamela, as they and their lineal descendants are considered dead for ALL purposes of the Shirley Trust and distributions made thereunder.

ARTICLE II E.1

Disposition of Trusts Upon Death of Survivor of my Spouse and Me.
Upon the death of the survivor of my spouse and me,

1. **Limited Power.** My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or **for the benefit of one or more of my lineal descendants and their spouses** [emphasis added];

ARTICLE II E.2

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, **shall be divided among and held in separate Trnsts for my lineal descendants then living** [emphasis added], per stirpes. **Any assets allocated under this Subparagraph II. D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trnsts[emphasis added]**, established by my spouse as grantor on even date herewith (the "Family Trusts" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. **The provisions of the Family Trusts are incorporated herein by reference**, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts for such lineal descendants and administered as provided in Subparagraph II. E. below. **Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "beneficiary," with their separate trusts to be administered as provided in Subparagraph II. E. below** [emphasis added].

Clearly, the alleged language states that lineal descendants are only those defined, which include only Eliot, Jill and Lisa and their lineal descendants and exclude Theodore and Pamela and their lineal descendants as already defined herein. The power granted Simon was a "Limited Power" and not a "special" power. The alleged Shirley Trust by this language above referenced by the alleged

ANSWER

Tuesday, September 2, 2014

Page 14 of 66

Trustee, incorporates by reference the Family Trusts set up for Eliot, Jill and Lisa into the Shirley Trust. These Family Trust are not attached to the alleged Shirley Trust presented in this case, along with the other missing referenced Schedules and Addendums, making the claim that this is an authentic copy of the Shirley Trust a further misleading statement to this Court.

20. The Shirley Trust was funded by assets transferred to it during Shirley's life and also was funded by the residue of her estate.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states that information and accountings have been suppressed, withheld and denied and not provided in both the Estate and Shirley Trust for **four years** to the beneficiaries, **IN GROSS VIOLATION and BREACH OF PROBATE and TRUST RULES and STATUTES** and thus it is unknown what was funded in the Shirley Trust. Again, Schedules and Addendums referenced in the alleged Shirley Trust are also suppressed and denied making it impossible to know what assets are part of the trust corpus or Trust Res. That Theodore in two years acting as the alleged Trustee has also failed to provide statutorily required accountings that are also required under the terms of the alleged Shirley Trust when demanded and again these requests to produce accountings have been denied.

That documentation regarding the information on the inventories provided in Simon and Shirley's Estates have also been challenged and alleged as part of the larger theft of assets of Simon and Shirley that are under ongoing investigations and civil and federal actions. The alleged Trustee, Theodore is the central suspect in **ALL** of these investigations, along with his sister Pamela and their minion of Attorneys at Law who have all participated in the already proven frauds and others alleged. Four of Theodore's Attorneys at Law are removed and resigned from these matters already, including the recent withdrawal of John Pankauski, Esq. and the Pankauski Law Firm PLC for irreconcilable differences with their client Theodore.


ANSWER

Tuesday, September 2, 2014

Page 15 of 66

21. After Shirley's death, the beneficiary of the Shirley Trust was Simon L. Bernstein during the remainder of his life.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same

22. Upon Simon's death, the Shirley Trust provided to Simon a Limited Power to appoint the trust's assets "to or for the benefit of one or more of my [Shirley's] lineal descendants and their spouses."

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states again that Shirley's lineal descendants and their spouses are clearly defined in the alleged Shirley Trust and specifically exclude for ALL purposes of the alleged Shirley Trust and distributions made thereunder, Theodore and Pamela, their lineal descendants and their spouses, all considered as PREDECEASED.

ARTICLE III. GENERAL

E. Definitions. In this Agreement,

1. ... Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, [emphasis added]...

Again, what is important to note is the definition of lineal descendants, which is clear and unambiguous that Theodore, Pamela, and their lineal descendants are NOT lineal descendants of Shirley as defined as they are specifically excluded by name as living lineal descendant. That if Simon could have or allegedly attempted to make changes to the disposition of the Shirley Trust he could only make changes to the IRREVOCABLE beneficiary class established at her death.


ANSWER

Tuesday, September 2, 2014

Page 16 of 66

That further, the alleged Simon Trust that was later allegedly amended to amend language that was specifically deemed unamendable regarding Simon's limitations on Shirley's property added to his Simon Trust at her death, stated,

ALLEGED ORIGINAL 2008 SIMON L. BERNSTEIN TRUST

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise [emphasis added].

Then, the alleged Simon Trust was fraudulently amended to leave out this language that prohibits Simon from attempting to amend or revoke anything to do with the Shirley Trust properties transferred to Simon in order to perpetrate a fraud and try to change through amendment that which could not be amended, as stated,

ALLEGED 2012 AMENDED AND RESTATED SIMON L. BERNSTEIN TRUST

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

This Court must note that despite the Original 2008 Simon Trust language stating that no amendment could be made to change any property added by Shirley by Will or otherwise after her death, by any means, including revocation or amendment or otherwise, this prohibited amendment to Shirley Trust allegedly by Simon is exactly what was being attempted by allegedly amending Simon's Trust and attempting to then use those changes to attempt to change the Shirley Trust beneficiary class.

ANSWER

Tuesday, September 2, 2014

Page 17 of 66

Even more telling of criminal intent in the Estates and Trusts with regard to this “special” power of Simon’s, is that in the alleged 2012 Amended and Restated Trust of Simon, drafted by Tescher and Spallina, there is language that STRICTLY LIMITS Simon’s power in regard to Shirley Trust properties. The language “However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.” was intentionally deleted from the alleged Amended and Restated Simon Trust, which language specifically prohibits revocation or amendment regarding Simon’s powers in regard to Shirley’s property.

Then, copies of the alleged original Simon Trust with that language in it was intentionally suppressed and denied from beneficiaries despite repeated requests, in order to hide the fact that Simon could do nothing to amend the Shirley Trust or make changes to her properties transferred or change her irrevocable class of beneficiaries once she died. The original alleged Simon Trust was not turned over to beneficiaries until this Court Ordered Tescher and Spallina to turn over all documents and properties to the newly appointed Curator Benjamin Brown, Esq. upon their resignations and removal. Where Brown then turned the alleged original Simon Trust over and this fraudulent alteration was then discovered when the language of the two documents could be analyzed side by side.

23. The Shirley Trust provides an alternate or default disposition for any parts of the trust that Simon does not or cannot effectively appoint: such assets “shall be divided among and held in separate Trusts for my [Shirley] lineal descendants then living, per stirpes.”

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states again that Shirley’s lineal descendants then living and their spouses specifically excludes for ALL purposes of the alleged Shirley Trust, Theodore and Pamela, their lineal descendants and their spouses and

considers them PREDECEASED and thus not living as clearly defined in number 19 above in the alleged language of II E. 2 and throughout the Shirley Trust.

24. Simon exercised his Special Power in Article II in the Will of Simon L. Bernstein dated July 25, 2012 ("Simon's Will").

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Everything Simon did allegedly to make changes in he and Shirley's Estates and Trusts in 2012 is already challenged in this Court. Challenged for being Fraudulently created, alleged Forged, proven Improperly Notarized² and part of a larger fraud to seize illegally Dominion and Control of the Estates and Trusts and then loot the Estates and Trusts of Simon and Shirley through this series of fraudulent documents done POST MORTEM. Already several documents are proven POST MORTEM FORGED AND FRAUDULENTLY NOTARIZED. That again, there is no defined "Special Power" in the alleged Shirley Trust and Eliot has never heard of a "special" power appointment. What the Trustee is hesitant to make clear to this Court is that it was a VERY LIMITED POWER OF APPOINTMENT and the only permissible appointees under the limited power of appointment are Eliot, Jill and Lisa and their respective lineal descendants as already exhibited in the Section E.1 Limited Power of Appointment language cited already herein. It is unknown if Simon exercised this alleged Limited Power of Appointment or if it too was also done for him Post Mortem. From the PBSO report, it becomes clear that Simon was prohibited from making any changes to Shirley's Trust and Spallina alleges that he drafted documents that were fraudulent and that made changes Simon COULD NOT LEGALLY DO, as stated to Palm Beach County Sheriff Investigators by Spallina when he claimed,

² The alleged 2012 Will and alleged 2012 Amended and Restated Trust of Simon have already been found by Governor Rick Scott's Notary Public division to be improperly notarized so as it make it unknown if Simon appeared before the Notary, a one Lindsay Baxley, the alleged Trustees personal assistant. There are other severe problems with the construction of all of these documents Simon was alleged to have signed already pled to the Court in the Estate matters.

ANSWER
Tuesday, September 2, 2014
Page 19 of 66

Spallina said that he explained to him [Simon] again, that only his trust, not Shirley's can go to both grandchildren, unless he takes all of the assets out of the Shirley Trust and puts them into his name...

New documents were drawn up for Simon's estate. These new documents gave everything to all 10 grandkids, he also exercised his power over Shirley's estate, leaving everything to all 10 grandkids, **even though legally he could not include Ted and Pam's kids because of the predeceased limitations.**

25. An authentic copy of Simon's Will is attached as Exhibit "C".

ANSWER - Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Exhibit C is a copy, no original has been provided in two years to the beneficiaries by the fiduciaries, both former removed fiduciaries and the alleged current fiduciary and it has been further been denied and suppressed despite repeated requests to produce it. In fact, it has been claimed by the Curator Benjamin Brown, Esq. to Eliot that no original document may exist and that an original Will was not provided in the production from the former fiduciaries upon their resignation and removal in Simon's Estate.

26. Simon's Will specifically references Shirley's Trust and the power given to him under subparagraph E.1 of Article II of Shirley's Trust. The relevant provision of Simon's Will reads:

Under Subparagraph E.1. of Article II of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "Shirley Trust"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and Family Trust established under the Shirley Trust. Pursuant to the power granted to me under the Shirley Trust, upon my death, I hereby direct the then serving Trustees of the Marital Trust and the Family Trust to divide the remaining assets into equal shares for my then living grandchildren and distribute said shares to the then serving Trustees of their respective trusts established under Subparagraph II.B. of my Existing Trust, as referenced below, and administered pursuant to Subparagraph II.C. thereunder.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states

ANSWER
Tuesday, September 2, 2014
Page 20 of 66

that then living grandchildren Simon allegedly claims in the alleged 2012 Will can only refer to the grandchildren of the Shirley Trust that are lineal descendants as defined in her language, as Eliot, Lisa and Jill's children only. Simon was precluded under language of the original Simon L. Bernstein Trust dated May 20, 2008 from making any changes or amendments to his Trust in regard to Shirley's Trust property as stated in the opening of the document,

SIMON L. BERNSTEIN TRUST DATED MAY 20, 2008

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

- A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. **However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.**

Further and not as if that is necessary but in formality to Answer this Toxic, Vexatious, Frivolous, Costly and Fraudulent pleading, as already stated, for all purposes of the alleged Shirley Trust(s) and distributions thereunder, Theodore, Pam and their lineal descendants, also known as grandchildren are considered predeceased for all distributions made thereunder. Do note the use of a lower case g in grandchildren in the language cited by the Trustee, the term grandchildren is not defined by Simon to be the 10 grandchildren in his alleged 2012 Will as it is not capitalized. Nor did Simon name or number the grandchildren in any way to equal the 10 grandchildren in the language cited and even if he did it was impermissible for him to take make changes to Shirley's Trust property. Therefore any power he granted himself under a newly drafted amendment was Limited in the original trust, as the Limited Power was intended ONLY for the living grandchildren defined specifically to exclude Theodore, Pamela and their lineal descendants under the Shirley Trust, thus it could only refer to Eliot, Lisa and Jill's six children, of which Eliot has three. Therefore, the above language referenced was knowingly and with scienter unlawfully created and inserted into the document by Robert

ANSWER

Tuesday, September 2, 2014

Page 21 of 66

Spallina and Donald Tescher to wrongfully benefit their client and close bedfellow Theodore Bernstein and business associate Pamela Simon in their creation of these premeditated frauds.

Spallina in fact stated to PBSO Investigators,

New documents were drawn up for Simon's estate. These new documents gave everything to all 10 grandkids, **he also exercised his power over Shirley's estate, leaving everything to all 10 grandkids, even though legally he could not include Ted and Pam's kids because of the predeceased limitations.**

Here in black and white Spallina admits that Simon COULD NOT LEGALLY INCLUDE TED AND PAM'S CHILDREN for distributions of the Shirley Trust property because of the "PREDECEASED LIMITATIONS." Yet, here in this newly filed complaint we have the alleged Trustee Theodore, now aided and abetted by Alan Rose, trying to claim that there were no predeceased limitations and that distributions could be legally made to include Theodore and Pamela's kids. This statement despite Spallina's statement to PBSO claiming it could not legally be done and where Spallina drafted the document for Tescher, who better to tell Alan Rose that this cannot be legally done and what he is attempting through this felonious legal pleading is merely further legal process abuse.

This time the attempt to commit the fraud is to make the clearly illegal distributions now appear legal through a cleverly crafted word fraud constructed in this TOXIC, VEXATIOUS, FRIVOLOUS, COSTLY and FRAUDULENT pleading attempting to claim the fraudulent distributions made already are legal by cutting and pasting partial statements, wholly out of context. The fraud Spallina claims was illegally committed by Simon, was done despite he and his partner Tescher knowing this language was prohibited and fraudulent, claiming apparently that his legal work aided and abetted and allowed Simon to commit a fraud. Simon loved his wife Shirley profusely as noted for 50+ years and would never under any circumstances attempted to dishonor her last wishes and desires steeped in fraud. Eliot states this whole document, allegedly done days before Simon died, was in fact

ANSWER
Tuesday, September 2, 2014
Page 22 of 66

BATES NO. EIB 003479
02/27/2017

another fraudulent and forged document that came Post Mortem. Where all witnesses to the documents alleged execution have already either been arrested and convicted of fraudulently notarizing documents or admitted to fraudulently altering trust documents and thus have NO CREDIBILITY FORWARD in attesting to the documents.

Further, the Notarization failed to state if Simon was present at the signing and this done by Theodore's assistant Lindsay Baxley. The language in the alleged original Simon Trust, specifically stated that Simon was also unable to amend or revoke anything in regard to the properties of the Shirley Trust transferred to him upon her death. This language prohibiting any changes through amendment, revocation or otherwise was intentionally omitted when the Simon Trust was allegedly amended. Then to cover up their fraud Spallina, Tescher and Theodore suppressed and denied the original Simon Trust to advance the fraud hiding the illegal amendment to the original trust, as already exhibited herein.

27. In essence, through his Special Power, Simon directed Shirley's Trustee to divide the remaining trust assets into equal shares for his then living grandchildren, to be added to trusts established for each such grandchild under Simon's Trust.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that "in essence" despite any "special" power the only living grandchildren in reference to Shirley Trust property can only include grandchildren that are her defined living lineal descendants, Eliot, Lisa and Jill. Again, as already stated, for ALL purposes of the alleged Shirley Trust(s) and distributions thereunder, Theodore, Pam and their lineal descendants, also known as grandchildren have been considered PREDECEASED and thus Simon could not legally make any changes to alter the irrevocable beneficiary class or make distributions to any other parties. That Eliot further claims that Simon could not alter the Beneficiary Class of Shirley's Trust once it became irrevocable. That the

ANSWER
Tuesday, September 2, 2014
Page 23 of 66

Shirley Trust does not provide provision for Simon to illegally convert and distribute assets of the IRREVOCABLE Shirley Trust from her designated class of beneficiaries to newly created trusts executed POST MORTEM of Simon through Simon's alleged Will and Trusts. Spallina stated to PBSO,

He [Spallina] told Simon (Si as he called him) that he could not make those changes to Shirley's Trust because she had wrote Ted and Pam and their children as predeceased in her Trust. Spallina reiterated that Simon can do whatever he wants with his estate, but all he can do with Shirley's Trust is give it to Lisa, Jill, and Eliot's children.

The alleged 2012 Simon Trust is further not a valid legal document as it is already proven improperly notarized and suffers from other construct defects already pled to this Court and currently before the Court in the Simon and Shirley Estate matters.

28. The persons identified by Simon, "his then living grandchildren," all appear to be among the class of permitted appointees as defined in the Shirley Trust to be Shirley's "lineal descendants and their spouses".

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. This statement hinges on the word "appear" when in fact the living grandchildren in regard to the Shirley Trust property legally appear to be ONLY the living grandchildren of Shirley as defined in her irrevocable beneficiary class of Eliot, Lisa and Jill. Again, Theodore, Pamela, their lineal descendant and their spouses, Deborah Bernstein and David B. Simon, are ALL considered PREDECEASED AND NOT LIVING for all purposes of the alleged Shirley Trust and distributions made thereunder and Simon was precluded specifically from amending or altering the Shirley Trust property as illustrated already herein.

The word grandchildren is not capitalized nor defined in the Simon Trust language so obviously if he exercised this power, he was referring only to the grandchildren of Eliot, Lisa and Jill as those were

ANSWER
Tuesday, September 2, 2014
Page 24 of 66

the only legally permissible grandchildren, as Theodore and Pamela's children were considered predeceased for ALL purposes of the Shirley Trust and distributions made thereunder. Per the terms of the Shirley Trust therefore the only legal permissible appointees under the Shirley Trust are the living grandchildren of Eliot. Jill and Lisa whose shares could be adjusted only by Simon through his Limited Power and NO NEW PARTIES could be added once Shirley's Trust beneficiary class became irrevocable.

29. Because Simon exercised his power of appointment, the assets in the Shirley Trust do not pass under the Shirley Trust to the alternate, default beneficiaries: "my lineal descendants then living, per stirpes."

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Simon cannot effectively appoint assets outside of the permissible appointees of the irrevocable class of beneficiaries defined under the alleged Shirley Trust.

The beneficiaries of the alleged Shirley Trust are family trusts created on May 20, 2008 for ONLY Eliot, Lisa and Jill as defined in the IRREVOCABLE alleged Shirley Trust. This Class of Beneficiaries is therefore closed and unchangeable, despite what Simon is alleged to have attempted to do. Again, Theodore, Pamela, their lineal descendant, their spouses (Deborah Bernstein and David B. Simon, Esq.) are ALL considered PREDECEASED AND NOT LIVING for all purposes of the alleged Shirley Trust and distributions made thereunder and are not permissible appointees or distributees. Simon was specifically precluded from amending or revoking anything in the Shirley Trust or distributions made thereunder in Article 1, Section A of his alleged original Simon Trust he executed with Shirley while they both were alive, as it stated prior to amendment, which was prohibited,

SIMON L. BERNSTEIN TRUST DATED MAY 20, 2008

ANSWER
Tuesday, September 2, 2014
Page 25 of 66

BATES NO. EIB 003482
02/27/2017

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

30. The class of permissible appointees for Simon's power (Shirley's "lineal descendants and their spouses") is different that the class of alternate/default beneficiaries (Shirley's "lineal descendants then living, per stirpes").

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That if Simon's alleged LIMITED POWER OF APPOINTMENT class of permissible appointees is different that Shirley's Trust, which it is not it still would it would not matter, as Shirley's IRREVOCABLE Class of beneficiaries is defined and irrevocable upon her death. Nothing Simon allegedly did after her death to change that could alter the IRREVOCABLE Class of Shirley's beneficiaries, as he was limited and under Section I, Article A of the alleged Simon Trust, he could not amend or change anything in regards to Shirley's Trust property, including who it was to be distributed to under the Shirley Trust. That the appointees allowable were unchangeable after her death by any party, even one alleging new or "SPECIAL" or magical powers subsequently created. That this would be a construction flaw in Simon's alleged 2012 Amended and Restated Trust done allegedly 48 days before his passing while he was medically unfit to even make changes being of unfit mind and body at that time as pled to this Court in the Simon and Shirley Estate cases already before this Court.

31. Because Simon L. Bernstein exercised his Special Power in favor of his [and also Shirley's] grandchildren, none of Shirley's and Simon's children is a beneficiary under the Shirley Trust. Thus,

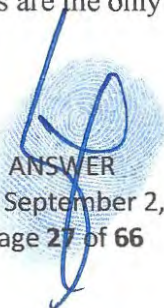
ANSWER

Tuesday, September 2, 2014

Page 26 of 66

it appears that neither Ted, Pam, Eliot, Lisa or Jill are to receive any portion of the assets in the Shirley Trust.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. There is no "special" power of appointment granted to Simon in the alleged Shirley Trust, only a **LIMITED** power of appointment for a permissible class of appointees defined in Shirley's definition of lineal descendants to exclude Theodore and Pamela and their lineal descendants. Any language to the contrary in any amended document of Simon is procured in fraud and drafted by Robert Spallina and Donald Tescher to unlawfully benefit their client and business associate Theodore Bernstein and business associate Pamela Simon and their respective lineal descendants who were disinherited in the Shirley Trust. Eliot states that Simon and Shirley's definition of grandchildren in the alleged dispositive documents referenced is different and so the alleged Trustee and his counsel, through careful wordsmithing games try now to mislead the Court that their grandchildren are similar for distributions made under the alleged Shirley Trust. From this false statement of the alleged Trustee he then leaps to an invalid conclusion based on the faulty premise claiming Eliot, Lisa and Jill are not to receive any portion of the assets in Shirley's Trust, knowing that in no way could Simon change the class of beneficiaries from Eliot, Jill and Lisa to **ANY OTHER PERSON OR PERSONS**. That Simon's ability to replace Eliot, Lisa and Jill with their children **ONLY** as beneficiaries after Shirley's death is already challenged as well and will have to be determined by this Court if such attempted change is legal. This determination of course can only be done once the dispositive documents are **FINALLY TURNED OVER** and are analyzed for further evidence of forgery and fraud to see if they have also been tampered with and determinations are made as to what documents will ultimately prevail. That Eliot, Jill and Lisa and their lineal descendants are the only beneficiaries under the Shirley Trust once



ANSWER

Tuesday, September 2, 2014
Page 27 of 66

it became irrevocable at her death, the beneficiary class forever closed and any attempt by Simon to change this would have been through knowingly fraudulent acts.

32. Pursuant to Article IV.C.1., upon Simon's death, Ted became the Successor Trustee of the Shirley Trust. Ted also serves as the Successor Personal Representative of Shirley's Estate.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Theodore references the alleged Shirley Trust where documents are admitted altered and tampered with already and Eliot has no belief in the validity of any parts of the Shirley Trust at this time. That Theodore is alleged to have become Successor through further alleged fraudulent alteration and fabrication of the Shirley Trust documents in order to illegally gain Dominion and Control of the trust with his sister Pamela and their minion of Attorneys at Law who aided and abetted in the frauds. **THEODORE IS CONSIDERED PREDECEASED FOR ALL PURPOSES OF THE ALLEGED SHIRLEY TRUST AND DISTRIBUTIONS MADE THEREUNDER AND THUS CANNOT BE A TRUSTEE AS HE IS DEAD.** Therefore, despite what any ALLEGED documents may say, Theodore is not now or ever was qualified to act as Trustee by the very terms of the alleged Shirley Trust document he acts under and in addition to the language that precludes him there are now a host of legally valid other reasons already presented to this Court that make him unfit to serve in any fiducial capacities in either Simon and Shirley's Estates and Trusts. The other reasons, include but are not limited to, conflicts of interests and adverse interests (to Eliot especially who has uncovered all these frauds and other crimes and is pursuing Theodore with criminal authorities and civil authorities) that prohibit his continued acts in any fiducial capacity in the Estates and Trusts of Simon and Shirley. Further, Theodore and his predecessors failure to account in violation of Probate and Trust Rules and Statutes and his direct involvement in the prior fraudulent activities with his Counsel that benefited him directly. Theodore further claimed to the Palm Beach County Sheriff

ANSWER
Tuesday, September 2, 2014
Page 28 of 66

Investigators that he did not read the trust document he was operating under and only acted to make distributions on the advice of his counsel Spallina, which is directly contradicted by Spallina's statements to Palm Beach County Sheriff Investigators where he claims that he advised Theodore NOT to make distributions. Theodore stated to investigators as cited in the Palm Beach County Sheriff Report,

He [Theodore] said that Tescher and Spallina told him after his father's death that he was the Trustee for his mother's estate. He said over many in person meetings and phone calls he was given guidance by the attorneys on how to perform his duties as Trustee, because this was all new to him. He had never been in this role before. He stated he was not provided a checklist or book on how to perform these duties... **Ted stated he did not read all of Shirley's trust documents** [emphasis added] and that Spallina and Tescher had both told him several times how Shirley's trust was to be distributed. Ted said that he did read in the documents where the 10 grandchildren were to receive the assets of the Trust.

Spallina then stated to investigators,

Spallina stated that against his advice, a distribution was made from one of the trusts after Simon's death. He stated that he advised against this and when Simon passed a former partner filed a claim against the Estate for \$2,500,000... He [Spallina] said that in September of 2013, \$80,000 was distributed to each of the seven trusts, which is a total of \$560,000. Spallina reiterated that Ted was told not to make distribution.

That the Court should note that either Ted cannot read or had read the fraudulently altered first amendment, prior to when Spallina claims anyone knew about the document in January 2014 when he confessed to altering the document to add language to include illegally Theodore and Pamela's children back in. NOWHERE in the alleged Shirley Trust does it state that distributions are to be made to the 10 grandchildren as Ted claims and then acted to make such unlawful and prohibited distributions to his and Pamela's family.

Eliot also states that before this frivolous, vexatious and premature action was taken by the Trustee in filing this ridiculous construct action, Eliot filed a Counter Complaint in yet another frivolous and

ANSWER
Tuesday, September 2, 2014

Page 29 of 66

vexatious action filed and now before the Court, in the Oppenheimer v. Eliot and Candice Bernstein lawsuit. The Oppenheimer lawsuit directly relates to the nexus of past and present frauds committed in the Estates and Trusts of Simon and Shirley and involves their Estate and Trust documents but was filed in a separate action and sought no relation to the Estate actions. Eliot countersued the Shirley Trust in his Counter Complaint and thus this action for construction should have been filed in that case where the Shirley Trust is already a Defendant, along with Theodore, Alan Rose and others. Eliot asks the Court to relate ALL of these related cases to avoid further WASTE, FRAUD AND ABUSE OF PROCESS. The Oppenheimer lawsuit has counts against Theodore and his minion of Attorneys at Law for Breach of Fiduciary Duties, Interference with an Expectancy, Legal Malpractice, Theft and more, all making Theodore further unqualified to act as fiduciary any longer, as pled in numerous pleadings filed by Eliot and the Creditor Stansbury in the Simon Estate currently before the Court.

The next item up to be heard in the Estate of Simon are the motions to remove Theodore as a fiduciary, including a motion for Your Honor to make the decision on your own initiative under Fl. Statute 736, due to recent information showing assets under Theodore's control as fiduciary are now missing, mismanaged, unaccounted for and probably stolen. Evidence learned in a hearing before this Court revealed that Theodore and his counsel Alan Rose did not know where assets of the Simon Estate were after the sale of Shirley's condominium. This lack of accountability for assets under Theodore's control led to an Order from this Court over two months ago in the Estate of Simon for re-inventorying the assets and that Order has not been complied with and is being evaded.

After the Court Order to re-inventory the missing assets at Simon's other home in Saint Andrews Country Club, where Alan Rose and Theodore claimed the furniture and other effects had been taken after the illegal sale of Shirley's condominium, in a deposition of Donald Tescher he claimed the personal property of Simon's was sold with the condominium, directly contradicting Theodore's

ANSWER
Tuesday, September 2, 2014
Page 30 of 66

prior statements to the Court and directly contradicting the final accounting Tescher and Spallina filed with the Court in Simon's Estate where the assets are listed as still owned by the Estate.

33. Sometime after Simon's death, a significant asset of Shirley's Trust (a condominium) was sold. The decision was made to make a partial interim distribution to all of the beneficiaries of the Shirley Trust. At the time of this decision, the Trustee was not aware of any question or issue as to Simon's right to appoint the assets to his ten grandchildren.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that the condominium was an asset of the alleged Shirley Trust that was ONLY to be distributed to her legally qualified beneficiaries at the time, which the alleged Shirley Trust clearly defines as Eliot, Lisa and Jill and their lineal descendants. That at the time the condominium was sold, Theodore signed forms, including tax forms while acting as the alleged PR of the Estate of Shirley. That at that time he sold the condominium Theodore was not the successor PR and not appointed by the Court. This was in large part due to the fact that NO successor PR was chosen when Simon died to replace Simon as they needed Simon to **appear** alive while executing POST MORTEM changes to he and Shirley's dispositive documents. Then almost defying belief, Simon, while dead, was further used by Attorneys at Law Tescher and Spallina to close the Estate of Shirley while he was DEAD, yes, DEAD and the Court was not notified of his death and no Successor was legally appointed or accepted such position. These FRAUDS ON THE COURT were done as part of the larger fraud to illegally seize Dominion and Control of the Estates and Trusts through a series of POST MORTEM FORGED AND FRAUDULENT DOCUMENTS POSITED BY A DEAD PR. The series of fraudulent documents include documents that were forged and notarized by Simon Post Mortem and that were posited for him with the Court while he was dead for four months and whereby nobody notified the Court that he was DEAD and nobody elected a new PR to legally close the Estate. That

ANSWER

Tuesday, September 2, 2014

Page 31 of 66

this Fraud on the Court of using a DEAD PR to close the Estate of Shirley led this Court to reopen the Estate of Shirley and further delay and stymie expected inheritances of Eliot. In the September 13, 2013 hearing where Your Honor first learned of these frauds on this Court, Your Honor issued the statement that you had enough evidence there and then to read Miranda Warnings to Theodore, Spallina and Tescher. That all distributions made from this sale were made after Theodore and the others who took them knew at the time that their own names had been forged and documents of theirs and their father were fraudulently notarized and forged. Yet, none of them contacted the authorities once they had this knowledge that the documents were fraudulent making them all further unqualified to act in any fiduciary matters they claim in this lawsuit and cause for all of them to be reported by this Court to the proper authorities and have Guardians appointed for their children's protection, as many of the alleged crimes have Theodore and Pamela attempting to take monies they claim are due to their children, instead to themselves without their children's knowledge as the Federal Illinois insurance action in Simon's estate will further prove.

34. The Trustee attempted to make a partial interim distribution to the trusts for all ten living grandchildren of Simon, into a separate trust for each grandchild under the Simon L. Bernstein Trust Dtd 9/13/12, with the respective parent of each grandchild as the trustee.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The alleged Trustee made distributions to Simon's grandchildren, which the Trustee knew were not the same as Shirley's grandchildren by definition in the alleged Shirley Trust document he operates under, which is a defined and closed Beneficiary Class of Eliot, Jill and Lisa and their lineal descendants only, as already defined herein. This conversion and comingling of funds benefited Theodore the most and this is a classic conflict of interest where the Trustee is acting to benefit himself rather than the true and proper legally qualified beneficiaries. How can Theodore be Trustee if he is fighting to have

language that his attorney Spallina fraudulently fabricated or else does not exist now inserted into an irrevocable trust or attempt to reconstruct the trust to include himself and his children at the expense of other defined beneficiaries, to the tune of converting approximately 33% percent of the sale price of the condominium alone to his family, again a classic conflict that cannot be parsed or allowed and violates Probate and Trust Rules and Statutes and further reason for his removal instantly by this Court in any alleged Fiducial capacity in Simon and Shirley's Estates and Trusts. Monies therefore were knowingly and illegally converted and comingled to Theodore and his sister Pamela's lineal descendant in violation of the terms of the alleged Shirley Trust. That monies from the alleged Shirley Trust were taken out and distributed to Post Mortem Trusts allegedly created by Simon, created allegedly on the day he died but Eliot as of this date has never received a trust instrument for him to review but has been urged to take distributions blindly to it and waive all rights in so doing. Shirleys trust is clear that she and her spouse provided for Theodore and Pamela and their lineal descendants during her lifetime and were to receive NOTHING.

35. The Trustee was able to complete the partial interim distributions to the trusts for seven of the ten living grandchildren of Simon, but not to Eliot's children. Despite having tried on numerous occasions, the Trustee was unable to make a partial interim distribution to the trusts for the other three living grandchildren (Eliot's minor children) because Eliot refused to accept these distributions. **ANSWER – Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot did not refuse to accept the "partial interim distributions" for any reason other than the way they were structured was through FRAUD and based on fraudulent, forged and fabricated documents. Eliot, as he stated to Judge Colin in the September 13, 2013 hearing, would not participate in the same FRAUD that his siblings did and convert and comingle funds illegally to knowingly improper beneficiaries or waive any rights in receiving those distributions or release the trustee for making

ANSWER

Tuesday, September 2, 2014

Page 33 of 66

those distributions illegally. Eliot, after seeking the Court's approval to take knowingly fraudulent distributions for the condominium transaction was not given such blessing by Hon. Martin Colin after careful review of the situation would not give his judicial blessing on the transaction to make it legally approved for Eliot to take such fraudulent distribution without giving any implied consent or waiving his rights to sue others for their fraud.

36. The Trustee believes that there is a disagreement between and among the children and grandchildren of Shirley Bernstein as to effect of the exercise of the power of appointment by Simon L. Bernstein and which persons are entitled to receive a distribution from the Shirley Trust.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Robert Spallina even admits that the powers cited were not permissible and Simon's Trust was thus restated unlawfully based on fabricated documents he prepared for his client.

The alleged Trustee and his minion of Attorneys at Law that he personally brought into the Bernstein family affairs has participated in creating the disagreement with intent and scienter so as to benefit his family personally and to gain 33% of a beneficial interest in something that he and his children are prohibited from having by the express language in the alleged Shirley Trust. Simon's alleged power of appointment has not been verified at this time to be a legally qualified power, as the very document it comes from, the 2012 alleged Amended and Restated Trust is improperly notarized and constructed This may be evidence of a premeditated attempt to either force Simon to sign documents while he was suffering mental and physical symptoms that were unexplainable by his doctors, starting approximately 60 days before his death and lasting until his final breath or to his alleged murder (where MURDER was alleged to PBSO by Theodore the day Simon died, see PBSO Report at [www.iviewit.tv/Sheriff Reports.pdf](http://www.iviewit.tv/Sheriff_Reports.pdf) and Theodore pointed the finger and accused Simon's girlfriend of poisoning him). The documents allegedly signed 48 days before his death cannot even

be shown to have been signed by Simon at all that day, as the notary failed to state such appearance and to further complicate matters, all the potential witnesses to the documents allegedly signed by Simon are involved directly in the proven Fraudulent Notarizations done POST MORTEM, the admitted Alteration of trusts documents done POST MORTEM and the admitted Forgeries done POST MORTEM. All these 2012 documents are under ongoing investigations and have been challenged before the Court. The Trustee and others who took ILLEGAL INTERIM DISTRIBUTIONS knowingly, knew what they were doing and that everything was challenged and that their names had been forged and fraudulent notarizations affixed upon documents in the Estate of Shirley, in fact, Eliot specifically notified them all not to make any distributions to the grandchildren at all until the Court and investigators could determine what the effects of the fraudulent documents were and if they could change in any way the Shirley Class of Beneficiaries. Instead, they rushed to take the monies and were advised by Theodore, Spallina, Tescher, Manceri and Rose that the distributions were legal, despite their knowledge that they had committed fraud to achieve the illegal distributions.

37. The disagreement and dispute involves the interpretation of the Shirley Trust and the construction of Article III.E.1 of Shirley's Trust, which defines who is Shirley Bernstein's "child", "children", and "lineal descendant" "for the purposes of the dispositions made under this Trust."

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. There is no disagreement or dispute involving the Shirley Trust or its construction, other than the document appears as fraudulent and more, as it was Irrevocable and its beneficiary class sealed and so Tescher, Spallina, Theodore, Pamela and others decided to create disputes to enable them to convert and comingle funds that benefited them all to the detriment of the true and proper beneficiaries.


ANSWER

Tuesday, September 2, 2014

Page 35 of 66

38. Article III.E.1 of Shirley's Trust states that, "for purposes of the dispositions made under this Trust, my children, Ted S. Bernstein ("TED") and Pamela B. Simon ("PAM") and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me [Shirley]".

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That again, the actual language states in full,

ARTICLE III. GENERAL

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "child," "children" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.

39. At the time of Simon's death, there were ten grandchildren who were alive: Alexandra Bernstein, Eric Bernstein, Michael Bernstein, Molly Simon, D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

ANSWER - Admit.



Tuesday, September 2, 2014

Page 36 of 66

40. If the exclusionary language of Article III.E.1 of Shirley's Trust applies to Simon's exercise of his Special Power, then Simon's then living grandchildren, at the time of his death, could be construed to include only D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That again the language cannot be relied upon as the authenticity of the dispositive document referenced is challenged in toto at this time as being a Fraud and Forged document, along with the many others already proven and admitted to as Forged and Fraudulent. The definitions in the alleged Shirley Trust appear to be clear regarding permissible appointees as Eliot, Jill and Lisa and their lineal descendants only.


41. If the exclusionary language of Article III.E.1 of Shirley's Trust does not apply to Simon's exercise of his Special Power, then the appointment would be in favor of all ten grandchildren identified in ¶40.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That again the language cannot be relied upon as the documents authenticity in toto is challenged as being a Fraudulent and Forged document, along with the many others already proven and admitted to as Forged and Fraudulent. The definitions in the alleged Shirley Trust are clear that Simon has a limited power of appointment over permissible appointees defined as Eliot, Jill and Lisa and their lineal descendants only. Simon's alleged "Special" power is alleged to have been done almost two years after Shirley's death and may have been done POST MORTEM as alleged and despite the alleged magical nature of this document that makes it "Special" it was only referencing the LIMITED POWER granted under the alleged Shirley Trust and thus could not favor any party other than her irrevocable class of beneficiaries, Eliot, Jill and Lisa and their lineal descendants. Simon

ANSWER
Tuesday, September 2, 2014
Page 37 of 66

could not alter or change this irrevocable class of beneficiaries to any other parties and Spallina and Tescher who drafted this alleged language would have been perpetrating a fraud if they tried to make Simon have "Special" magical powers to break the law. Again, it appears this "Special" power where it is known that there are only "limited" and "general" powers of appointment, appears to be an attempt by Spallina and Tescher to make a new power not defined in law that has "Special" powers of committing FRAUD. Now after being busted and admitting to authorities that these changes to the Shirley Trust could not be done, THEODORE and his COUNSEL, both involved directly in advancing the proven and admitted frauds to benefit THEMSELVES, attempt to CON this Court into attempting to rewrite the Shirley Trust and commit further FRAUD ON THE COURT and FRAUD on the BENEFICIARIES through this legal process abuse in efforts to make the PRIOR PROVEN AND ADMITTED FRAUD LEGAL through this TOXIC, VEXATIOUS, FRIVOLOUS, ABUSIVE, COSTLY and FRAUDULENT pleading. What can one expect when their lives hang in the balance as without this Court making "Special" powers legal that are not, they are going to jail for their acts, which makes them further conflicted, adverse and retaliatory to the beneficiaries, adverse to the wishes and desires of the decedents and further reason for Theodore's removal as a Fiduciary in all capacities in the Estates and Trusts of Simon and Shirley and for Alan Rose's removal as the Attorney at Law for the alleged Trustee Theodore. That this Court needs to now report Theodore and his counsel to the proper authorities for this attempted Fraud on the Court to pass further fraudulent documents to the Court and attempt to have the Court approve the criminal FRAUDULENT DISTRIBUTIONS already made and miraculously provide an illegal "Get Out of Jail Free Card" by further violating law and this Court by attempting to make a crime now legal.

42. A telephone conference occurred in May 2012 between and among Simon L. Bernstein, his lawyer Robert Spallina, each of Shirley's and Simon's children (Ted, Pam, Eliot, Jill and Lisa), and some or all of their spouses.


ANSWER
Tuesday, September 2, 2014
Page 38 of 66

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states that Donald Tescher was also on the line and participated in the phone call.

43. Based upon the discussions during that telephone call, there is no uncertainty that Simon L. Bernstein advised each of his children that Shirley's and Simon's wealth was going to be divided equally among all ten grandchildren.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states that Simon did say on a phone call with his children that he was considering changing he and Shirley's plans and asked for agreement in principle before making any changes. If the proposed changes could be legally done, where it is now confessed by Spallina that he knew this legally could not be done, it would have divided the Estates and Trusts of Shirley equally among all ten grandchildren. This meeting was really about Simon asking Eliot, Jill and Lisa ONLY, if they would be willing to give up their 1/3rd interests in the Estates and Trusts of Simon and Shirley as they were the only beneficiaries at the time, in order to have the abuse by Theodore and Pamela as defined herein stop. These changes briefly contemplated by Simon were to be in exchange for Theodore and Pamela agreeing to stop their abuse of Simon and stop pressuring him to make changes to put them back into the Wills and Trusts or they would continue withholding their children from seeing him and using them as pawns to force the changes. Threatening that if Simon did not comply with their demands for changes he would never see four of his ten grandchildren again.

There was a concurrent extortion of Simon for several months leading up to the meeting in addition to the one being waged by Theodore and Pamela to make the changes, which was engaged in by four of five of Simon's children, Theodore, Pamela, Jill and Lisa. This extortion again used their children's as pawns so that if Simon did not comply with their demands to either stop seeing his

ANSWER
Tuesday, September 2, 2014
Page 39 of 66

girlfriend, Maritza Puccio Rivera they and their children would not see Simon. Simon would not stop seeing his girlfriend, Simon refused to make changes to his and Shirley's Estates and Trusts and Theodore, Pamela, Lisa and Jill and their children did not see Simon for almost a year and half over this. All of this starting almost immediately after the loss of his wife and carrying on for over a year and half and the withholding of his grandchildren started almost immediately after Shirley's death when Theodore and Pamela were unscrupulously informed by Tescher and Spallina that they were entirely disinherited with their lineal descendants. This rage despite the reason stated being that they had already been fully compensated for millions upon millions of dollars by acquisition of family businesses and more while Simon and Shirley were living. The other three children and their children had not.

The rage caused by this release of this private, highly sensitive and confidential information about their being disinherited in the Estates and Trusts of both Simon and Shirley was done without Simon's consent by Spallina and left Simon a sitting or possibly a dead duck, see Pamela's Attorney Letter to Simon www.iviewit.tv/20111128PamelaLettertoSimonHeriaud&Genin.pdf after learning of her and Theodore and their lineal descendants disinheritance, fully incorporated by reference herein. That this Court should note that Simon may have been being drugged or poisoned at the time of the meeting as Theodore alleged to Palm Beach County Sheriff Investigators on the day Simon died that he was being poisoned³, as defined herein and this drugging and poisoning may have been started months before his death.

That this Court should note that Simon was under so much duress from this elder abuse that he sought mental health treatment from Patricia Fitzmaurice LCSW, due to mental duress, stress and fear caused by four of his children and from the pain from the extortion with his children withholding his grandchildren was causing him. This was like the death of 11 of 14 of his living direct lineal

³ September 13, 2012 Palm Beach County Sheriff Report @ www.iviewit.tv/Sheriff Reports.pdf pages 24-27, fully incorporated by reference herein.

descendants. Eliot and his family while have been requested to join the abuse of their father and withhold his children in protest too, flatly refused to participate in the cruelty as he loved and respected his father and mother until the day they died, along with Eliot's lovely wife Candice and their three children.

That Spallina in the meeting inferred at the time that all the changes could legally be done, despite later claiming he advised Simon that he could not make the changes, however this admission only came after the Sheriff came knockin. The fact that the Shirley Trust was irrevocable and that Eliot, Lisa and Jill were the only beneficiaries of the Shirley Trust and Simon could not change this and thus to change this would require fraud was never disclosed to any parties at the meeting.

Until the meeting, on May 10, 2012, Eliot had never been informed that he was a one third beneficiary of both Simon and Shirley's Estates and Trusts, nor that Theodore and Pamela had been WHOLLY disinherited but once learned it explained why they were abusing Simon for months since Shirley passed and why they were trying to extort him to commit fraud and make changes or else. In fact, Spallina's claimed to Palm Beach County Sheriff Investigators that these changes to the beneficiary class of Shirley could not be made legally, which they cannot. Therefore, his own statement invalidates any alleged agreement made by any parties who were misled, coerced or otherwise engaged to participate in fraudulent transactions promulgated by Tescher and Spallina and furthered now by Theodore and Alan Rose in this fraudulent pleading.

That Eliot, Jill and Lisa agreed in principle to the suggested estate plan changes that they first heard about in the May 10, 2012 meeting and had no idea they were being asked to give up their inheritances in both Estates. Eliot requested from Spallina and Tescher all documentation showing his newly learned of interests as a one third beneficiary in the Estates and Trusts, the dispositive documents that existed and those that were going to be change or amend the existing documents before he would fully agree and sign anything. Eliot did sign one document but with language

attached that stated the signature was not valid until receiving the documents requested to review and to ascertain what interests he was being asked to forgo or waive. Eliot also requested to be provided with an accounting as required in the Estate and Trusts of Shirley that he was a beneficiary of and that was also never sent by Tescher and Spallina. That Simon on May 09, 2012 was unaware that Spallina and Tescher had not sent out the legally required dispositive documents and accountings to Eliot after Shirley's death and advised Eliot to ask for them before doing anything from Spallina and Tescher.

Eliot after the meeting stated orally and in writing repeatedly to Spallina and Tescher that before making any final decisions and waiving any interests, Eliot would have to see these statutorily required items he was owed as a beneficiary and the other requested documents. These documents were promised to be sent to him before any changes would be made, Spallina stating he would have them within a few days.

That a singular Waiver was the only document ever sent to Eliot and that was later discarded by the Court as being FORGED and FRAUDULENTLY NOTARIZED for Eliot and thus legally void.

This was sent to the Court with two Waivers for Simon, one already admitted FORGED for Simon Post Mortem and the other one challenged as forged too and these FORGED AND FRAUDULENT waivers were then submitted to this Court by Tescher & Spallina, P.A. on behalf of Simon, acting as the PR/Executor when they were posited with the Court while dead.

That the agreement in the May 10, 2012 meeting was based on the fact that the issues between Theodore and Pamela with Simon to make these changes or else would cease if Simon made the changes. However, the hostilities against Simon from the meeting to the day of his death months later never ceased between Theodore and Pamela, as the changes were never executed upon and for a number of reasons including the fact that Simon learned that they were illegal changes being forced upon him that he could not and would do. This only enraged Theodore and Pamela further and

ANSWER

Tuesday, September 2, 2014

Page 42 of 66

Spallina and Theodore are alleged to have had a huge fight with Simon only days before he passed in efforts to force him to make changes or else.

Simon had determined that he could not legally make the changes and being an expert estate planner for most of his life knew these changes to either he or Shirley's estate could legally not be done and did not therefore make the changes that were suggested, which would have made him participate in a fraud. Theodore and his counsel were attempting to extort him to commit this fraud or else with Spallina and Tescher together drafting the alleged documents knowing what they were doing was illegal.

That even if Simon, Theodore, Pamela, Spallina and Tescher all wanted or intended to make these changes, the only way they could be done would be through committing fraud. An agreement construed in fraud is not legally valid so the 2012 Will and Amended and Restated Trust would not survive is so constructed to commit a fraud. Since nothing could be done to legally change the irrevocable beneficiary class of Shirley once Shirley died as stated in their dispositive documents, without committing fraud on the beneficiaries Eliot, Lisa and Jill an agreement to try and do so would be a fraudulent agreement and thus void.

For these reasons it is believed that Simon never legally executed any changes in he or Shirley's 2008 estate plans and all attempts to do so appear to have been done POST MORTEM and done with knowingly fraudulent intent by Spallina, Tescher and Theodore, all claiming to be expert estate planners who knew this was legally impossible. This leads one to believe that the meeting and these documents were part of a premeditated plan to have Simon under duress and pressure commit fraud to make changes or else. After Simon died suddenly and unexpectedly those who wanted these changes so badly, Theodore and Pamela, along with Tescher and Spallina, then created Post Mortem forged and fraudulent documents to achieve these fraudulent ends and make the illegal changes they knew could not be legally done. It is apparent Simon never executed any of the alleged 2012

ANSWER

Tuesday, September 2, 2014

Page 43 of 66

dispositive documents that would have made him commit fraud knowingly and that his Attorneys at Law were claiming at the time could be legally done to Eliot and others, while knowing they were advancing a fraudulent scheme.

44. Each of Simon's children, including Eliot, acknowledged and agreed with Simon's stated decision to leave all of his and Shirley's wealth to the ten grandchildren.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that no matter what Eliot or anyone else stated or agreed to at the May 10, 2012 meeting, Eliot DID NOT AGREE, nor did anyone else Eliot recollects, agree to participate in fraudulent transactions that were legally impermissible.

In fact, in either of the alleged Simon Trust documents the following language is specific and unchallengeable,

ALLEGED 2008 SIMON L. BERNSTEIN TRUST

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise [emphasis added].

ALLEGED 2012 AMENDED AND RESTATED SIMON L. BERNSTEIN TRUST

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

ANSWER

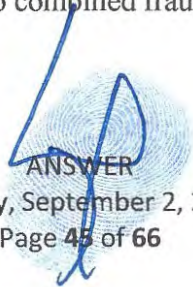
Tuesday, September 2, 2014

Page 44 of 66

This Court must note that despite the Original 2008 Simon Trust language stating that no amendment could be made to change any property added to Simon's Trust by Shirley after her death, by any means, including revocation or amendment or otherwise and yet this is exactly what was being attempted by allegedly amending Simon's Trust. This same change to her trust property is being attempted through this pleading that attempts to mislead the Court by failing to include this language that specifically prohibits such attempted amendment. In fact, in so illegally crafting the alleged Amended and Restated Simon Trust, Spallina attempted to just erase that language prohibiting the changes to Shirley's property in the new trust altogether. Then Spallina and Tescher hid the alleged 2008 Simon Trust from the beneficiaries in violation of Probate and Trust codes and statutes, until they were forced to turn it over by Court order upon their removal in all capacities from the Estates and Trusts of Simon and Shirley.

That when turning over in January of 2013 (four months after Simon's death) the 2012 Amended and Restated Simon Trust to Eliot's counsel, Christine Yates of Tripp Scott law firm, who was hired to get the documents Spallina and Tescher refused to give Eliot, Spallina failed to enclose the 2008 Simon Trust as required. This done in order to hide this fraudulent and illegal change that was being made in his alleged amended document that anyone who would have saw the document being amended would have instantly found the attempted amendment to change Shirley's property as prohibited.

That it gets worse, as to further the fraud, Spallina admitted to Palm Beach County Sheriff Investigators that he further altered a Shirley Trust Amendment to compliment the fraudulent amendment in Simon's Trust and sent them together via US Mail to Eliot's counsel Christine C. Yates, in efforts to try and fraud her that the beneficiaries of Shirley's trust could be changed to all the 10 grandchildren by Simon using the two combined fraudulent documents.


ANSWER
Tuesday, September 2, 2014
Page 45 of 66

The admitted fraudulent alteration of Shirley's Trust Amendment by Spallina inserted the following admitted fraudulent language into an older amendment that did not have this language, effectively trying to alter Shirley's Trust through fraud,

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

That the slight change in language in this fraudulent amendment from what Shirley's Trust actually states, is the omission of Ted and Pam's lineal descendants as also being excluded and considered predeceased from the Shirley Trust. Spallina admitted to the Palm Beach County Sheriff Investigators that he made this change to further his fraud in January 2013 POST MORTEM OF BOTH SIMON AND SHIRLEY, as with other documents used in this fraud in both estates and trusts of both Simon and Shirley.

45. Despite Simon L. Bernstein's stated intentions and his actual exercise of his Special Power through his Will, the Trustee presently is uncertain whether to distribute assets in favor of ten or only six grandchildren, or otherwise.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. A little late for the alleged Trustee to start asking this Court how to distribute assets after distributions were made to knowingly improper parties and now that they are caught committing fraud trying to change the documents to fit the crimes. That Eliot states that the words "stated intentions" has no documents legally executed to support the stated intentions, whereby 10 grandchildren received distributions.

Even if it were Simon's stated intention and was executed, it was not done legally under Article I, Section A of Simon's Trust and under the alleged Shirley Trust language that defined her class of beneficiaries, which were set in stone at her death. Therefore, who cares what Simon intended to do if it was impermissible, illegal and consummated through intentional fraud, which would void any attempted change entirely.

It appears that when Simon refused to make changes and found changing anything in Shirley was legally impossible, the changes were made for him POST MORTEM and may have been part of premeditated plan once Simon was allegedly murdered or even died naturally. Therefore, no matter what may have or may not have been agreed to in regard to changing the beneficiary class after Shirley's death on her property that became irrevocable under her Shirley Trust or what was alleged done to so do, NO CHANGES to the defined beneficiary class could legally be made without committing fraud.

NO CHANGES OR AMENDMENTS IN SIMON'S ALLEGED 2012 Will and Trust that attempted to alter SIMON OR SHIRLEY'S class of beneficiaries are legally valid. Even if they were executed these changes are still legally invalid and those who participated in attempting to alter that class of beneficiaries set in stone once Shirley died are guilty of knowingly participating in fraud. Therefore, the BENEFICIARIES Shirley's Trusts ARE STILL THE ONLY LEGALLY ALLOWABLE BENEFICIARIES OF ELIOT, JILL AND LISA and their lineal descendants. Simon, nor anyone else's intent or acts could change the beneficiary class of the Shirley Trust legally once one of them had died and therefore any documents so attempting to commit fraud are therefore legally void and any distributions made to any other parties based on the fraudulent documents or illegal agreements are fraudulent conversions as well. ALSO MISSING FROM THE SHIRLEY AND SIMON TRUSTS AND ESTATES ARE THE REMOVED SCHEDULES OF ASSETS REFERRED TO IN THE DISPOSITIVE DOCUMENTS, yet another series of frauds unfolds concerning the alleged

ANSWER
Tuesday, September 2, 2014
Page 47 of 66

BATES NO. EIB 003504
02/27/2017

Shirley Trust that is missing KEY COMPONENTS that have been suppressed and denied in violation of Probate and Trust Rules and Statutes and law.

46. Palm Beach County, Florida is where the Trustee administers Shirley's Trust, is the location where the books and records of Shirley's Trust are kept, and is the principal place of administration of Shirley's Trust.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot has been refused all requests for inspection of books and records and it remains unknown if there are proper books and records or where they are in violation of Probate and Trust Rules and Statutes.

47. This proceeding seeks the intervention of this Court in the administration Shirley's Trust by an interested person, the Trustee, and declaratory relief.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The alleged Trustee Theodore is not a qualified Trustee now or ever, even if he was named a Successor as he is excluded by the very terms of the alleged Shirley Trust document and is further not an interested person as **THEODORE IS CONSIDERED DEAD** by the terms of the Shirley Trust for all purposes including any distributions made thereunder. Thus it would be prohibited oxymoronic contradictory language if Theodore's name was put there by Shirley instead of fraudulently inserted as is alleged. Thus, Theodore cannot be Trustee by the very terms of the document and has no interests that are not created through a series of fraudulent documents and other frauds. Thus, this baseless lawsuit stands merely as further **EVIDENCE OF FRAUD ON THIS COURT** and **FRAUD ON THE BENEFICIARIES AND INTERESTED PARTIES** and yet another attempt to commit fraud hoping Your Honor will aid and abet this time around.

ANSWER

Tuesday, September 2, 2014

Page 48 of 66

48. This Court has subject matter jurisdiction pursuant to Sections 736.0203 and 736.0201, Florida Statutes.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

49. Pursuant to Article III.I, Shirley's Trust is governed by the laws of the State of Florida.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Again, the documents validity and ANY language thereunder is challenged as fraudulent and thus NOTHING can be relied upon in the document until it is first determined if the document is legally valid and to date, Eliot, despite repeated requests, has not been able to inspect and analyze the original to know if it even exists at this time. Certainly the Shirley Trust would have to include all Schedules, etc. that were attached, which still remain suppressed and denied.

50. This is a judicial proceeding concerning Shirley's Trust pursuant to Section 736.0201, Florida Statutes.

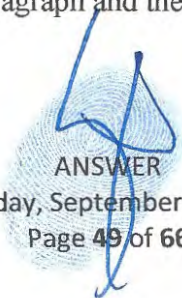
ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

51. Venue is proper in this Court pursuant to Section 736.0204, Florida Statutes.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

52. Venue is appropriate in the Probate Division of this Court pursuant to Administrative Order 6.102-9/08.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.


ANSWER
Tuesday, September 2, 2014
Page 49 of 66

53. Plaintiff Trustee is entitled to retain counsel pursuant to Article IV.A.29 of Shirley's Trust and Section 736.0816 (20), Florida Statutes.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That the alleged Trustee Theodore cannot be the Trustee by the very language of the Shirley Trust as he is dead and therefore cannot retain legal counsel as alleged Trustee as he is dead for ALL purposes of Shirley's Trust and distributions made thereunder.

54. Plaintiff Trustee has retained the undersigned counsel, and has agreed to pay it reasonable attorney's fees and to reimburse it for costs and may do so from Shirley's Trust.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that if Theodore has retained counsel acting as an alleged Trustee and agreed to pay attorney fees and reimburse costs from Shirley's Trust and his counsel agreed to this too, they are both knowingly furthering a fraud. Both Theodore and his counsel are aware of the language prohibiting Theodore from being a Trustee or making any distributions under Shirley's Trust, as Ted is considered dead for ALL purposes of the Shirley Trust and distributions made thereunder, including distributions to any Attorney at Law, including the five or six of them that he has already made distributions to.

55. Defendants Alexandra Bernstein, Eric Bernstein, and Michael Bernstein are lineal descendants of Ted S. Bernstein.^[Footnote 1] Each is over the age of 18 and claims a beneficial interest in the Shirley Trust.

ANSWER – Affirm and Deny - Eliot affirms the names and stated age of over 18 regarding Theodore's children. Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot further states that Theodore and his lineal descendants have absolutely no beneficial interest in the

ANSWER
Tuesday, September 2, 2014
Page 50 of 66

Shirley Trust and are not permissible beneficiaries, appointees, defendants or even interested parties and that this newest attempt to convert and comingle the funds to them through a wordsmithing game to commit fraud through this pleading is further Fraud on this Court.

The fact that the alleged Trustee admits herein that there are disputes created by his former counsel that create a question if HIS family is to receive ANY distributions from Shirley's Trust again sets up a classic Conflict of Interest and another reason he should voluntarily resign as Trustee. Yet, Theodore, as an alleged Trustee and Fiduciary, again Breaches his Duties regarding resigning when there are not waivable conflicts and refusing to resign due to this conflict that his own counsel created to benefit him and pits him against the interests of the beneficiaries. Theodore however continues to act in these matters that he is knowingly conflicted with directly and further now has adverse interests and hostilities to other beneficiaries and the creditor Stansbury who are alleging he is unfit to be a fiduciary and alleging that he is committing criminal acts and civil torts against them. That Theodore and his counsel Rose who were both involved in advancing the fraudulent distribution scheme, including through this Toxic pleading are also arguing and pleading for their lives, as if these documents are fraudulent, as others have been and found to be part of a Fraud, he and his counsel are the central accused parties.

FOOTNOTE 1

Ted S. Bernstein is the Trustee of three separate trusts created f/b/o Alexandra, Eric and Michael Bernstein under the Simon L. Bernstein Trust Dtd 9/13/12. Solely in the capacity as Trustee of each of these three trusts, each of which received an partial interim distribution, Ted S. Bernstein has signed a Receipt of Partial Distribution, agreeing to return the distribution if the Court determines that the distribution should not have been made. Ted S. Bernstein believes that the power of appointment was validly exercised by Simon L. Bernstein and that the prior partial interim distributions were proper; however, individually he takes no position in this lawsuit and agrees to abide by any final, non-appealable order entered by this Court with respect to the construction of the Shirley Trust. Ted S. Bernstein, individually, makes no claim of entitlement to any individual right to receive any

ANSWER
Tuesday, September 2, 2014
Page 51 of 66

devise, bequest, inheritance or beneficial interest in any portion of the Shirley Trust or her estate.

FOOTNOTE 1 ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

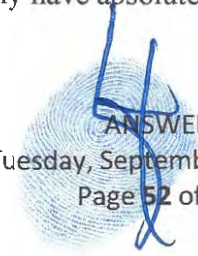
That Eliot believes that no Receipts were initially signed or agreement to return the ILLEGAL and IMPROPER distributions made to parties knowing they were committing fraud. All parties ignored repeated warnings to NOT MAKE OR TAKE THE ILLEGAL DISTRIBUTIONS prior to taking them (Spallina even claiming to PBSO Investigators that he told Theodore not to make distributions.)

That Eliot states the statement that Theodore takes “no position in this lawsuit” is a flat out lie.

Theodore is the Plaintiff in this lawsuit acting as the alleged Successor Trustee to defend the interests of the Trust and simultaneously Theodore has another position as the acting Trustee for his children/defendants interests. This conflict makes Theodore stand to gain or lose the most if this attempted FRAUD ON THE COURT and FRAUD ON THE BENEFICIARIES, INTERESTED PARTIES and CREDITOR succeeds or fails. If it fails his children get nothing, if it succeeds, his children may get something, setting up another irrefutable classic conflict of interest with the other beneficiaries that he is required to resign as Trustee over but again holds on, urged on by his Attorney at Law Rose.

56. Defendant Molly Simon is a lineal descendant of Defendant Pamela B. Simon. She is over the age of 18 and claims a beneficial interest in the Shirley Trust.

ANSWER – Affirm and Deny - Eliot affirms the name Molly Simon and her stated age of over 18. Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot further states that Pamela and her lineal descendant Molly have absolutely no beneficial interest in the Shirley Trust.


ANSWER
Tuesday, September 2, 2014
Page 52 of 66

57. Defendant Pamela B. Simon, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot further states that Pamela and her lineal descendants have absolutely no beneficial interest in the alleged Shirley Trust and are not permissible distributees or have any beneficial interests under any circumstances by express language in the Shirley Trust and the original 2008 Simon Trust that prohibit any distribution to them.

Pamela is also arguing here that she has a beneficial interest personally somehow for she refuses to believe or accept the language that has her and lineal descendant predeceased for all purposes of the distributions made under Shirley's Trust. This is a large problem underlying all of these crimes.

Pamela also has other problems in these matters, including her involvement in the fraudulent attempt to convert Simon's life insurance policy from the Estate to benefit her pockets directly while moving the assets from the Estate, where her child was alleged to be a beneficiary. In essence, stealing money from her child who she claims is a beneficiary of the Shirley Trust. Pamela is also fending for her life in this pleading. If these documents are further proven fraudulent, as so many others have already been and found to be part of a larger fraud, than Pamela is one of the central accused parties that promoted and participated in the advancement of the fraudulent beneficiary scheme working with Theodore, Tescher, Spallina and others. She is also one of two who benefited the most through the illegal distributions and fraudulent beneficiary scheme.

58. D.B., Ja. B. and Jo. B. are minors and are lineal descendants of Defendant Eliot Bernstein, who is their father and claims on behalf of each minor child a beneficial interest in the Shirley Trust.


ANSWER

Tuesday, September 2, 2014

Page 53 of 66

ANSWER – Admit in Part. The names and relation to Eliot of his children. Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot also does not claim that his minor children have a beneficial interest in the Shirley Trust directly and only as Eliot’s lineal descendants would they inure interests.

59. Eliot Bernstein, Individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B., is over the age of 18. As Trustee, he claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

ANSWER –Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that he is not Trustee of D.B., Ja. B. and Jo. B. trusts created allegedly POST MORTEM under the challenged Simon L. Bernstein Trust Dtd 9/13/12 and that he has never seen a copy of any such trusts allegedly created under an alleged legally void document.

60. J.I. is a minor and a lineal descendant of Jill Iantoni, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust.

ANSWER – Admit in Part. The names and relation of Jill and her child. Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that Jill may have a beneficial interest in the alleged Shirley Trust with Eliot and Lisa.

61. Jill Iantoni, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

ANSWER
Tuesday, September 2, 2014
Page 54 of 66

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

62. Defendant Max Friedstein is a lineal descendant of Defendant Lisa Friedstein. He is over the age of 18 and claims a beneficial interest in the Shirley Trust.

ANSWER – Admit in Part. The names and relation of Lisa and her child. Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that Lisa, not her child directly has a beneficial interest in the alleged Shirley Trust.

63. C.F. is a minor and lineal descendant of Lisa Friedstein, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

64. Lisa Friedstein, Individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F., is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

65. Each of the Defendants is subject to personal jurisdiction pursuant to Section 736.0202, Florida Statutes.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

WHEREFORE, Defendant, Eliot Bernstein, respectfully requests that this lawsuit be dismissed or stayed until the documents it relies upon are thoroughly investigated and inspected by

ANSWER
Tuesday, September 2, 2014
Page 55 of 66

the beneficiaries and this Court and the Court determines if the document can legally stand or to simply dismiss this lawsuit based on parties that have no legal interest in the Shirley Trust filing it to make prior conversions and comingling done fraudulently be somehow rewritten to make the documents fit the crime and thus is further FRAUD ON THIS COURT and FRAUD ON THE BENEFICIARIES TO INTENTIONALLY DELAY AND INTERFERE WITH EXPECTANCIES. That any dismissal of the Plaintiffs lawsuit still retain Eliot's rights to his Counter Complaint for damages and Eliot requests such other and further relief as the Court deems just and proper.

COUNT I –DECLARATORY AND OTHER RELIEF

66. Trustee restates the allegations contained in Paragraphs 1-65.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

67. This is a cause of action to ascertain beneficiaries, to determine a question arising in the administration or distribution of Shirley's Trust, to obtain a declaration of rights, and to instruct and discharge the trustee.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

68. This cause of action seeks a declaration and other relief or intervention by this Court as to who should receive Shirley's Trust; whether and to what extent Simon L. Bernstein's exercise of his limited or special power of appointment pursuant to his will should be given effect; which if either of the documents titled First Amendment of Shirley's Trust is valid; to whom the Trustee should distribute the assets of Shirley's Trust; and a discharge of the Trustee.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.


ANSWER

Tuesday, September 2, 2014
Page 56 of 66

69. It is in doubt as to whether Eliot Bernstein adequately represents the interests of his minor children and whether there are conflicts of interest between Eliot and the interests of his minor children, each of whom is expressly named in the Special Power.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot has admitted to this Court already that a direct conflict of interest was created with his children through the frauds, which has delayed his inheritances. Once realizing the conflicts intentionally created between he and his children through the fraud, Eliot immediately sought separate and distinct counsel for he and his children to negate this conflict as is required by him, especially when acting as Trustee to his children. The question is why did his siblings and all of them, not take similar steps to have separate counsel for their children. This conflict was immediately recognized by Eliot’s counsel Tripp Scott and Christine Yates, Esq. who was forced to stop representing Eliot to represent his children instead and this information was passed to Eliot’s siblings who simply ignored the information while acting as Trustees for their children despite the conflict.

By this statement, the Trustee is admitting that all the children of Shirley are conflicted with their children similar to Eliot and yet Eliot is the only one who sought separate and distinct counsel for he and his children to avoid this Breach of Fiduciary Duty as a Trustee of his children as required by Probate Rules and Statutes.

70. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes and seeking the intervention of the Court in the administration of the Trust, pursuant to Section 736.0201, Florida Statutes.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

71. The Trustee, and the Trust, will suffer irreparable harm if relief is not granted.

ANSWER
Tuesday, September 2, 2014
Page 57 of 66

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states massive irreparable harm has already come to the true and proper beneficiaries from the Frauds that have already interfered and delayed inheritances by now four years in Shirley and two years in Simon committed mainly by Officers and Fiduciaries who are under the tutelage of this Court. Theodore and Alan are alleged central parties in advancing the frauds and more.

Any irreparable harm to the trust and the beneficiaries are the trustees fault caused by his own breaches of duties and breaches of trust and he and his counsel should be held personally and professionally responsible, liable sanctioned, held accountable and forced to repay any damages his actions and inactions have caused by this Court.

72. There is no other adequate remedy at law.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

73. The relief sought constitutes and deals with a bona fide question between the Trustee and the Defendants.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

74. The declaration sought deals with a present state of facts or presents a controversy as to a state of facts.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

75. The Trustee has a justiciable question and has a bona fide, actual, and present practical need for a declaration from this Court.


ANSWER

Tuesday, September 2, 2014

Page 58 of 66

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

76. The Trustee’s rights, duties, and obligations are dependent upon the facts or law applicable to the facts.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

77. The seeds of litigation are ripening such that a declaration from this Court will benefit the Trust.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states that the only seeds ripening at this time are the seeds of fraud that are under multiple ongoing state and federal investigations and civil actions, all involving a mass of fraudulent acts to convert, comeingle and outright steal assets in what is alleged to be anywhere from 40-100 million dollars as Alan has stated in prior pleadings to this Court in the probate cases of Simon and Shirley.

78. Further, to the extent that the Court determines any prior interim distribution to have been improper, Plaintiff seeks supplemental relief in the form of an order directing and compelling the recipients of the any and all such distributions to return the funds. To date, funds were distributed to Lisa Friedstein, as Trustee for Max Friedstein and C.F.; Jill Iantoni, as Trustee for J.I.; Pamela B. Simon, as Trustee for Molly; and Ted S. Bernstein, as Trustee for Alexandra, Eric and Michael. Eliot as Trustee for his three children refused the interim distribution, even though it appears that his minor children should receive some distribution under the exercise of the Special Power. Each of the trustees who received a distribution for their children signed a Receipt of Partial Distribution, agreeing to return the distribution of the Court determines that the distribution should not have been made.



ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states the distributions were not just improper but ILLEGAL and felonious conversions and comingling done knowingly and with scienter by those who took them, all against the advice of Eliot and his counsel and others. Note that Eliot is the only party that did not have to sign anything about receiving improper illegal fraudulent distributions that he converted and comingling to improper parties with knowledge that it was illegal. That for these reasons, again, Eliot suggests Guardians for the children of each child of Simon and Shirley’s who knowingly did these fraudulent distributions, knowing of fraudulent and forged documents in their own names and their father’s name and failed to take any legally required steps to report the crimes, in fact suppressing their knowledge, while acting as Fiduciaries for their children are unfit to be Trustees to their children any longer.

79. “Plaintiff, TED BERNSTEIN, as trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended (the “Trust”), files this Complaint against and provides notice to those interested in the Trust, Defendants, ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B., and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B., and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F., and states that at all times relevant.”

ANSWER – Deny. Theodore is alleged to be Trustee through a fraudulent document and that document needs to be further analyzed by beneficiaries and authorities to determine its alleged

ANSWER
Tuesday, September 2, 2014
Page 60 of 66

authenticity. That Theodore's Trusteeship would be doomed as it directly conflicts with other language in the document. Even if he were named in the document as Successor he is firmly stated to be PREDECEASED for ALL purposes of the alleged Shirley Trust and distributions made thereunder and thus would not now or ever be qualified to make distributions as Trustee thereunder, as Ted again is dead for all purposes of the Shirley Trust and distributions made thereunder. That the alleged Defendants listed above are not at all named as beneficiaries in the Shirley Trust and are strictly prohibited from being included as having a beneficial interest. The Shirley Trust is irrevocable with a specific beneficiary class and trusts created thereunder that already exist and could not be altered Post Mortem by any party, including this Court despite this desperate and Toxic, Vexatious and Ridiculous pleading. These alleged Defendant trusts are created years after Shirley's death and after Simon's death as well and are alleged to be part of a further attempt to make fraudulent conversions and illegal distribution of benefits to improper parties. That Eliot has never seen or been given any such trusts in he or his children's names as listed by the alleged Trustee as Defendants and knows not who has executed these or how or how these trusts have become defendants in this nonsensical pleading.

WHEREFORE, Defendant, Eliot Bernstein, respectfully requests that this lawsuit be dismissed or stayed until the documents it relies upon are thoroughly investigated and inspected by the beneficiaries and this Court and the Court determines if the ALLEGED dispositive documents can legally stand. Or simply dismiss this lawsuit based on the fact that the parties that have no legal interest and standing in the Shirley Trust and this lawsuit is a further Fraud on the Court by Officers of this Court and Fiduciaries to attempt to make prior conversions and comingling done fraudulently somehow now post criminal acts legal. This attempt by using this TOXIC, VEXATIOUS, FRIVOLOUS, HARASSING and COSTLY pleading make the documents now fit the crimes. Thus is yet another FRAUD ON THIS COURT and FRAUD ON THE BENEFICIARIES TO

ANSWER
Tuesday, September 2, 2014
Page 61 of 66

INTENTIONALLY DELAY AND INTERFERE WITH EXPECTANCIES. That any dismissal of the Plaintiffs lawsuit however retain all Eliot's rights to his Counter Complaint for damages and Eliot requests such other and further relief as the Court deems just and proper.

Filed on Tuesday, September 2, 2014.

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children and as Trustee of the Eliot Bernstein Family Trust.

X _____

CERTIFICATE OF SERVICE

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Tuesday, September 2, 2014.

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children and as Trustee of the Eliot Bernstein Family Trust.

X _____

SERVICE LIST

ANSWER

Tuesday, September 2, 2014

Page 62 of 66

Robert L. Spallina, Esq.,
Tescher & Spallina, P.A.
Wells Fargo Plaza
925 South Federal Hwy Suite 500
Boca Raton, Florida 33432
rspallina@tescherspallina.com
kmoran@tescherspallina.com
ddustin@tescherspallina.com

Ted Bernstein
880 Berkeley
Boca Raton, FL 33487
tbernstein@lifeinsuranceconcepts.com

John J. Pankauski, Esq.
Pankauski Law Firm PLLC
120 South Olive Avenue
7th Floor
West Palm Beach, FL 33401

Pankauski Law Firm PLLC
120 South Olive Avenue
7th Floor
West Palm Beach, FL 33401
courtfilings@pankauskilawfirm.com
john@pankauskilawfirm.com

Donald Tescher, Esq.,
Tescher & Spallina, P.A.
Wells Fargo Plaza
925 South Federal Hwy Suite 500
Boca Raton, Florida 33432
dtescher@tescherspallina.com
ddustin@tescherspallina.com
kmoran@tescherspallina.com

Ted Bernstein
Life Insurance Concepts et al.
950 Peninsula Corporate Circle
Suite 3010
Boca Raton, FL 33487
tbernstein@lifeinsuranceconcepts.com

Pamela Beth Simon
950 N. Michigan Avenue
Apartment 2603
Chicago, IL 60611
psimon@stpcorp.com



ANSWER

Tuesday, September 2, 2014
Page 63 of 66

TESCHER & SPALLINA, P.A.
Wells Fargo Plaza
925 South Federal Hwy Suite 500
Boca Raton, Florida 33432
dtescher@tescherspallina.com
ddustin@tescherspallina.com
kmoran@tescherspallina.com

Alan B. Rose, Esq.
PAGE, MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
arose@pm-law.com
and
arose@mrachek-law.com

Pamela Simon
President
STP Enterprises, Inc.
303 East Wacker Drive
Suite 210
Chicago IL 60601-5210
psimon@stpcorp.com



ANSWER

Tuesday, September 2, 2014
Page 64 of 66

BATES NO. EIB 003521
02/27/2017

Mark R. Manceri, Esq., and
Mark R. Manceri, P.A.,
2929 East Commercial Boulevard
Suite 702
Fort Lauderdale, FL 33308
mrmlaw@comcast.net
mrmlaw1@gmail.com

L. Louis Mrachek, Esq.
PAGE, MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
lmrachek@mrachek-law.com

Charles D. Rubin
Managing Partner
Gutter Chaves Josepher Rubin Forman
Fleisher Miller PA
Boca Corporate Center
2101 NW Corporate Blvd., Suite 107
Boca Raton, FL 33431-7343
crubin@floridatx.com

Kimberly Moran
Tescher & Spallina, P.A.
Wells Fargo Plaza
925 South Federal Hwy Suite 500
Boca Raton, Florida 33432
kmoran@tescherspallina.com

Lindsay Baxley aka Lindsay Giles
Life Insurance Concepts
950 Peninsula Corporate Circle
Suite 3010
Boca Raton, FL 33487
lindsay@lifeinsuranceconcepts.com

Estate of Simon Bernstein
Personal Representative
Brian M. O'Connell, Partner
Ciklin Lubitz Martens & O'Connell
515 N Flagler Drive
20th Floor
West Palm Beach, FL 33401
boconnell@ciklinlubitz.com
jfoglietta@ciklinlubitz.com

ANSWER
Tuesday, September 2, 2014
Page 65 of 66

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com

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



ANSWER

Tuesday, September 2, 2014
Page 66 of 66

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

Case No. 502014CP003698XXXXSB

Eliot Ivan Bernstein, Individually;
Eliot Bernstein in his capacity as
Natural Guardian of his
minor children, Joshua, Jacob and Daniel;
and as beneficiary of the alleged Shirley
Bernstein Trust dated May 20, 2008, as
amended and Eliot Bernstein as Trustee of the
Eliot Bernstein Family Trust dated May 20,
2008,

Honorable Martin Colin

Jury Trial Requested

Counter Plaintiff,

v.

Tescher & Spallina, P.A., and all Partners Associates and of Counsel;
Robert L. Spallina, Esq., Personally;
Robert L. Spallina, Esq., Professionally;
Donald R. Tescher, Esq., Personally;
Donald R. Tescher, Esq., Professionally;
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;
Theodore Stuart Bernstein, Individually;
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;
Theodore Bernstein as Personal Representative of the Shirley Estate;
Lisa Sue Friedstein, Individually;
Jill Marla Iantoni, Individually;
Pamela Beth Simon, Individually;
Mark Manceri, Esq., Personally;
Mark Manceri, Esq., Professionally;
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;
Alan B. Rose, Esq. – Personally;
Alan B. Rose, Esq. – Professionally;
Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;
John J. Pankauski, Esq. – Personally;
John J. Pankauski, Esq. – Professionally;
Kimberly Francis Moran – Personally;
Kimberly Francis Moran – Professionally;
Lindsay Baxley aka Lindsay Giles – Personally;
Lindsay Baxley aka Lindsay Giles – Professionally;

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 1

“Simon L. Bernstein Amended and Restated Trust Agreement” Dated July 25, 2012;
Simon Bernstein Trust Agreement Dated May 20th 2008;
Shirley Bernstein Trust Agreement Dated May 20th 2008;
The Estate of Simon Bernstein;
The Estate of Shirley Bernstein;
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;
SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;
John and Jane Doe’s (1-5000),

Counter Defendants,

Judge Martin Colin, Personally;
Judge Martin Colin, Professionally;
Judge David French, personally;
Judge David French, professionally;

Material and Fact Witnesses who may
become Defendants in any amended
complaint.

COUNTER COMPLAINT


COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 2

COMES NOW, PRO SE¹, Eliot Ivan Bernstein (“Eliot”) as Beneficiary and Interested Party both for himself personally and as Guardians for his three minor children of the alleged “Shirley Bernstein Trust dated May 20, 2008, as amended” (“Shirley Trust”) and as Trustee of the “Eliot Bernstein Family Trust dated 5/20/2008” and hereby files this “ANSWER AND COUNTER COMPLAINT” and in support thereof states, on information and belief, as follows:

Parties, Jurisdiction and Venue

1. This is an action for money damages in excess of \$15,000.00 and for equitable, compensatory, punitive and other reliefs that may be as high as billions of dollars explained further herein.
2. Counter Plaintiff, Eliot Ivan Bernstein (“Eliot”) or (“Counter Plaintiff”) is the parent and natural guardians of minors, Joshua Ennio Zander Bernstein (“Joshua”) or (“Josh”), Jacob Noah Archie Bernstein (“Jacob”) or (“Jake”) and Daniel Elijsha Abe Ottomo Bernstein (“Daniel”) or (“Danny”), and resides with them in Palm Beach County, Florida.
3. Counter Plaintiff Eliot Ivan Bernstein is the alleged Trustee of the Eliot Bernstein Family Trust.
4. Counter Defendant, Tescher & Spallina, P.A. and all Partners Associates and of Counsel (“TSPA”), is domiciled in Florida and was counsel to Simon and Shirley Bernstein for Estate planning and more.
5. Counter Defendant, Robert L. Spallina, Esq. (“Spallina”), personally is a resident of Florida.
6. Counter Defendant, Robert Spallina, Esq., professionally, is a resident of Florida and a central defendant in all allegations contained herein.

¹ Pleadings in this case are being filed by Plaintiff In Propria Persona, PRO SE, wherein pleadings are to be considered without regard to technicalities. Propria, pleadings are not to be held to the same high standards of perfection as practicing lawyers. See Haines v. Kerner 92 Set 594, also See Power 914 F2d 1459 (11th Cir1990), also See Hulsey v. Ownes 63 F3d 354 (5th Cir 1995). also See In Re: HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991)." In Puckett v. Cox, it was held that a pro-se pleading requires less stringent reading than one drafted by a lawyer (456 F2d 233 (1972 Sixth Circuit USCA). Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957)"The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." According to Rule 8(f) FRCP and the State Court rule which holds that all pleadings shall be construed to do substantial justice.

7. Counter Defendant, Robert L. Spallina, Esq., as the former, Co-Personal Representative, Counsel and Fiduciary of the ESTATE and WILL OF SIMON BERNSTEIN (2012); Co-Trustee, Counsel and Fiduciary of the alleged SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT (2012); Counsel to the Co-Personal Representatives and Co-Trustees of the alleged WILL OF SIMON BERNSTEIN (2012); Counsel to the Co-Personal Representatives and Co-Trustees of the alleged SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT (2012); Trustee, Counsel and Fiduciary of the SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008); Trustee and Fiduciary of the MARITAL TRUST and FAMILY TRUST created by SHIRLEY BERNSTEIN TRUST (2008); Trustee, Counsel and Fiduciary of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995; Trustee, Counsel and Fiduciary of the SIMON L. BERNSTEIN TRUST AGREEMENT (2008); Personal Representative, Fiduciary and Counsel to the ESTATE and WILL OF SIMON BERNSTEIN (2008); Trustee, Fiduciary and Counsel to the SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to the SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to the WILMINGTON TRUST 088949-000 SIMON L BERNSTEIN IRREVOCABLE TRUST; Counsel to the Personal Representative and Fiduciary Simon Bernstein and Successor Personal Representative Theodore Bernstein for the ESTATE AND WILL OF SHIRLEY BERNSTEIN (2008); Counsel to the Trustee and Fiduciary Simon Bernstein and Successor Trustee Theodore Bernstein for the SHIRLEY BERNSTEIN TRUST AGREEMENT (2008); Counsel to the alleged Successor Trustee and Fiduciary Theodore Bernstein of the MARITAL TRUST and FAMILY TRUST created by SHIRLEY BERNSTEIN TRUST (2008); Trustee, Fiduciary and Counsel to the ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008; Trustee, Fiduciary and Counsel to the SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 4

BATES NO. EIB 003527
02/27/2017

the SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to the DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006; Trustee, Fiduciary and Counsel to the JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006; Trustee, Fiduciary and Counsel to the JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006; Counsel to the DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738; Counsel to the Defendant, JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381; Counsel to the Defendant, JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381; Counsel and Registered Agent to the Defendant, BERNSTEIN FAMILY REALTY, LLC; Counsel, Registered Agent and Manager of Bernstein Holdings LLC; Counsel and Registered Agents for Bernstein Family Investments LLLP; Counsel and Trustee to Defendants, Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012; Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012; Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012.

8. Counter Defendant, Donald R. Tescher, Esq. ("Tescher"), personally is a resident of Florida.
9. Counter Defendant, Donald R. Tescher, Esq., professionally, is a resident of Florida and a central defendant in all allegations contained herein.
10. Counter Defendant, Donald Tescher, Esq. as the former; Co-Personal Representative, Counsel and Fiduciary of the ESTATE and WILL OF SIMON BERNSTEIN (2012); Co-Trustee, Counsel and Fiduciary of the alleged SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT (2012); Counsel to the Co-Personal Representatives and Co-Trustees of the alleged WILL OF SIMON BERNSTEIN (2012); Counsel to the Co-Personal Representatives and Co-Trustees of the alleged SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT (2012); Trustee, Counsel and Fiduciary of the SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008); Trustee and Fiduciary of the MARITAL TRUST

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 5

and FAMILY TRUST created by SHIRLEY BERNSTEIN TRUST (2008); Trustee, Counsel and Fiduciary of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995; Trustee, Counsel and Fiduciary of the SIMON L. BERNSTEIN TRUST AGREEMENT (2008); Personal Representative, Fiduciary and Counsel to the ESTATE and WILL OF SIMON BERNSTEIN (2008); Trustee, Counsel and Fiduciary of the SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to the SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to the WILMINGTON TRUST 088949-000 SIMON L BERNSTEIN IRREVOCABLE TRUST; Counsel to the Personal Representative and Fiduciary Simon Bernstein and Successor Personal Representative Theodore Bernstein for the ESTATE AND WILL OF SHIRLEY BERNSTEIN (2008); Counsel to the Trustee and Fiduciary Simon Bernstein and Successor Trustee Theodore Bernstein for the SHIRLEY BERNSTEIN TRUST AGREEMENT (2008); Counsel to the alleged Successor Trustee and Fiduciary Theodore Bernstein of the MARITAL TRUST and FAMILY TRUST created by SHIRLEY BERNSTEIN TRUST (2008); Trustee, Fiduciary and Counsel to the ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008; Trustee, Fiduciary and Counsel to the SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to the SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to the DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006; Trustee, Fiduciary and Counsel to the JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006; Trustee, Fiduciary and Counsel to the JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006; Counsel to the DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738; Counsel to the Defendant, JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381; Counsel to the Defendant, JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381; Counsel and Registered Agent to the Defendant, BERNSTEIN FAMILY

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 6

BATES NO. EIB 003529
02/27/2017

REALTY, LLC; Counsel, Registered Agent and Manager of Bernstein Holdings LLC; Counsel and Registered Agent for Bernstein Family Investments LLLP; Counsel and Trustee to Defendants, Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012; Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012; Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012.

11. Counter Defendant, Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A. and all Partners Associates and of Counsel fka Tescher Gutter Chaves Josepher Rubin Ruffin & Forman , P.A. (“GC”) is domiciled in Florida and was Counsel to Simon and Shirley Bernstein for Estate planning work and more prior to Donald Tescher’s removal from that firm and forming Tescher & Spallina, P.A. and where Simon’s account was then transferred by Tescher, the account manager, to his new firm TSPA.
12. Counter Defendant, Theodore Stuart Bernstein (“Theodore”) or (“Ted”), individually, is a resident of Florida and a central defendant in all allegations contained herein.
13. Counter Defendant Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;
14. Counter Defendant Theodore Bernstein as, Personal Representative of the Shirley Estate; Personal Representative and Fiduciary of the ESTATE AND WILL OF SHIRLEY BERNSTEIN (2008); alleged Successor Trustee and Fiduciary of the SHIRLEY BERNSTEIN TRUST AGREEMENT (2008); alleged Successor Trustee and Fiduciary of the SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT (2012); as the alleged Trustee and Fiduciary of the SIMON L. BERNSTEIN TRUST AGREEMENT (2008); as alleged Successor Trustee and Fiduciary of the MARITAL TRUST and FAMILY TRUST created by SHIRLEY BERNSTEIN TRUST (2008); as the alleged Trustee and Fiduciary of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995; as an alleged Trustee and Fiduciary of the SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008); as alleged Manager of Bernstein Family Realty

LLC; as alleged Trustee and Fiduciary to the WILMINGTON TRUST 088949-000 SIMON L BERNSTEIN IRREVOCABLE TRUST.

15. Counter Defendant, Lisa Sue Friedstein (“Lisa”), Individually, is an Illinois resident with interests in the Florida probate and trusts of Simon and Shirley.
16. Counter Defendant, Jill Marla Iantoni (“Jill”), Individually, is an Illinois resident with interests in the Florida probate and trusts of Simon and Shirley.
17. Counter Defendant, Pamela Beth Simon (“Pamela”) or (“Pam”), individually, is a resident of Illinois and acting on behalf her daughter and herself in the Florida Probate matters of Simon and Shirley.
18. Counter Defendant, Mark Manceri, Esq. (“Manceri”), personally, is a resident of Florida.
19. Counter Defendant, Mark Manceri, Esq., professionally is a resident of Florida and was Counsel to, BERNSTEIN FAMILY REALTY, LLC; Counsel to Defendants Tescher and Spallina; Counsel to Defendant Theodore Bernstein as an Individual; Counsel to Theodore Bernstein as alleged Successor Trustee of Shirley Bernstein Trust Agreement 2008; Counsel to Theodore Bernstein as Personal Representative of the Estate and Will of Shirley Bernstein; Counsel to the Estate and Will of Simon Bernstein 2012.
20. Counter Defendant, Mark R. Manceri, P.A. and all Partners, Associates and of Counsel, is domiciled in Florida and acted as counsel in these matters to various parties.
21. Counter Defendant, Page, Mrachek, Fitzgerald & Rose, P.A. and all Partners Associates and of Counsel (“PMFR”), is domiciled in Florida and acted as counsel in these matters to various parties.
22. Counter Defendant, Alan B. Rose, Esq. (“Alan”) or (“Rose”), personally, is a resident of Florida who acted as counsel to various parties in these matters.
23. Counter Defendant, Alan B. Rose, Esq., professionally, is a resident of Florida and acted as Counsel to Defendant Theodore Bernstein as an Individual; Counsel to Theodore Bernstein as alleged Successor Trustee of the alleged Shirley Bernstein Trust Agreement 2008; Counsel to Theodore

Bernstein as Personal Representative of the Estate and Will of Shirley Bernstein; Counsel to the alleged Successor Trustee Theodore Bernstein of the alleged Simon Bernstein Amended and Restated Trust (2012); Counsel to Theodore Bernstein in the Stansbury Creditor Lawsuit in various capacities of various entities named thereunder.

24. Counter Defendant, Pankauski Law Firm PLLC and all Partners, Associates and of Counsel (PLW”), is domiciled in Florida and represented various parties in these matters.
25. Counter Defendant, John J. Pankauski, Esq. (“Pankauski”), personally, is a resident of Florida that acted as counsel to various parties in these matters;
26. Counter Defendant, John J. Pankauski, Esq., professionally, is a resident of Florida and as Counsel to Defendant Theodore Bernstein as an Individual; Counsel to Theodore Bernstein as alleged Successor Trustee of the alleged Shirley Bernstein Trust Agreement 2008; Counsel to Theodore Bernstein as Personal Representative of the Estate and Will of Shirley Bernstein; Counsel to the alleged Successor Trustee Theodore Bernstein of the alleged Simon Bernstein Amended and Restated Trust (2012).
27. Counter Defendant, Kimberly Francis Moran (“Moran”), personally, is a resident of Florida who was arrested in the matters for fraudulently notarizing documents and admitted to forging documents in these matters.
28. Counter Defendant, Kimberly Francis Moran, professionally, is a resident of Florida and was Notary Public/Legal Assistant for Spallina & Tescher P.A. and was convicted of Felony Fraudulent Notarization in the Estate of Shirley Bernstein and admitted Forgeries, including Post Mortem Forgery of Simon’s name while working and under direction of Defendants Tescher, Spallina and Tescher & Spallina, P.A. Moran has also had her Notary Public license revoked by Governor of Florida Rick Scott’s Notary Public Division.

29. Counter Defendant, Lindsay Baxley aka Lindsay Giles (“Baxley”) or (“Giles”), personally, is a resident of Florida who improperly notarized documents and was charged with such by the Florida Governor Rick Scott’s Notary Public Division while working for Theodore Bernstein.
30. Counter Defendant, Lindsay Baxley aka Lindsay Giles, professionally, is a resident of Florida who improperly notarized documents and was charged with such by the Florida Governor Rick Scott’s Notary Public Division while working for Theodore Bernstein.
31. Counter Defendant, Simon L. Bernstein Trust Agreement dated May 20, 2008 and as alleged Amended and Restated Trust Simon L, Bernstein Trust Agreement dated July 25, 2012 (“Simon Trust”) is a trust established in Florida.
32. Counter Defendant, Shirley Bernstein Trust Agreement dated May 20th 2008 (“Shirley Trust”), is a trust established in Florida.
33. Counter Defendant, Estate of Simon Bernstein, is an estate in the State of Florida.
34. Counter Defendant, Estate of Shirley Bernstein, is an estate in the State of Florida.
35. Counter Defendant, SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008), is a Trust established in Florida by Simon and where the Beneficiaries, include but are not limited to, Eliot and/or his children or both.
36. Counter Defendant, SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06, is a Trust established in Florida by Simon and where the Beneficiaries, include but are not limited to, Eliot and/or his children or both.
37. Counter Defendant, SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06, is a Trust established in Florida by Shirley. Information is currently unavailable regarding the Trustees, etc. as it is alleged missing or destroyed and where the Beneficiaries, include but are not limited to, Eliot and/or his children or both.

38. Counter Defendant, SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008), is a Trust established in Florida by Shirley and where the Beneficiaries are presumed to include but are not limited to, Eliot and/or his children or both. Information is currently unavailable regarding the Trustees, etc. as it is alleged missing or destroyed.
39. Counter Defendant, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995, is a suppressed and denied trust that is alleged missing and lost and yet a Plaintiff in a US Federal Court case and where the Beneficiaries, include but are not limited to, Eliot and/or his children or both and the Estate of Simon.
40. Counter Defendant, SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000), is a Trust established in Florida by Simon and where the Beneficiaries, include but are not limited to, Eliot and/or his children or both.
41. Counter Defendant, SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000), is a Trust established in Florida by Shirley and where the Beneficiaries, include but are not limited to, Eliot and/or his children or both.
42. Counter Defendant, Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012, is a trust set up in Florida by an unknown. Information is currently unavailable regarding the Trustees, etc. as it is alleged missing or destroyed.
43. Counter Defendant, Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012, is a trust set up in Florida by an unknown. Information is currently unavailable regarding the Trustees, etc. as it is alleged missing or destroyed.
44. Counter Defendant, Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012, is a trust set up in Florida by an unknown. Information is currently unavailable regarding the Trustees, etc. as it is alleged missing or destroyed.

45. Counter Defendant, ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008, is a Trust established in Florida by Shirley and Simon.
46. Counter Defendant, DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006, is a Trust established in Florida by Shirley and Simon.
47. Counter Defendant, JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006, is a Trust established in Florida by Shirley and Simon.
48. Counter Defendant, JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006, is a Trust established in Florida by Shirley and Simon.
49. Counter Defendant, DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738, is a Trust established in Florida by Shirley and Simon.
50. Counter Defendant, JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381, is a Trust established in Florida by Shirley and Simon.
51. Counter Defendant, JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381, is a Trust established in Florida by Shirley and Simon.
52. Counter Defendants, JOHN AND JANE DOE 1-5000, are John and Jane Doe.
53. Material and Fact Witness – Judge Martin Colin, personally and professionally, where certain Felony crimes occurred in and upon the Court of Judge Colin and were committed by Officers and Fiduciaries of his Court.
54. Material and Fact Witness – Judge David French, personally and professionally, where certain Felony crimes occurred in and upon the Court of Judge French and were committed by Officers and Fiduciaries of his Court.
55. Jurisdiction and venue are proper in Palm Beach County, Florida because the beneficiaries of the trusts reside here or have interests in the trusts in Florida, the trusts were allegedly created in Florida, the corporate entities are domiciled here and/or do business in the State of Florida.

BACKGROUND SPECIFIC TO THIS CASE

56. That Eliot states that the Trustees complaint uses language from documents that are already challenged in the Court and need to be forensically analyzed for further evidence of fraud. All language cited from any alleged trusts is now speculative. Where it is alleged that Simon did not amend and restate his 2008 Will and Simon Trust in 2012 and that these documents were done Post Mortem and are all fraudulent, forged, improperly notarized and improperly constructed to commit fraud.
57. That all documents executed allegedly by Simon in 2012 to change anything with Shirley's 2008 Will and Shirley Trust are further fraudulent and forged documents and legally invalid.
58. That until this Court can determine the dispositive documents to use forward due to the fraud and forgeries and more, any language cited from any of the wills or trusts of both Simon and Shirley cannot be relied on without disclaimer that identifies the fact that these documents all must be analyzed and reviewed forensically for further evidence of fraud, before any language can be accepted as legally valid.
59. That as of this date, Eliot has been refused to see or inspect the original dispositive documents in the estates and trusts of Simon and Shirley, in violation of Probate and Trust Rules and Statutes.
60. That Eliot hereby incorporates all statements made in his Answer to this complaint, all pleading made in the Oppenheimer v. Candice and Eliot Bernstein lawsuit before Hon. Judge Colin and all prior pleadings in the Probate cases of Simon and Shirley before Hon. Judge Colin and Hon. Judge David French pending hearings, all are hereby incorporated by reference herein.
61. That this Court is in part the SCENE OF THE CRIME, as the fraudulent and forged documents were posited with this Court, by Officers of this Court, Tescher and Spallina by their law firm TSPA, which enabled the illegal seizure of Dominion and Control of the Estates and Trusts of both Simon and Shirley.

62. That a highly sophisticated legal process abuse scheme was committed by the fiduciaries and counsel to the fiduciaries (including certain of the fiduciaries acting as their own counsel) committing felony acts while acting as Fiduciaries and Officers of this Court to illegally seize Dominion and Control of the Estates and Trust of Simon and Shirley.
63. That Simon and Shirley Bernstein had a net worth between 40-100 million dollars.
64. That these crimes, include but are far from limited to, proven Frauds on the Court, alleged Fraud on a Federal Court, proven Frauds on the Beneficiaries, proven Fraudulent Notarizations, Admitted Forgery of six persons including Simon POST MORTEM, admitted fraudulent alteration of a Shirley Trust document POST MORTEM, Creditor Fraud, Bank Fraud, Insurance Fraud, Theft of Assets, Identity Theft of a dead person and more.
65. That all the crimes listed above were committed primarily by Fiduciaries and Attorneys as Law, all acting as Officers of this Court, all who proceeded to then use the fraudulent and forged documents to commit Fraud on the Court and Fraud on the beneficiaries. These crimes included using Simon as an acting PR/Executor while he was dead for several months to close his wife Shirley's Estate illegally.
66. That Simon was used while DEAD to submit false instruments to this Court filed by TSPA, as they needed to make it look like Simon closed his deceased wife Shirley's Estate and made changes to he and Shirley's Estates and Trusts while alive.
67. That Simon died on September 13, 2012 and at that time was the PR/Executor of Shirley's Estate and Trustee of the Shirley Trust.
68. That Simon submitted documents to the Court as if alive from the date he died until January 2013 when Shirley's Estate was illegally closed by a dead PR/Executor.

69. That after Simon died no Successor PR/Executor was appointed for Shirley's Estate as it appeared Simon had closed the Shirley Estate while alive and died after so doing, which is untrue, Simon died before closing Shirley's Estate.
70. That after Simon died no Successor Trustee was appointed for the Shirley Trust, as it appeared Simon had closed the Shirley Estate while alive and died after so doing, which is untrue, Simon died before closing Shirley's Estate.
71. That documents were fraudulently notarized for Simon POST MORTEM.
72. That documents were fraudulently notarized for five of Simon's children.
73. That documents were forged for Simon Post Mortem.
74. That documents were forged for five of Simon's children.
75. That documents were admitted fraudulently altered in the Shirley Bernstein Trust.
76. That when Shirley Bernstein passed her Shirley Trust became irrevocable.
77. That when Shirley Bernstein passed the beneficiaries of the Shirley Trust were Eliot, Jill and Lisa and their lineal descendants through Family Trusts created for them thereunder.
78. That Theodore and Pamela and their lineal descendant are disinherited entirely and considered predeceased for all purposes of Simon and Shirley's Trusts and distributions made thereunder.
79. That Theodore and Pamela and their lineal descendants are disinherited entirely and considered predeceased for all purposes of the 2008 Simon Trust and distributions made thereunder.
80. That Theodore and Pamela and their lineal descendants are disinherited entirely and considered predeceased for all purposes of the alleged 2012 Amended and Restated Simon Trust and distributions made thereunder.
81. That Theodore and Pamela and their lineal descendants are disinherited entirely and considered predeceased for all purposes of the alleged 2008 Shirley Trust and distributions made thereunder.

82. The Simon L. Bernstein Amended and Restated Trust is alleged to have been amended from the Simon L. Bernstein Trust dated May 20, 2012 and was amended improperly and improperly notarized approximately 48 days prior to Simon's unexpected and sudden death.
83. That the alleged Shirley Trust states,

ARTICLE III. GENERAL

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "child," "children" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person.

Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, [emphasis added] however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.

84. That the alleged Simon Trust states,

ALLEGED ORIGINAL 2008 SIMON L. BERNSTEIN TRUST AGREEMENT

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

- A.** Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 16

whole or in part and otherwise modify or amend this Agreement.
However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise. [emphasis added].

85. That the alleged 2012 Amended and Restated Simon L. Bernstein Trust Agreement states,

ALLEGED 2012 AMENDED AND RESTATED SIMON L. BERNSTEIN TRUST AGREEMENT


ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

[NOTE LANGUAGE FROM 2008 SIMON TRUST REMOVED]

86. That Simon could not by the 2008 Simon Trust to revoke this 2008 Simon Trust Agreement in whole or in part and otherwise modify or amend the Simon Trust Agreement after Shirley's death with respect to property added by Shirley upon Shirley's death by Shirley's Will or otherwise and could not amend or change the Shirley Trust.
87. That through the 2012 Amended and Restated Simon Trust Agreement, attempts are made to modify and amend the 2008 Simon Trust with respect to property added by Shirley upon Shirley's death.
88. That Eliot through trusts already established in his family's name is a beneficiary of 1/3rd of the 2008 Shirley Trust.
89. That Eliot is a 1/3rd beneficiary through a Family Trust in his name of the 2008 Simon Trust.
90. That if the alleged 2012 documents do not survive and the 2008 Simon Trust prevails, which there is already evidence of fraud, improper construction, proven improper notarizations and more and there is new evidence now indicating they were procured to knowingly commit fraud by the fiduciaries and officers of this Court and this would legally invalidate them.

91. That if the 2012 alleged Simon Trust and Will fail are legally invalidated, Eliot is a 1/3rd beneficiary of the Simon Trust and the Shirley Trust both dated May 20, 2008.
92. That in a May 2012 meeting Eliot was asked by Simon if he would be willing to give up his 1/3rd interests in Simon and Shirley's Estate and Trusts and transfer Eliot's interests to Simon's 10 grandchildren.
93. That there were disputes and issues that Theodore and Pamela had with Simon and Shirley having disinherited them and their lineal descendants that were discussed in the May 2012 meeting and if Simon, Eliot, Jill and Lisa choose to later execute upon the contemplated changes these disputes were agreed to come to an end.
94. That after the May 20, 2012 meeting Eliot requested documents from Tescher and Spallina and stated he would in no way do anything with transferring his interests until seeing what interests he was giving up and what the terms, tax and other consequences would be for he and his family and if the arrangement agreed to in principle was legally possible.
95. That Eliot to date, despite repeated requests of the former and current alleged fiduciaries for accountings of his interests, has never received the accounting of his interests asked for in the May 2012 meeting and in multiple written requests since that time in violation of Probate and Trust Rules and Statutes.
96. That Eliot to date, despite repeated requests to the former and current alleged fiduciaries has not received complete dispositive documents in the Estates and Trusts of Shirley and Simon with all Schedules, Addendums and any other attachments affixed and has been further refused inspection of the original documents.
97. That Simon did not have the right to change the beneficiary class of the Shirley Trust as the Trust became irrevocable with Eliot, Jill and Lisa beneficiaries only through Family Trusts created exclusively and only for them and their lineal descendants.

98. Shirley and Simon's wishes and intents were drafted together and stated in their 2008 Wills and Trust documents for them with clear desires to wholly disinherit Theodore, Pamela and their lineal descendants and considered them predeceased for all purposes of their trusts and distributions made thereunder for compensation they already received while Simon and Shirley were alive.
99. That in the 2008 Shirley Trust and 2008 Simon Trust, Theodore, Pamela and their lineal descendants are referred to as having been adequately provided for during their lifetimes.
100.  That Theodore and Pamela in the May 2012 meeting with Simon agreed that if Simon were to change his estate plans legally they would cease their disputes, harassment and extortion of Simon to force him to make changes and allow him to see his grandchildren again.
101. That this relief from abuse was all Theodore and Pamela were asked to give up in the May 20, 2012 meeting, as they had nothing to give up in either the Simon Trust or Shirley Trust as they were wholly disinherited and had no beneficial or other interest in the 2008 Simon and Shirley Trusts.
102. That the disputes between Theodore and Pamela with Simon did not cease until the day Simon died. In fact, the disputes and hostilities grew worse after the May 20, 2012 meeting, as Simon never expressed any desire to make any changes again or did anything to make changes to he and Shirley's estate plans.
103. That Simon never asked Eliot again to consider giving up his interests in he and Shirley's Estates and Trusts to benefit Theodore and Pamela's family in order to cease the elder abuse against him.
104. The elder abuse of having his grandchildren held hostage to either make changes and concede to demands by four of his five children continued until the day he died. These disputes and issues grew over the refusal of Simon to make estate plan changes to reinsert Theodore and Pamela's lineal descendants only back into the estate plans, as discussed in the May 20, 2012 meeting.
105. That Simon also refused to stop seeing his girlfriend to the day he died, Maritza Puccio Rivera, and, Theodore, Pamela, Jill and Lisa continued to use their children as pawns withholding them from him

to persuade Simon to give in to their demands to stop seeing her or never see four of his five children and seven of his ten grandchildren again.

106. That the May 2012 meeting was called for by Simon to end disputes with his four other children, other than Eliot whom he had no disputes with and who was not extorting him to do anything and never withheld his children from him for any reason whatsoever.
107. That Spallina and Tescher drafted the alleged 2012 Will and Amended and Restated Trust of Simon, Spallina witnessed the document and Spallina and Tescher named themselves as Co-Personal Representatives and Co-Trustees.
108. That Spallina represented as counsel he and Tescher as Co-Personal Representatives and Co-Trustees of the alleged 2012 Will and Amended and Restated Trust of Simon.
109. That Spallina represented Theodore as counsel in his role as alleged Successor PR and alleged Successor Trustee of the Shirley Bernstein Estate and Shirley Trust.
110. The alleged 2012 dispositive documents of Simon gave Spallina and Tescher fiducial and legal powers in the Estate and Trusts of Simon and therefore direct interests and financial gains via their alleged roles as Co-PR/Executors, Co-Trustees and Counsel to themselves as fiduciaries.
111. That Tescher and Spallina through their law firm TSPA billed the Estate and Trusts for time worked to forge, fraudulently notarize and fraudulently alter trust documents in the Estates and Trusts of Simon and Shirley.
112. That the alleged 2012 dispositive documents of Simon were witnessed by Kimberly Moran and Robert Spallina who have both now admitted to fraudulently altering documents in these matters.
113. That Kimberly Moran worked as a Legal Assistant and Notary Public while employed by Tescher & Spallina, P.A.
114. That fraudulently notarized documents and forged documents crafted by Moran were posited by Tescher & Spallina, P.A. with the Probate Court in Shirley's Estate on behalf of Simon who was

acting as the PR/Executor (Spallina his counsel as PR/Executor) at the time while Simon was dead at the time the documents were posited with the Court.

115. That Theodore, Spallina and Manceri were told by Judge Martin Colin in a September 13, 2013 hearing, one year after Simon died, that when he discovered that Simon was dead at the time he was alleged to be serving closing documents with Court that he had enough to read them their Miranda Rights. Judge Colin reiterated this later in the hearing to Theodore and Spallina.
116. The alleged 2012 alleged Simon Will and alleged Amend and Restated Simon Trust documents were improperly notarized by Lindsay Baxley who works as Theodore's assistant, as determined by Governor Rick Scott's Notary Public Division for failing to state if Simon was present when the documents were notarized in his name.
117. That Moran was arrested and convicted for fraudulently notarizing a document and admitted to fraudulently notarizing six documents for six separate parties, including one for Simon Post Mortem and these false instruments were posited with this Court by Tescher & Spallina, P.A. on behalf of their client Simon as PR/Executor after Simon had died.
118. That for three to four months after died Simon was used by Spallina and Tescher as if he were alive to submit closing documents for Shirley's Estate and then closed the Estate of Shirley with a dead PR/Executor in violation of law.
119. That Moran admitted to Palm Beach County Sheriff Investigators that she forged six documents for six separate parties, including a Post Mortem forgery for Simon and these false instruments were posited with this Court by Tescher & Spallina, P.A.
120. That Alan Rose is a Respondent in the probate Estate cases of both Simon and Shirley.
121. That Alan Rose is a Counter Defendant in the Oppenheimer v. Candice and Eliot lawsuit before this Court.
122. That Theodore Bernstein is a Respondent in the probate Estate cases of both Simon and Shirley.

123. That Theodore Bernstein is a Counter Defendant in the Oppenheimer v. Candice and Eliot lawsuit before this Court.
124. That Robert Spallina, Esq. is a Respondent in the probate Estate cases of both Simon and Shirley.
125. That Robert Spallina, Esq. is a Counter Defendant in the Oppenheimer v. Candice and Eliot lawsuit before this Court.
126. That Donald Tescher, Esq. is a Respondent in the probate Estate cases of both Simon and Shirley.
127. That Donald Tescher, Esq. is a Counter Defendant in the Oppenheimer v. Candice and Eliot lawsuit before this Court.
128. That on or about January 2013, Lisa and Jill were notified that there were forged and fraudulent documents in the Estate of Shirley in their name and their deceased father's name.
129. That on or about May 2013, Theodore, Pamela, Spallina, Tescher, Lisa and Jill were all notified that there were forged and fraudulent documents in the Estate of Shirley in Theodore, Pamela, Lisa, Jill, Eliot and their deceased father's name through a pleading filed by Eliot in the Probate cases of both Simon and Shirley.
130. That these fraudulent acts attempt to change beneficiaries in the Shirley Trust and the Simon Trust illegally through committing multiple, separate and distinct Frauds on this Court and the beneficiaries, achieved by advancing fraudulent and forged instruments to various parties to commit various frauds and these acts were perpetrated primarily by Counter Defendants, Tescher, Spallina, Tescher & Spallina, P.A., Moran, Baxley, Rose, Pankauski, Manceri, Theodore, Pamela and others acting either separately or in various combinations in conspiracy to commit fraud and more.
131. That Robert Spallina has admitted to Palm Beach County Sheriff Investigators that he fraudulently altered a trust document of the Shirley Trust after consulting with Donald Tescher about what to do to attempt to make changes to the IRREVOCABLE Shirley Trust beneficiary class. This alteration was necessary as the Shirley Trust was irrevocable and Simon was also prohibited from making

changes to the Shirley Trust beneficiary class and so Spallina alleges to PBSO investigators that he took it upon himself to alter a trust document to achieve what he and Tescher knew was legally impossible and fraudulent.

132. That distributions were made in the Shirley Trust to improper parties as the only beneficiaries of Shirley's Trust are Eliot, Lisa and Jill through Family Trusts created under the Shirley Trust for the benefit of them and their lineal descendants only, despite any efforts Simon may or may not have made to change the beneficiary class, he was prohibited from any such changes and thus would have been committing a fraud by changing them after Shirley's death.
133. That Spallina and Tescher have resigned and withdrawn due to their fraudulent activities that have now caused intentional delays with Eliot's inheritance and interfered and delayed distributions for now almost two years by their attempt to feloniously change beneficiaries to benefit Theodore and Pamela who without the fraudulent acts would receive nothing in the Simon Trust and Shirley Trust.
134. That Theodore introduced Tescher and Spallina to Simon and the Bernstein family as Theodore was doing business with them and was a close personal friend with Tescher primarily and Spallina.
135. That Tescher was the main partner on the Bernstein family matters and worked closely with his partner Spallina on virtually all documents and issues relating to the Bernstein family matters.
136. That Theodore Bernstein was asked by Eliot Bernstein to contact the FBI in relation to his having been the last party to take possession of Eliot's car and having it towed to where it was blown up and blew up three cars next to it in what is alleged to have been an attempted murder of Eliot and his family, see www.iviewit.tv for graphic images.
137. That Theodore is adverse to Eliot as Eliot has alleged that Theodore worked with defendants in a RICO and ANTITRUST lawsuit Eliot filed, against interests in companies and intellectual properties owned by Simon and Eliot.

138. That Theodore works closely with several of the defendants in the RICO that Eliot alleges have stolen intellectual properties owned by Eliot and Simon, including the law firms of Greenberg Traurig, Proskauer Rose LLP, Albert Gortz, Esq. and Gerald Lewin, CPA., four of the primary suspects in orchestrating the original IP thefts.
139. This case is related to ALL of the following ongoing actions² worldwide involving Eliot Bernstein where there are claims of civil and criminal conspiracy, including RICO, where the main predicate acts are committed by Attorneys at Law in each separate action.
140. That Eliot's RICO and ANTITRUST lawsuit is legally related to a New York Supreme Court Disciplinary Department Attorney at Law Whistleblower Lawsuit of Christine C. Anderson, Esq.
141. That shockingly there are many links in each of the lawsuits to the same Attorneys at Law as in the initial RICO, acting in various combinations in each case, including the instant action, in efforts to harm Eliot and his family, including a massive amount of legal process abuse and crimes committed in and upon the Courts involved in these cases. That the lawsuits, include but are not limited to:
- i. UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK, ELIOT I. BERNSTEIN, et al., Plaintiffs, - against - APPELLATE DIVISION FIRST DEPARTMENT DISCIPLINARY COMMITTEE, et al., Defendants. Case No. 07 Civ. 11196 (SAS), Honorable Judge SHIRA A. SCHEINDLIN, U.S.D.J. (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.) (TO BE PETITIONED TO REOPEN BASED UPON FRAUD ON THE COURT AND OBSTRUCTION RECENTLY DISCOVERED).
 - ii. SIMON BERNSTEIN ESTATE PROBATE CASE IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL ESTATE OF SIMON LEON BERNSTEIN CASE NO. 502012CP004391 IZ XXXX SB (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.).
 - iii. SHIRLEY BERNSTEIN ESTATE PROBATE CASE IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL ESTATE OF SHIRLEY BERNSTEIN CASE NO. 502011CP00653XXXXSB (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.).
 - iv. IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION, Case No. 13cv3643, before the Hon. Judge Amy St.

² The estate and trust cases all should be related legally related by the Court but appear not yet related and Eliot is asking this Court to do so in the administration of justice and to save costs.

- Eve (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.)³
- v. OPPENHEIMER V CANDICE AND ELIOT BERNSTEIN CASE NO. 502014CP002815XXXXSB
 - vi. IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA, CASE NO. CA 01-04671 AB, PROSKAUER ROSE LLP, A NEW YORK LIMITED LIABILITY PARTNERSHIP, PLAINTIFF, VS. IVIEWIT.COM, INC., A DELAWARE CORPORATION, IVIEWIT HOLDINGS, INC., A DELAWARE CORPORATION, AND IVIEWIT TECHNOLOGIES, INC., A DELAWARE CORPORATION, DEFENDANT. (To be petitioned to reopen based upon fraud on the court and obstruction recently discovered.)
 - vii. OBSIDIAN FINANCE GROUP, LLC ET AL. V. COX CASE NO. 3:11-CV-00057-HZ. (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.). (Note Bernstein is not a Defendant but was tried to be added as a Defendant after the case was heard).
 - viii. RANDAZZA ET AL V. COX, BERNSTEIN ET AL., CASE NO. 2:12-CV-02040-GMN-PAL. (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.)
 - ix. COX VS. RANDAZZA, ET AL. – NEVADA RICO CASE NO. 2:13-CV-00297-JCM-VCF CHANGED TO 2:13-CV-00297 JCM (NJK) CHANGED TO 2:13-CV-00297 MMD-VCF. (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.)
 - x. MARC J. RANDAZZA ET AL. V GODADDY, LLC ET AL. ISSUED BY THE MIAMI-DADE COUNTY, FLORIDA 11TH JUDICIAL CIRCUIT COURT, CIVIL ACTION NO. 2014-5636-CA. (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.)

142. That Tescher, Spallina, Moran, Theodore, Manceri, Pamela, Baxley and others are all under INVESTIGATION with Palm Beach County Sheriff Office (“PBSO”) detectives.

143. That Moran and Baxley were investigated and found guilty of various Notary violations in these matters by Florida’s Governor Rick Scott’s Notary Public Division. Allegations investigated were for Fraud, Fraudulent Notarizations, Forgery and other crimes, instigated by Eliot and Candice in relation to criminal acts⁴ taking place in the Estates and Trusts of Simon and Shirley with both state and federal civil and criminal authorities.

³ Where the Estate of Simon was recently allowed to intervene in the II. case as it directly relates to the Estate of Simon. The Estate was not previously represented in the case by the former PR’s of the Estate Tescher and Spallina, who actually represented Theodore in direct opposition to the Estate beneficiaries and aided and abetted him in committing Insurance Fraud and Fraud on a US Federal Court.

⁴

144. That Spallina filed an insurance death benefit claim form with Heritage Union Life acting as the Trustee of a what he and others claim is a lost “SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995” that no executed copies have been produced for and that he claimed never to have seen or possessed.
145. That Spallina’s fraudulent death benefit claim was denied for good and just cause by the insurance carrier for failure to produce a qualified legal beneficiary and more.
146. That Theodore Bernstein filed a Breach of Contract lawsuit in an Illinois Circuit Court that was moved to an Illinois Federal Court for Heritage’s Union’s failure to pay the fraudulent death claim filed by Spallina, acting as the Plaintiff in that lawsuit with direct conflicting interests with the Estate of Simon and Simon Trust beneficiaries, including his own children, as Theodore is trying to extract the proceeds of policy to himself directly versus the Estate of Simon beneficiaries.
147. The Theodore is the alleged “Trustee” for the missing “SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995” a document he claims not to possess or to have ever seen

-
1. Palm Beach County Sheriff Report – Case No. 12121312 – Alleged Murder of Simon Bernstein filed by Theodore Bernstein
 2. Palm Beach County Sheriff Report – Case No. 13097087 - Forgery and Fraudulent Notarizations
 3. Palm Beach County Sheriff Report – Case No. 13159967 - Theft of Assets of Estates
 4. Palm Beach County Sheriff Report – Case No. 14029489 - Continuation of Fraud, Extortion and more.
 - a. PBSO REPORTS @ <http://www.iviewit.tv/Sheriff Reports.pdf>
 5. State Attorney FL – - Case No. 13CF010745 - Forgery and Fraudulent Notarizations
 6. Jacksonville, IL. Police Department – Case No. #2014000865 – Insurance Fraud - Directed to Federal Authorities.
 7. Case No. 13-cv-03643 United States District Court – Northern District II.
 8. Florida Probate Simon – Case No. 502012CP004391XXXXSB
 9. Florida Probate Shirley – Case No. 502011CP000653XXXXSB
 10. Heritage Union Fraud Investigation – Case No. TBD
 11. Florida Medical Examiner – Autopsy Case No. 12-0913 – Filed by Theodore Bernstein
 12. Governor Rick Scott Notary Public Division – Moran – Case No. Eliot and Simon Bernstein v. Moran
 - a. [http://www.iviewit.tv/Simon and Shirley Estate/20131014%20Office%20of%20the%20Governor%20Moran%20Suspension%20of%20Notary.p
df](http://www.iviewit.tv/Simon and Shirley Estate/20131014%20Office%20of%20the%20Governor%20Moran%20Suspension%20of%20Notary.pdf)
 13. Governor Rick Scott Notary Public Division – Baxley – Case No. Eliot and Simon Bernstein v. Baxley
 - a. [http://www.iviewit.tv/Simon and Shirley Estate/20140421 Office Of Governor Lindsay Baxley
Complaint Misconduct.pdf](http://www.iviewit.tv/Simon and Shirley Estate/20140421 Office Of Governor Lindsay Baxley Complaint Misconduct.pdf)

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 26

an executed copy, along with his counsel Tescher and Spallina who also claim never to have possessed or seen the nonexistent trust.

148. That Spallina had in his possession an alleged 2000 insurance trust, titled "SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000) allegedly done by Simon with Proskauer Rose LLP that would have made legally void any 1995 prior insurance trust claimed to be the beneficiary by Spallina as the 2000 insurance trust specified the Heritage Union Life missing policy.

149. That the alleged SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000) was secreted from the insurance company, this Court, the Federal Court involved in the Breach of Contract litigation and the beneficiaries by Spallina, Tescher, Theodore and Pamela.

150. That the SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000) until it was discovered in the production documents Spallina and Tescher were forced to turn over by this Court's Order to the Curator Benjamin Brown, Esq. upon their removal and withdrawal.

151. That the discovery in 2014, almost two years after Spallina filed his fraudulent claim on behalf of the 1995 lost trust and Theodore filed his lawsuit on behalf of the 1995 lost trust, also came with evidence that conspiratorial efforts were made in writing by Tescher, Spallina, Theodore and Pamela to hide the document, while advancing a claim that would get Pamela money, as the 2000 insurance trust had her already disinherited therein.

152. That Theodore Bernstein filed the Breach of Contract lawsuit claiming he was the alleged "Trustee" of the lost 1995 trust after Spallina's filed a claim only months earlier stating that he was the "Trustee" of the 1995 insurance trust.

153. That Theodore was advised by his Counsel Spallina allegedly that he had no basis to file the Breach of Contract Lawsuit as the alleged "Trustee" of a nonexistent trust and yet Theodore ignored the advice of counsel and went ahead with filing the baseless Breach of Contract lawsuit.

154. That Theodore's brother-in-law David Simon and his brother Adam Simon through their law firm housed in Pamela's company then replaced Spallina as Theodore's counsel in the Illinois Breach of Contract Lawsuit.
155. That Tescher and Spallina were sent multiple correspondences from Heritage Union Life addressed to them as the Trustee of the LaSalle National Trust, N.A. in regard to the Heritage Union Life policy.
156. That NO executed copies of this alleged "SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995" and Theodore like Spallina claims to have never seen or possessed this lost trust.
157. That after the insurance death benefit claim was denied, Theodore upon filing his Breach of Contract lawsuit and replaced his former counsel Spallina as the alleged Trustee of this lost and missing "SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995" that neither he nor his Attorneys at Law, Spallina and Tescher claim to have ever seen or have any proof that it factually exists or any idea of what the executed document states.
158. That while representing Theodore initially in the Breach of Contract matters, Spallina and Tescher, were also simultaneously representing the Estate and Trust of Simon at the time as Co-PR's, Co-Trustees and Counsel to the Co-PR's and Co-Trustees and had fiducial duties to the Estate.
159. That if no beneficiary can be found at the time of death, Florida statutes state the death benefit will go to the Estate.
160. That once the Breach of Contract lawsuit was filed by Theodore, acting as Trustee of the lost "SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995", Spallina and Tescher, while knowing of the lawsuit, failed to intervene on behalf of the Estate of Simon's interests in the policy.

161. That instead of representing the Estate in the Breach of Contract lawsuit, Spallina and Tescher aided and abetted Theodore and three of his four siblings (Pamela, Lisa and Jill) in their attempt to fraudulently move the insurance policy out of the Estate that was allegedly OWNED by Simon and thereby have the proceeds paid to themselves directly in equal shares, to the detriment of the Estate and Estate beneficiaries, who they claim are their own children.
162. That acting as Trustees and Guardians for their children in the Estate of Simon matters, when filing their Breach of Contract Lawsuit to get the benefits transferred to themselves, Theodore, Pamela, Jill and Lisa failed to get counsel for their children, necessary to protect their alleged interests in the policy and this set up a classic conflict interest. Even after knowing that if the lost trust does not legally exist and could not secure the insurance proceeds, the Estate and hence their children would allegedly get the proceeds or Eliot, Lisa and Jill would get them if the 2012 alleged Amended and Restated Simon Trust documents are found legally invalid.
163. That if the Breach of Contract Lawsuit is successful Theodore and Pamela would receive 2/5th of the insurance policy proceeds and the amount of the death benefit currently is an unknown, as the policy is also missing and lost as claimed by Spallina, Tescher, Theodore, Pamela and even claimed lost by the insurance carrier.
164. That if the Breach of Contract Lawsuit is unsuccessful, and the policy proceeds instead are paid to the Estate, which owns the policy allegedly, Theodore and Pamela would receive NOTHING as they have been disinherited and their children may receive nothing or 4/10th of it.
165. That Theodore sold a condominium and signed tax forms as the Personal Representative in the process, prior to this Court having issued him Letters.
166. That Theodore failed to properly notify beneficiaries that he was allegedly the Successor Trustee of the Shirley Trust timely and also failed to follow Trust Rules and Statutes by failing to send complete

Shirley Trust documents with all Schedules and Addendums and other attachments requested with his acceptance.

167. That upon his alleged acceptance Theodore failed to file accountings and NO final accounting was ever submitted by Simon to the Court prior to Theodore claiming to be Successor Trustee to Simon and Theodore failed to file any Accounting in the two years since he has alleged himself to be the Successor Trustee in violation of Trust Rules and Statutes.
168. That Simon never transferred the role of PR to Theodore as the Estate was closed by Simon while dead.
169. That had Tescher and Spallina notified the Court that Simon was dead prior to Simon closing Shirley's Estate while he was dead, a Successor would have been appointed to have closed the Estate legally.
170. That the Estate of Shirley was closed illegally, which led to it being reopened and remains reopened as of the date of this Counter Complaint filing with the Court.
171. That Robert Spallina and Donald Tescher informed Eliot and others the day Simon died that Theodore was going to be the Successor Trustee and PR/Executor of the Estate and Trusts of Shirley because he was the oldest living child and that was the law in Florida.
172. That later on the day Simon died after learning of this, Eliot challenged the anointment of Theodore as Successor Trustee and PR/Executor of Shirley's Estate and Trusts.
173. That Spallina and Tescher then stated they just discovered documents, the 2008 Will and Shirley Trust that actually named Theodore as the Successor Trustee and Successor PR/Executor, contradicting their prior claims that Theodore was only a Successor because he was the oldest living child.

174. That Eliot asked for copies of all dispositive documents to inspect for both Simon and Shirley and was told by Spallina they were not giving dispositive out at the time and that he did not have to give them to Eliot, as he claimed Eliot had no interests.
175. That Eliot was not given full and complete copies of these documents to inspect and still has not been given them and was forced to retain Tripp Scott law firm to attempt to recover them for Eliot and his three minor children.
176. Eliot is a beneficiary through his Family Trust set up under the Shirley Trust, which he is Trustee for. Eliot also acts as a Trustee and Guardian for his children who may or may not be decided by this Court to be beneficiaries and either way he was owed the documents under Florida Probate and Trust Rules and Statutes as a beneficiary or Guardian of beneficiaries.
177. That defying logic and raising the brow, in a case already fraught with felonious document tampering in both Simon and Shirley's Estates and Trusts by several parties, is that Shirley allegedly had Tescher and Spallina draft the Shirley Trust that completely disinherited and considered Theodore deceased for all purposes and for distributions made thereunder and then contradict that language and name Theodore as alleged Successor Trustee able to then make distribution thereunder. In essence, Shirley would have created a direct conflict of interest knowing that any disinherited child would be bitter and that she had made him legally dead so that he could not make distributions. Eliot has challenged this document as fraudulent in part for these reasons.
178. That Theodore has been accused by the Creditor Stansbury of having architected a scheme to defraud him of over two million dollars in the Creditors action against the Estates of Simon and Shirley.
179. That Theodore is involved in insurance litigation centering around his having been involved in insuring parties for much higher insurance amounts than they had insurable interest for through possible felonious underwriting. That parties are alleged to have died and insurance companies learned of the unjustified amounts of death benefits and recalled other policies whereby the same

uninsurable interests were found, causing a payback to be sought for commissions made by those who advanced the scheme.

180. That Theodore with his counsel Rose have negotiated an alleged settlement with Stansbury for himself personally and simultaneously settled with the Estate of Shirley acting as the PR/Executor.
181. That this settlement presents a classic conflict of interest where Theodore negotiated for his personal interests while negotiating simultaneously as a PR/Executor for Shirley's Estate where he has no interests and waiving others interests that he has fiduciary responsibilities to, to benefit himself at their expense. Theodore should have resigned himself with Rose from one side of the negotiations and not negotiated both sides while conflicted.
182. That beneficiaries were not made aware of the settlement discussions and were not given any documents to review the transactions, which occurred in a black box for the Estate beneficiaries, where the terms are still unknown and no documents or what amounts of what was settled have been provided.
183. That the beneficiary designations of IRA accounts for Simon and Shirley are now claimed missing by Spallina, Tescher and JP Morgan.
184. That Theodore Bernstein was transferred the position of Manager of a company, Bernstein Family Realty LLC that is part of the estate plan of Simon and Shirley, owned by Eliot's minor children.
185. That Theodore was allegedly transferred the Manager position by Janet Craig, who simultaneously upon Theodore's acceptance sent over personal and confidential information she maintained regarding this company to Theodore and other private and confidential trust information regarding Eliot and his three minor children.
186. That Theodore later claimed he knew nothing about this transfer of the Manager role by Craig while simultaneously paying bills of Bernstein Family Realty LLC over a several month period using Shirley Trust funds to make the payments.

187. That Theodore received letters written to him by Craig that stated she was transferring information to him as Manager of BFR.
188. That after Simon died by several months, Spallina ILLEGALLY transferred the role of the Manager position of Bernstein Family Realty LLC to Craig at Oppenheimer and in so doing violated the operating agreement of BFR.
189. That the operating agreement of BFR that Spallina created and kept record for, called for a vote to elect a Successor Manager after Simon died by the Members, who are Eliot and Candice Bernstein as Guardians of their children who own the company equally.
190. That Spallina made the decision without consulting with Eliot and Candice on who to elect and told Eliot and Candice that the new Manager was Craig.
191. That Craig accepted the transfer from Spallina in violation of the operating agreements of BFR, which would have had to have her voted in by the Members.
192. That Craig transferred the documents and role of Manager of BFR to Theodore in violation of the operating agreements of BFR as no vote was again taken by the Members of BFR, Eliot and Candice on behalf of their children.
193. That Legacy Bank accounts that Simon was the only signatory party on the accounts that pertained to BFR were used for several months after Simon was deceased by several parties who were unauthorized.
194. That Simon's American Express was used for several months after he was deceased by other parties.
195. That Simon Post Mortem received a red light ticket and his license was suspended for failure to respond.
196. That Legacy Bank froze accounts of Simon's that were being used after his death by several months.

197. That Pamela, Jill and Lisa after Shirley's death came to the home of Simon in Florida and shipped personal properties of Simon's that were left to him by Shirley back to their homes in Chicago, including but not limited to, Jewelry, Art, Clothing and more.
198. That these items taken from Simon's residence are estimated to be worth several million dollars and they were taken by his daughters who claimed they were protecting them from being stolen by Rachel Walker, Simon's assistant and then from his girlfriend, Maritza Puccio. These items have not been accounted for in Shirley's Estate or on her inventory or Simon's Estate inventory and accounting, as if they vanished. Eliot has repeatedly requested their return and has been completely denied even a response regarding these missing assets of the Simon Estate.
199. That Robert Spallina alleges to have transferred monies frozen at Legacy Bank of Simon's for BFR to new Oppenheimer BFR accounts months after Simon's death.
200. That furniture and other personal properties of Shirley and Simon's, estimated to be worth millions of dollars was not properly inventoried on Shirley or Simon's inventory when they passed.
201. That furniture and other personal properties of Simon's estimated to be worth millions of dollars that was transferred to Simon as his personal property when Shirley died and was inventoried (but challenged already by Eliot and Creditor Stansbury as to the value) now appears to be missing.
202. That this Court was told by Alan Rose and Theodore Bernstein that furniture of Simon's that was his personal property was moved when the Condominium was fraudulently sold and was taken to Simon's other residence in Saint Andrews Country Club. To confirm this removal of the properties and transfer to the other residence, this Court ordered a re-inventorying of the furniture and other properties of the Condominium on a motion filed by the Curator Benjamin Brown, Esq.
203. That Donald Tescher and Alan Rose, in a deposition of Tescher's conducted by his friend and colleague who Tescher and Theodore retained in these matters, Alan Rose, then claimed that the furniture had been sold with Condominium and that they would "true it up" later with the

beneficiaries. That this statement directly contradicts the statements to this Court about where the furniture went.

204. That the parties Theodore committed fraud with in the sale of the Condominium, include but are not limited to, Nestler Polleto Realty / Sotheby's International Realty, Attorney at Law Gregory S. Gefen, PA of Florida, All Regency Title dba US Title of Florida, Old Republic National Title Insurance Company and George Wesley Thomas Voorheis a Canadian resident.
205. That Theodore Bernstein gave Eliot a gold ten commandment necklace Simon had told Eliot he was bequeathing him (specific bequeathed items are missing from the Estates and Trust documents despite reference to them in the ALLEGED dispositive documents). Theodore told Eliot he was taking the personal property jewels of Simon he removed from his residence and accounting for this Jewelry with Tescher and Spallina. Theodore stated the necklace would be deducted from any distributions later made to Eliot. That nowhere on the inventory of Simon or Shirley is this jewelry listed or accounted for.
206. That an appraisal of Shirley's Jewelry done for an insurance policy done are materially different in character and substance of the quality and type of the alleged same pieces Theodore then had appraised. It appears that there are either similar looking pieces inventoried and appraised and there then should be two separate pieces of jewelry that look the same and appear to be named similarly but that have wholly different characteristics and MASSIVE discrepancy in worth over several hundred thousand dollars on one jewel alone. Alternatively, the Jewels were changed from the time the insurance company appraised them to when Theodore took possession of them and had them appraised.
207. Theodore took possession for months of Jewelry that was an asset of Simon's Estate, despite the fact that Spallina and Tescher upon Simon's death were the alleged PR's responsible for these jewels. This has been reported to Sheriff Investigators.

208. That Theodore, Pamela, Lisa and Jill, acting as alleged trustees for their children, all knew documents were forged and fraudulently notarized in their names that could change the beneficiaries of the Estates and Trusts of Simon and Shirley and took no actions for months to notify authorities or this Court and instead during that time rushed to liquidate assets and convert and comingle monies to knowingly questionable parties.
209. That Theodore, Pamela, Lisa and Jill, instead of reporting the forged and fraudulent documents in their names now proven and admitted by them as such, then tried to waive the forgery and fraud through perjured new waivers filed with this Court in attempts to replace the illegally done ones. That further they attempted to forgive the felony crimes done in their names, their father Post Mortem and Eliot's names without reporting such crimes. That this behavior imparts aiding and abetting in the crimes. misprision of a felony and breach of fiduciary duties.
210. That Theodore Bernstein opened a criminal investigation on the day Simon died into what he alleged was a possible murder of Simon with Palm Beach Sheriff Investigators claiming that Simon's girlfriend Maritza Puccio had poisoned Simon.
211. That Theodore Bernstein ordered on the day Simon died an autopsy of Simon for what he alleged was a possible murder of Simon with the Palm Beach Medical Examiner's office claiming that Simon's girlfriend Maritza Puccio had poisoned Simon.
212. That Simon Bernstein owned 30% of initial shares of stock in several companies⁵ he formed together with Eliot and some that were formed fraudulently without their knowledge by Proskauer Rose and

5

lviewit Holdings, Inc. – DL
lviewit Holdings, Inc. – DL (yes, two identically named)
lviewit Holdings, Inc. – FL (yes, three identically named)
lviewit Technologies, Inc. – DL
Uviewit Holdings, Inc. - DL
Uview.com, Inc. – DL
lviewit.com, Inc. – FL
lviewit.com, Inc. – DL

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 36

Gerald R. Lewin that used identically named to their companies, as listed in footnote one, herein together all these companies are referred to as “Iviewit Stock.”

213. That Proskauer Rose and Foley & Lardner filed patents on behalf of Eliot Bernstein for technologies Eliot invented that Simon had a 30% ownership interest in them.

214. That Proskauer Rose LLP and Gerald Lewin formed these companies and have held the Iviewit Stock that was supposed to be in Simon’s Estate and Trusts and that Theodore and Spallina made contact with Proskauer and Lewin to find where they were.

215. That Tescher and Spallina after contacting Proskauer and Lewin were unable to find the missing Iviewit Stock and Proskauer and Lewin who maintained the Iviewit Stock and patent interests did not turn them over.

216. That the Iviewit Stock may be worth hundreds of BILLIONS of dollars as certain of the Iviewit Stock companies held rights to Intellectual Properties of Eliot’s where the technologies have been estimated to have values including “billions” and “priceless” by others who reviewed the Intellectual Properties, invested in them and licensed them, including but not limited to, Wayne Huizenga and Wayne Huizenga Jr., Crossbow Ventures, Wachovia Bank and others who evaluated them such as Real 3D, Inc. (owned by Intel 20%, Lockheed Martin 70% and Silicon Graphics Inc. 10%) and now owned wholly by Intel, Warner Bros., Sony, AOL, Time Warner, Proskauer Rose, Foley & Lardner, Goldman Sachs and others.

217. This instant lawsuit is yet another Fraud on the Court, beneficiaries and others, in efforts to make prior illegal and fraudulent distribution committed now legal through attempting to modify an

I.C., Inc. – FL
Iviewit.com LLC – DL
Iviewit LLC – DL
Iviewit Corporation – FL
Iviewit, Inc. – FL
Iviewit, Inc. – DL
Iviewit Corporation

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 37

irrevocable trust beneficiary class. This attempt to reconstruct the language of the irrevocable Shirley Trust and change the Class of Beneficiaries defined at her death on December 08, 2010 through documents that are challenged and alleged to be fraudulent and evidence of fraud already proven and admitted in regard to documents in the Estate and Trusts of Simon and Shirley.

218. That after attempting to alter the Class of Beneficiaries of the Shirley Trust fraudulently, Theodore, Pamela, Jill and Lisa took distributions allegedly for their children based upon knowingly fraudulent documents and knowing the distributions were improper.

COUNT 1 - CIVIL CONSPIRACY

219. This is an action for Civil Conspiracy under Florida Statutes.

220. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 219, inclusive.

221. That as with any conspiracy, all of the facts regarding the actions of each of the defendants is largely unknown at this time and with ongoing investigations and new production documents that reveal even more alleged criminal acts and civil torts, more is being learned every day but one thing is for certain in this illegal legal conspiracy, the primary participants known at this time are licensed Attorneys at Law who have acted together to deprive Eliot and his family of legal rights through further abuse of process and complex illegal legal frauds constructed to obstruct justice and deny Eliot of due process and procedure and his and his children's inheritances.

222. That Theodore, on the day Simon died on September 13, 2012 alleged that Simon was murdered and filed a Palm Beach County Sheriff report already evidenced herein, claiming that Simon's girlfriend poisoned Simon.



223. That Theodore, on the day Simon died on September 13, 2012 alleged that Simon was murdered and ordered an Autopsy⁶ be done, alleging that Simon's girlfriend poisoned Simon.
224. That Simon may have been murdered but now a growing body of evidence uncovered involves proven and further alleged FELONY criminal misconduct by the Counter Defendants in combination.
225. That Simon may have been murdered not by his girlfriend but by those involved in the criminal conspiracy that has taken place to illegally seize Dominion and Control of the Estates and Trusts of Shirley and Simon and loot their assets to the tune of between \$20-100 Million dollars (not including the Iviewit Stock and interests in Eliot's Intellectual Properties which would raise the values into the BILLIONS) and deprive Eliot and his family of their inheritances.
226. That Simon may have been murdered not by his girlfriend but by those involved in the criminal conspiracy to steal intellectual properties worth billions upon billions of dollars, a conspiracy that has already been filed in a RICO and ANTITRUST lawsuit, already embodied herein, whereby there are allegations that ATTORNEYS AT LAW and others put a bomb in the Minivan of Eliot to murder he and his family, have made repeated and reported death threats to Eliot, OBSTRUCTED JUSTICE (allegedly in this Court as well in a prior lawsuit already mentioned herein), ABUSED PROCESS, ILLEGALLY WIRETAPPED AND MISUSED JOINT TERRORISM TASK FUNDS AND RESOURCES TO VIOLATE ELIOT and others PRIVACY RIGHTS and more.
227. That Eliot is the midst of attempting to bring about a change in the legal system in efforts to root out systemic corruption at the highest levels by a rogue group of criminals disguised as Attorneys at Law, Judges, Politicians and more.
228. That in Eliot's Federal RICO and ANTITRUST Lawsuit, recent news shows a massive fraud on the courts occurred and Obstructions of Justice directly committed by heads of the New York Attorney at

⁶ www.iviewit.tv/SIMONBERNSTEINAUTOPSYREPORTHEAVYMETAL.pdf

Law Disciplinary Committees and more, see all of the following articles. These articles relate to Eliot Bernstein's Federal RICO and ANTITRUST lawsuit that was legally related by Hon. Judge Shira Scheindlin to the Whistleblower Lawsuit of Attorney at Law and Disciplinary Expert former New York Supreme Court Attorney, Christine C. Anderson, Esq. Eliot's RICO is one of the cases mentioned in the articles related to her case that due process and procedure was obstructed with intentionally. All of these matters will be cause for the lawsuits, including Eliot's that are legally related to Anderson to be reopened due to fraud on the court and obstruction newly learned of, as evidenced in the following articles. That the articles in reference to Senator John Sampson being threatened and taking bribes to stifle corruption he was aware of are also related to Eliot's testimony before the New York Senate Judiciary Committee on Public Corruption in the New York Supreme Court Disciplinary Departments of New York (akin to the Florida Bar) that Sampson chaired while head of the Democratic Party of New York.

SELECTED ARTICLES RELATING TO THE ELIOT BERNSTEIN RICO AND NEW INFORMATION ABOUT OBSTRUCTION OF JUSTICE AND MORE:

BREAKING NEWS!!!

INDICTMENTS COMING! US SENATOR JOHN SAMPSON FORMER HEAD OF THE NEW YORK DEMOCRATIC PARTY AND CHAIRMAN OF THE NEW YORK SENATE JUDICIARY COMMITTEE WAS THREATENED & BRIBED TO COVER UP NY & FEDERAL CORRUPTION!!

UPDATE - INDICTMENTS COMING : Iviewit Breaking News: NY Supreme Court Ethics Oversight Bosses Alleged MISUSE of Joint Terrorism Task Force Resources & Funds & Violations of Patriot Acts Against Civilian Targets for Personal Gain... US Senator John Sampson Threatened & Bribed to Cover Up NY & Federal Corruption!!

<http://www.free-press-release.com/news-iviewit-breaking-indictments-coming-us-senator-john-sampson-threatened-bribed-to-cover-up-ny-federal-corruption-1369140092.html>

Wednesday, May 15, 2013
Expose Corrupt Courts

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 40

**INSIDER SAYS NY STATE OFFICIALS BRIEFED ON JUDICIAL CORRUPTION
INDICTMENTS**

BREAKING NEWS: A New York State Court administrative insider says that top state officials have been briefed by the feds on pending federal corruption indictments that will include New York state court employees....

And late this morning, a Washington, D.C. source confirmed the information, adding that the target of one federal corruption indictment will include at least one sitting New York State judge and other individuals- all with ties to major banks.....

<http://exposecorruptcourts.blogspot.com/2013/05/insider-says-ny-state-officials-briefed.html>

**UPDATE: SENATOR JOHN SAMPSON, FORMER NEW YORK SENATE JUDICIARY
CHAIR THREATENED AND BRIBED TO COVER UP OFFICIAL CORRUPTION**

FRIDAY, MAY 17, 2013

Washington, D.C. Insider Says Senator John Sampson Covered-Up Court Corruption

BREAKING NEWS: Washington, D.C. insider says NYS Senator John Sampson covered-up evidence of widespread corruption in New York Surrogate's Courts.

Source says Sampson was first threatened, but then successfully bribed, to bury evidence involving countless state and federal crimes involving billions of dollars.

Syracuse, Rochester, Albany, White Plains, Brooklyn and Manhattan Surrogate's Courts are said to top the list of areas involved.

It was revealed on Wednesday that a New York State Court administrative insider said that top state officials had been briefed by the feds on pending federal corruption indictments that would include employees of New York's Office of Court Administration (a/ka/ "OCA"). Most court employees, including judges, are employed by OCA.

It was further confirmed by the Washington, D.C. source that judges, with ties to banks, would be among those charged.

<http://ethicsgate.blogspot.com/2013/05/washington-dc-insider-says-senator-john.html>

**VIEWIT BREAKING NEWS: NY SUPREME COURT ETHICS OVERSIGHT BOSSES
ALLEGED MISUSE OF JOINT TERRORISM TASK FORCE RESOURCES & FUNDS &
VIOLATIONS OF PATRIOT ACTS AGAINST CIVILIAN TARGETS FOR PERSONAL
GAIN..**

May 14, 2013

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 41

See Full Story at:

<http://www.free-press-release.com/news-iviewit-breaking-news-ny-supreme-court-ethics-oversight-bosses-alleged-misuse-of-joint-terrorism-task-force-resources-funds-violations-of-patriot-1368533731.html>

and

<http://ethicsgate.blogspot.com/2013/04/formal-complaint-filed-against-nys.html>

FORMAL COMPLAINT FILED AGAINST NYS EMPLOYEES FOR ILLEGAL WIRETAPPING... THE WIDESPREAD ILLEGAL WIRETAPPING INCLUDED TARGETED NEW YORK STATE JUDGES AND ATTORNEYS....

<http://ethicsgate.blogspot.com/2013/04/formal-complaint-filed-against-nys.html>

SELECT QUOTES FROM THAT NEWS STORY

April 3, 2013

Robert Moosy, Jr., Section Chief
Criminal Section, Civil Rights Division
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

RE: FORMAL COMPLAINT AGAINST NEW YORK STATE EMPLOYEES INVOLVING CONSTITUTIONAL VIOLATIONS, INCLUDING WIDESPREAD ILLEGAL WIRETAPPING

Dear Mr. Moosy,

At some point in time shortly after 9/11, and by methods not addressed here, these individuals improperly utilized access to, and devices of, the lawful operations of the Joint Terrorism Task Force (the JTTF). These individuals completely violated the provisions of FISA, ECPA and the Patriot Act for their own personal and political agendas. Specifically, these NY state employees essentially commenced black bag operations, including illegal wiretapping, against whomever they chose- and without legitimate or lawful purpose.

This complaint concerns the illegal use and abuse of such lawful operations for personal and political gain, and all such activity while acting under the color of law. This un-checked access to highly-skilled operatives found undeserving protection for some connected wrong-doers, and the complete destruction of others- on a whim, including the pre-prosecution priming of falsehoods (set-ups). The aftermath of such abuse for such an extended period of time is staggering.

It is believed that most of the 1.5 million-plus items in evidence now under seal in Federal District Court for the Eastern District of New York, case #09cr405 (EDNY) supports the fact, over a ten-year-plus period of time, of the illegal wiretapping of New York State judges, attorneys, and related targets, as directed by state employees.

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 42

BATES NO. EIB 003565
02/27/2017

One sworn affidavit, by an attorney, confirms the various illegal activity of Manhattan's attorney ethics committee, the Departmental Disciplinary Committee (the DDC), which includes allowing cover law firm operations to engage in the practice of law without a law license. Specifically, evidence (attorney affidavits, etc.) supports the claim that Naomi Goldstein, and other DDC employees supervised the protection of the unlicensed practice of law. The evidence also shows that Ms. Goldstein knowingly permitted the unlicensed practice of law, over a five-year-plus period of time, for the purpose of gaining access to, and information from, hundreds of litigants.

Evidence also supports the widespread illegal use of black bag operations by the NYS employees for a wide-range of objectives: to target or protect a certain judge or attorney, to set-up anyone who had been deemed to be a target, or to simply achieve a certain goal. The illegal activity is believed to not only have involved attorneys and judges throughout all of the New York State, including all 4 court-designated ethics departments, but also in matters beyond the borders of New York.

The set-up of numerous individuals for an alleged plot to bomb a Riverdale, NY Synagogue. These individuals are currently incarcerated. The trial judge, U.S. District Court Judge Colleen McMahon, who publicly expressed concerns over the case, saying, I have never heard anything like the facts of this case. I don't think any other judge has ever heard anything like the facts of this case. (2nd Circuit 11cr2763).

The concerted effort to fix numerous cases where confirmed associates of organized crime had made physical threats upon litigants and/or witnesses, and/or had financial interests in the outcome of certain court cases.

The judicial and attorney protection/operations, to gain control, of the \$250 million-plus Thomas Carvel estate matters, and the pre-prosecution priming of the \$150 million-plus Brooke Astor estate.

The wire-tapping and ISP capture, etc., of DDC attorney, Christine C. Anderson, who had filed a lawsuit after being assaulted by a supervisor, Sherry Cohen, and after complaining that certain evidence in ethics case files had been improperly destroyed. (See SDNY case #07cv9599 - Hon. Shira A. Scheindlin, U.S.D.J.)

The eToys litigation and bankruptcy, and associates of Marc Dreier, involving over \$500 million and the protection by the DDC of certain attorneys, one who was found to have lied to a federal judge over 15 times.

The set-up and chilling of effective legal counsel of a disabled woman by a powerful CEO and his law firms, resulting in her having no contact with her children for over 6 years.

The wrongful detention for 4 years, prompted by influential NY law firms, of an early whistleblower of the massive Wall Street financial irregularities involving Bear Sterns and where protected attorney-client conversations were recorded and distributed.

The blocking of attorney accountability in the \$1.25 billion Swiss Bank Holocaust Survivor settlement where one involved NY admitted attorney was ultimately disbarred- in New Jersey. Only then, and after 10 years, did the DDC follow with disbarment. Gizella Weissshaus v. Fagan.

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 43

NY SUPREME COURT BOSSES ILLEGALLY WIRETAPPING JUDGES CHAMBERS & HOMES. CHRISTINE ANDERSON WHISTLEBLOWER ILLEGALLY TARGETED FOR 24/7/365 SURVEILLANCE IN RELATED CASE TO IVIEWIT ELIOT BERNSTEIN RICO...

FOR IMMEDIATE RELEASE

(Free-Press-Release.com) May 14, 2013 -- According to news reports, yes, the heads of the NY Supreme Court Ethics Department have been accused of derailing Justice by targeting victims and misusing Government Resources against private citizens with no other motive then Obstruction of Justice in court and regulatory actions against them or their cronies.

World Renowned Inventor Eliot Bernstein files NEW RICO RELATED CRIMINAL ALLEGATIONS against Law Firms Proskauer Rose, Foley & Lardner, Greenberg Traurig and more. Allegations that Bernstein was a target of these criminals cloaked as ATTORNEY AT LAW ETHICS BOSSES at the NY Supreme Court were presented to Federal Judge Shira A. Scheindlin. That evidence was presented that Bernstein's father may have been a target and murdered for his efforts to notify the authorities and more!!!

READ ALL ABOUT IT @

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20Motion%20to%20Rehear%20and%20Reopen%20Obstruction%20of%20Justice165555%20WITH%20EXHIBITS.pdf>

PREVIOUS PRESS RELEASES RELATING TO JUDGES ILLEGALLY WIRETAPPED

That on Tuesday, February 19, 2013, ECC released the story,

ETHICSGATE UPDATE FAXED TO EVERY U.S. SENATOR THE ULTIMATE VIOLATION OF TRUST IS THE CORRUPTION OF ETHICS OVERSIGHT EXCLUSIVE UPDATE:

<http://exposecorruptcourts.blogspot.com/2013/02/ethicsgate-update-faxed-to-every-us.html>

IVIEWIT LETTER TO US DOJ OFFICE OF INSPECTOR GENERAL MICHAEL E. HOROWITZ

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130520%20FINAL%20Michael%20Horowitz%20Inspector%20General%20Department%20of%20Justice%20SIGNED%20PRINTED%20EMAIL.pdf>

IVIEWIT RICO MOTION FOR CLARIFICATION:

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130513%20FINAL%20Motion%20for%20Clarification%20of%20Order174604%20WITH%20NO%20EXHIBITS.pdf>

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 44

Investigative Blogger Crystal Cox Sues Forbes and the New York Times for Defamation. March 6, 2013

<http://www.free-press-release.com/news-investigative-blogger-crystal-cox-sues-forbes-and-the-new-york-times-for-defamation-1362547010.html>

COURT CASES OF INTEREST

COX VS. RANDAZZA, ET AL. " NEVADA RICO CASE NO. 2:13-CV-00297-JCM-VCF CHANGED TO 2:13-CV-00297 JCM (NJK) CHANGED TO 2:13-CV-00297 MMD-VCF

OBSIDIAN FINANCE GROUP, LLC ET AL. V. COX CASE NO. 3:11-CV-00057-HZ (Famed First Amendment Rights Attorney at Law and Professor, Eugene Volokh, Esq., Professor at UCLA School of Law is representing Cox on Appeal)

THE BEGINNING OF THE END ~ NEW YORK SENATE JUDICIARY COMMITTEE HEARINGS

September 24, 2009 - Second Hearing

Public Hearing: Standing Committee On The Judiciary New York Senate Judiciary Committee
John L. Sampson Chairman

SENATE STANDING COMMITTEE ON THE JUDICIARY NOTICE OF PUBLIC HEARING

SUBJECT: The Appellate Division First Department Departmental Disciplinary Committee, the grievance committees of the various Judicial Districts and the New York State Commission on Judicial Conduct

PURPOSE: This hearing will review the mission, procedures and level of public satisfaction with the Appellate Division First Department Departmental Disciplinary Committee, the grievance committees of the various Judicial Districts as well as the New York State Commission on Judicial Conduct

ORAL TESTIMONY BY:

Witness List for Judiciary Hearing 9/24/09 The Judicial & Attorney Disciplinary Process in the State of New York

1. Richard Kuse of New City, NY
2. Victor Kovner of the Fund for Modern Courts
3. Douglas Higbee of Mamaroneck, NY
4. Judith Herskowitz of Miami Beach, FL
5. Peter Gonzalez of Troy, NY
6. Andrea Wilkinson of Rensselaer, NY
7. Maria Gkanios of Mahopac, NY
8. Dominic Lieto of Mahopac, NY
9. Regina Felton Esq of Brooklyn, NY
10. Kathryn Malarkey of Purchase, NY

COUNTER COMPLAINT

Tuesday, September 2, 2014

Page 45

11. Nora Renzuli, Esq. of Staten Island, NY
12. Stephanie Klein of Long Beach, NY
13. Ike Aruti of Rosedale, NY
14. Terrence Finnan of Keene, NY
15. Gizella Weisshaus, NY
16. **Eliot L. Bernstein of Boca Raton, FL**
17. Suzanne McCormick & Patrick Handley of NY

The Appellate Division of the Supreme Court is the entity that is legally responsible for enforcing the Rules of Professional Conduct governing the conduct of attorneys in New York State. The Appellate Division Departments have created grievance committees that are charged with the investigation of complaints against attorneys. Within the First Judicial Department the Departmental Disciplinary Committee of the Appellate Division investigates complaints against attorneys. The New York State Commission on Judicial Conduct was created by the State Constitution and is charged with investigating complaints against Judges and Justices of the Unified Court System.

According to the 2009 Report of the Commission on Judicial Conduct, there were 1,923 complaints filed in 2008. Yet of these complaints only 262 were investigated and of those, 173 were dismissed. This hearing will examine the processes and procedures that are followed by the various agencies charged with the responsibility of enforcing the rules and regulations that must be followed by the Judiciary and the Bar in the State of New York. It will also evaluate public satisfaction with the disciplinary process.

229. That Eliot has been targeted through a complete violation of his personal property rights, privacy rights and more as he is a related case to Anderson Whistleblower lawsuit that was obstructed and in effort to silence his efforts to take a large bite out of crime in New York and Florida.
230. That this lawsuit and all the other related Probate cases and other legal cases Eliot is in are a coordinated and conspiratorial efforts to harm Eliot and his family through legal process abuse and RICO type activities that use the legal system to deprive victims of their due process rights against those that hold seats of power and honor who were fixing the cases against them and their friends and misusing government resources to do so.
231. That this legal conspiracy may relate to other legal actions Eliot is currently involved in as described in Eliot's first Petition in the Estate cases⁷, which are again involving conspiracy charges against primarily Attorneys at Law.

⁷ That on May 6, 2013 Petitioner filed an "EMERGENCY PETITION TO: FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SIMON/SHIRLEY BERNSTEIN AND MORE." Filed in both estates.

232. That many defendants in the RICO and ANTITRUST who stand as the primary accused are similar to parties alleged to be involved in the criminal misconduct in the probate and trust cases before this Court, including but not limited to, Gerald Lewin, CPA and Proskauer Rose LLP (Albert Gortz, Esq.).
233. That Eliot will be seeking the US District Court's approval to have the RICO reopened based on Fraud on that Court, new evidence of RICO related crimes in the Probate and Trust actions defined herein with common threads to the RICO defendants and new evidence of intentional Obstruction of Justice in the RICO and related cases currently unfolding.
234. That Simon may have been murdered but not by his girlfriend as alleged, as he may have been talking with State and/or Federal Authorities regarding his knowledge in Proskauer Rose's alleged involvement in the Sir Robert Allen Stanford Ponzi scheme⁸ and more and to gain control or destroy Simon's interests in Eliot's Intellectual Properties and the Iviewit Stock companies.
235. That Eliot is pursuing Proskauer Rose LLP, Gerald Lewin, CPA and Albert Gortz, Esq. as the main initial parties involved in the theft of Simon and Eliot's Intellectual Properties and companies that were set up to hold those assets, worth estimated billions of dollars.

15th Judicial Florida Probate Court

www.iviewit.tv/20130506PetitionFreezeEstates.pdf

and

Most Honorable Shira A. Scheindlin. Pages 156-582 reference estate matters in Simon and Shirley as it relates to RICO allegations.

www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf US District Court Southern District of New York

⁸ "U.S. justices say Allen Stanford victims can sue lawyers, brokers" REUTERS, By Lawrence Hurley, WASHINGTON Wed Feb 26, 2014 4:09pm EST <http://www.reuters.com/article/2014/02/26/us-usa-court-stanford-idUSBREA1P17220140226>

and

"Proskauer, Chadbourne Could Face Billions In Damages" Law 360, By Stephanie Russell-Kraft, New York (February 26, 2014, 10:16 PM ET)

<http://www.law360.com/articles/513782/proskauer-chadbourne-could-face-billions-in-damages>

and

"How Allen Stanford kept the SEC at bay" Reuters, By Murray Waas, January 27, 2012 11:06 AM ET

<http://business.financialpost.com/2012/01/27/how-allen-stanford-kept-the-sec-at-bay>

COUNTER COMPLAINT
Tuesday, September 2, 2014

Page 47

236. That the RICO CONSPIRACY has reached into the estates and trusts, again through corruption involving complex legal frauds committed through misuse of the legal system now by new Attorneys at Law acting as Officers of this Court, acting in concert with those accused in Eliot's RICO and criminal complaints, now committed in efforts to deprive Eliot and his family of their inheritances to interfere and hinder their efforts to bring about justice in several of the other now legal battles Eliot and they are involved in.
237. That the Simon and Shirley probate and trust matters before this Court now have several elements of RICO in Florida, including but not limited to, proven fraudulent notarizations, admitted forgery, alleged Extortion, alleged Murder (by Theodore and Pamela primarily and Theodore's past employee Rachel Walker), Conversion, Multiple Counts of Interstate Mail and Wire Fraud, Insurance Fraud, Institutional Trust Company Fraud, Theft, Fraud on this Court, Fraud on a Federal Court and more.
238. That two or more parties have conspired in each of the frauds described herein and others, some acting as fiduciaries in the Estates and Trusts of Simon and Shirley while simultaneously serving as Officers of this Court and under this Court's Jurisdiction.
239. That to effectuate the looting of the Estate, the document fraud on this Court and the beneficiaries allowed the fraudsters to illegally seize Dominion and Control of the Estates and Trusts and by misusing their fiducial trust and powers and violating most of the Probate and Trust Rules and Statutes they were enabled to loot the assets of Simon and Shirley through various state and federal criminal acts.
240. That new evidence reveals that Eliot and his family have been targeted by high ranking members of the legal community (disciplinary department members, judges and attorneys at law) who illegally misused Joint Terrorism Task Force funds and resources to specifically Obstruct Justice in Eliot's prior lawsuits cited herein by targeting them and surveilling them directly to interfere with their rights to due process and procedure.

241. That Simon and Shirley left vast wealth to their beneficiaries under their years of elaborate estate plans, costing thousands upon thousands of dollars to set up these trusts, business entities and other vehicles. Simon and Shirley went to Proskauer for Estate planning in 2000 primarily to protect their interests in Eliot's technologies but Simon fired them upon learning of their involvement in the criminal acts involved in the stolen Intellectual Properties against his son.
242. That Simon and Shirley's interests in the technologies and companies that held them is missing from the Estates and Trusts of Simon and Shirley at this time, as are ALL Schedules, Addendums and other attachments that were required to be attached to them and given to beneficiaries.
243. That Spallina contacted Lewin and Proskauer to find out where the Iviewit Stocks were that they held for the companies they formed to hold the Intellectual Properties and did not receive any information back regarding where the Iviewit Stock companies stocks were.
244. That Oppenheimer and JP Morgan were both initially involved in Eliot's technologies and signed various agreements with the companies that held the Intellectual Properties, see <http://iviewit.tv/CompanyDocs/Appendix%20A/>.
245. That all of these complex estate plans, including multiple layers of trusts, business entities and other estate planning vehicles have been seized illegally and interfered with by various of the Counter Defendants, acting alone and/or in concert with other Counter Defendants.
246. That assets have been converted to improper parties through a combination of frauds and thefts to defeat Eliot of his inheritance, including but not limited to, the shares of the Iviewit Stock companies that held the Intellectual Properties.
247. That many of these crimes have occurred in and on this Court as the scene of the crimes, which were committed by Officers of this Court and the fiduciaries.
248. That in order to achieve this looting of the Estate, Trusts and Corporate Entities, financial and accounting information due the Beneficiaries has been suppressed and denied and now it is learned in

some instances even destroyed, in violation of probate statutes, trust statutes, state law, federal law, attorney conduct codes and through breach upon breach of fiduciary duties.

249. That all parties sued hereunder have acted alone and in combination with others to violate the trusts, business entities and other vehicles to fraudulently remove assets from the corpuses of the trusts and estates and business entities, in various artifices to defraud the true and proper beneficiaries.
250. That if this Court would like a more definite type conspiracy statement at this time, detailing all known participants and each act they have committed in the conspiracy, including those already pled in the Estate cases before the Court, Petitioner will be happy to provide a statement similar to a RICO Statement to tie the conspirators together in any Amended Complaint that further elaboration is requested.
251. That more on the conspiracy aspect of this lawsuit and how it interrelates to the Probate cases now before the Court can be found in Eliot's first Petition in the Estate cases of both Simon and Shirley, under the section titled "The Elephant in the Room."⁹ While this was done over a year ago, many of the main allegations of criminal misconduct and civil torts that were alleged at that time have now been either proven or admitted and many more recently uncovered new crimes have been found.
252. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants for Civil Conspiracy, jointly and severally, personally and professionally, for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

⁹ That on May 6, 2013 Petitioner filed an "EMERGENCY PETITION TO: FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SIMON/SHIRLEY BERNSTEIN AND MORE." Filed in both estates.

www.iviewit.tv/20130506PetitionFreezeEstates.pdf 15th Judicial Florida Probate Court and www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf US District Court Southern District of New York, Most Honorable Shira A. Scheindlin. Pages 156-582 reference estate matters in Simon and Shirley as it relates to RICO allegations.

COUNT 2 - CIVIL EXTORTION

253. This is an action for Civil Extortion under Florida Statutes.

254. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 253, inclusive.

255. That many of the claims of Extortion have already been pled before this Court in filings¹⁰ yet unheard at this time but that are fully incorporated here by reference.

¹⁰ That on September 04, 2013, ELIOT filed Docket #TBD, in the estate of Simon, a "NOTICE OF EMERGENCY MOTION TO FREEZE ESTATES OF SIMON BERNSTEIN DUE TO ADMITTED AND ACKNOWLEDGED NOTARY PUBLIC FORGERY, FRAUD AND MORE BY THE LAW FIRM OF TESCHER & SPALLINA, P.A., ROBERT SPALLINA AND DONALD TESCHER ACTING AS ALLEGED PERSONAL REPRESENTATIVES AND THEIR LEGAL ASSISTANT AND NOTARY PUBLIC, KIMBERLY MORAN: **MOTION FOR INTERIM DISTRIBUTION DUE TO EXTORTION BY ALLEGED PERSONAL REPRESENTATIVES AND OTHERS; MOTION TO STRIKE THE MOTION OF SPALLINA TO REOPEN THE ESTATE OF SHIRLEY; CONTINUED MOTION FOR REMOVAL OF ALLEGED PERSONAL REPRESENTATIVES AND ALLEGED SUCCESSOR TRUSTEE.**"

<http://www.iviewit.tv/20130904MotionFreezeEstatesShirleyDueToAdmittedNotaryFraud.pdf>

and

That on October 10, 2013 Petitioner filed in Shirley's estate case Motions titled,

(I) MOTION TO ORDER ALL DOCUMENTS BOTH CERTIFIED AND VERIFIED REGARDING ESTATES OF SHIRLEY AND SIMON (SIMON'S DOCUMENT ARE REQUESTED AS IT RELATES TO SHIRLEY'S ALLEGED CHANGES IN BENEFICIARIES) BE SENT TO ELIOT AND HIS CHILDREN IMMEDIATELY IN PREPARATION FOR THE EVIDENTIARY HEARING ORDERED BY THIS COURT

(II) MOTION TO FOLLOW UP ON SEPTEMBER 13, 2013 HEARING AND CLARIFY AND SET STRAIGHT THE RECORD

(III) MOTION TO COMPEL FOR IMMEDIATE, EMERGENCY RELIEF!!!, INTERIM DISTRIBUTIONS AND FAMILY ALLOWANCE FOR ELIOT, CANDICE & THEIR THREE MINOR CHILDREN DUE TO ADMITTED AND ACKNOWLEDGED FRAUD BY FIDUCIARIES OF THE ESTATE OF SHIRLEY AND ALLEGED CONTINUED EXTORTION

(IV) MOTION TO CORRECT AND DETERMINE THE BENEFICIARIES OF THE ESTATE BASED ON PRIOR CLOSING OF THE ESTATE THROUGH FRAUD ON THE COURT BY USING FRAUDULENT DOCUMENTS SIGNED BY SIMON WHILE HE WAS DEAD AND POSITED BY SIMON IN THIS COURT WHEN HE WAS DEAD AS PART OF A LARGER FRAUD ON THE ESTATE BENEFICIARIES

(V) MOTION TO ASSIGN NEW PERSONAL REPRESENTATIVES AND ESTATE COUNSEL TO THE ESTATE OF SHIRLEY FOR BREACHES OF FIDUCIARY DUTIES AND TRUST, VIOLATIONS OF PROFESSIONAL ETHICS, VIOLATIONS OF LAW, INCLUDING BUT NOT LIMITED TO ADMITTED AND ACKNOWLEDGED FRAUD, ADMITTED AND ACKNOWLEDGED FRAUD ON THE COURT, ALLEGED FORGERY, INSURANCE FRAUD, REAL PROPERTY FRAUD AND MORE

(VI) MOTION FOR GUARDIAN AD LITUM FOR THE CHILDREN OF TED, P. SIMON, IANTONI AND FRIEDSTEIN AND ASSIGN A TRUSTEE AD LITUM FOR TED FOR CONFLICTS OF INTEREST, CONVERSION AND MORE

(VII) MOTION TO RECONSIDER AND RESCIND ORDER ISSUED BY THIS COURT "ORDER ON NOTICE OF EMERGENCY MOTION TO FREEZE ASSETS" ON SEPTEMBER 24TH FOR ERRORS AND MORE AND

(VIII) MOTION TO RECONSIDER AND RESCIND ORDER ISSUED BY THIS COURT "AGREED ORDER TO REOPEN THE ESTATE AND APPOINT SUCCESSOR PERSONAL REPRESENTATIVES" ON SEPTEMBER 24TH FOR ERRORS AND MORE

www.iviewit.tv/20131010MotionCompelFreezeYouHaveTheRighttoRemainSilent.pdf

COUNTER COMPLAINT
Tuesday, September 2, 2014

Page 51

BATES NO. EIB 003574
02/27/2017

256. That the Counter Defendants worked together and with others to interfere and deprive in combinations and separately to illegally seize Dominion and Control of BFR and the children's trust funds, which were the primary sources of funding for Eliot's family, along with intentional interference with Eliot and his children's inheritances.
257. That Counter Defendants worked together in concert and with others to interfere and deprive in combinations and separately, a Pattern and Practice of frauds to destroy BFR and the children's trusts, in efforts to deplete Eliot of resources and then extort Eliot to either accept improper distributions as others had done to his children by participating in their fraud or else deprive Eliot of his and his children's inheritances.
258. That the Counter Defendants worked together in concert and with others to interfere and deprive in combinations and separately to illegally seize Dominion and Control of the Estates and Trusts and delay and interfere with expectancies and inheritances of Eliot and his children.
259. That the Counter Defendants worked together in concert and with others to interfere and deprive in combinations and separately to illegally seize Dominion and Control of Telenet Systems and delay and interfere with Eliot and Candice's income and interests in that company.
260. That once Counter Defendants had seized Dominion and Control of the Estates, Trusts and Corporate Entities and diminished available funds to Eliot's family, they began an extortive attempt to have Eliot either participate in the fraudulent activity they were caught in or to face intentional financial calamity they now controlled.
261. That when Eliot refused and instead continued to pursue investigations with civil and criminal authorities, Counter Defendants worked together in concert and with others to interfere and deprive in combinations and separately to interfere and deprive Eliot and his family of inheritances due them and deplete trust funds in his three minor children's trusts and leave them with no income.

262. That income for Eliot and his family had been set up to continue for years to come by Simon and Shirley in their estate plans and through their inheritances and these funds were shut off illegally and virtually overnight cutting them off of essential monies owed them and thrusting Eliot and his family to financial ruin with intent and scienter.
263. That Eliot and his children had been set up financially through entities created by both Simon and Shirley while living. These finances were intended to continue after their deaths through their ELABORATE estate plans especially in regard to Eliot and some of these entities were created exclusively for Eliot and his family's PROTECTION and so designed to provide monthly income, fully prefunded school funds and a fully paid for home owned by his children for many years into the future. That these plans were intentionally interfered with and Eliot's needs were held on accepting a carrot fraught with fraud and the hope that Eliot would sign releases, waivers and through participation in a knowing fraud a consent of sorts.
264. That ELIOT is a one third beneficiary of the Estates and Trusts of both Simon and Shirley Bernstein until Counter Defendants through a series of forged and fraudulent documents created by the former PR's and Trustees of Simon and Shirley's Estates and Trusts then attempted to claim that Simon had changed Shirley's beneficiaries and his own from their three children, Eliot, Jill and Lisa, to their ten grandchildren.
265. That Fraud on the Court was committed by Officers of this Court, including using a dead PR, Simon, to close the Estate of Shirley his deceased wife, morbid indeed and Fraud on the Court, as the PR's failed to notify the Court that Simon was dead and failed then to elect a successor PR or Trustee once they were through using the dead Simon to achieve their Fraud on the true and proper beneficiaries.
266. That Eliot's siblings Theodore and his sister Pamela had been wholly disinherited and considered predeceased for Shirley and Simon's Estate and Trusts in 2008. When Shirley died in 2010 her

Trusts that held millions of dollars in assets then became irrevocable with Eliot, Lisa and Jill and their lineal descendants as the only ultimate beneficiaries.

267. That both Simon and Shirley completed mirrored Wills and Trusts in 2008, according to deposition statements made by Donald Tescher on July 09, 2014, and these plans wholly left their Estates and Trusts and all properties to Eliot, Lisa and Jill and their lineal descendants only.
268. That documents recently provided by Court Order in the Estate of Simon have revealed that the 2008 Wills and Trusts of Shirley and Simon's appear materially different and not mirrored bringing into question their legal validity.
269. That Shirley died with her 2008 Will and Trusts as her dispositive documents, with Simon as a Trustee while alive and only Eliot, Lisa and Jill and their lineal descendants as the beneficiary class when it became irrevocable through Family Trust created for them and their lineal descendants only.
270. That Simon could neither add nor subtract beneficiaries to the Shirley Trust once she died as the Shirley Trusts became irrevocable.
271. Despite efforts by the former PR/Executors/Trustees, Tescher, Spallina, Theodore, Rose, Manceri, Pankauski, Moran, Baxley and others to illegally achieve changes to the beneficiaries through a series of fraudulent and admitted forged and fraudulently altered documents, Simon did not factually do the changes.
272. That no documents exist that are not fraudulently altered or improperly prepared, witnessed, notarized and executed showing that Simon ever made any changes to he and Shirley's alleged 2008 Wills and Trusts.
273. That subsequent to the Fraud on the Court and positing of fraudulent documents that led to seizure of Dominion and Control, illegal distributions were made and converted and comingled, as if these fraudulent beneficiary changes were legal. This fraud was to the advantage of Theodore and Pamela primarily and to the disadvantage of other beneficiaries including primarily Eliot and his family.

274. That Simon in no way could execute a Power of Appointment to make any changes to the class of beneficiaries in Shirley's Will and Trusts (Eliot, Lisa and Jill and their lineal descendants) once she passed away due to language in the Simon Trust that prohibited him from amending or revoking anything with Shirley's Trust property once it transferred to him. Despite knowing these facts about the frauds, the PR's and Fiduciaries rushed to sell assets and then take knowingly improper distributions made to knowingly improper.

275. That in 2012 Shirley's Estate was reopened by Hon. Judge Martin Colin due to Fraud committed by Tescher, Spallina, TSPA, Theodore, Manceri and Moran et al. and remains open today, pending ongoing litigation.

276. That in 2012 it is ALLEGED that Simon annulled his 2008 Will (instead of amending it) and allegedly replaced it with an alleged 2012 Will and further allegedly Amended his 2008 Simon Trust and allegedly replaced it with a 2012 Amended and Restated Simon Trust, only 48 days before he passed suddenly and unexpectedly and by alleged MURDER according to Theodore and Pamela primarily.

277. That in 2013 it is proven in this Court in the Estate and Trust cases that POST MORTEM, Simon closed the Estate of Shirley, while dead for four months acting as Personal Representative, yes dead and done with Fraudulently Notarized, Fraudulent and Forged documents that has already led to one an arrest for felony acts and admissions of fraudulently altering trust documents and more.

278. That in 2013 it was learned from the Governor Rick Scott's Office Notary Public Division that the notarizations on the ALLEGED 2012 Will and Amended and Restated Trust were improperly notarized.

279. That Simon cannot now said to have been present on the date the documents were allegedly signed, due to such improper notarization and therefore are legally void for this and other defects.

280. The documents have been challenged before this Court for the alleged 2012 Will and Trusts of Simon.
281. That Eliot has assisted the Palm Beach County Sheriff Office Financial Crimes Division in making the arrests and forcing the admissions of fraud, while also pursuing other alleged criminal acts to loot the Estates and Trusts of Simon and Shirley that are under ongoing investigations and civil actions.
282. Many of the crimes committed were done by the Officers and Fiduciaries of this Court and due to this fact Counter Defendants in this lawsuit and Counter Defendants in the Oppenheimer Lawsuit have further conspired to deny Eliot and his family, including three minor children, of their inheritances and made further extortive efforts to have Eliot participate in knowingly fraudulent distributions.
283. That knowing that they were intentionally harming Eliot and his family financially, they proceeded to repeatedly attempt to force Eliot to either partake in illegal activities to get his inheritance monies by participating in the fraud they had done, sign waivers to release them and give them implied consent or starve and watch his family suffer from his failure to partake in fraud and give them waivers and releases of liabilities to partially set them free and make their illegal acts not prosecutable by Eliot.
284. Eliot is also now threatened with foreclosure through more fraudulent acts, already pled in the Estates and Trust cases before the Court and threatened to be evicted from the home his children own that is now claimed via an alleged Mortgage and Promissory Note allegedly held by Simon's Estate, that was added to an amended inventory of Simon's after the fiduciaries were contacted by criminal authorities.
285. These tactics represent classic extortion, with a either play or pay, even using the kids in certain of the alleged attempted extortions to force Eliot to take illegal distributions or watch his THREE MINOR CHILDREN suffer from their abuses, including, taking a KIA Soul that Simon had given Eliot's 15 year old son for his birthday days before he died and using it as a bargaining chip to try

and gain waivers, claiming it as an asset of the Estate. The extortive attempt was based on if Eliot would cooperate and take the car the way they wanted, they would release it as a gift. If Eliot did not comply they would take it and claim it as personal property of Simon's, which they did. This battle went on for over a year until they finally when brought to this Court abandoned their effort to extort Eliot using his son's car and dropped their legal action and gave it back as exempt property before facing Your Honor. However, before so returning the exempt property they filed pleadings with this Court claiming it as Personal Property of Simon's, yet this does not appear on the final accounting of Simon or his inventories.

286. That the fiduciaries cut off all inheritance funds for Eliot and his family and claimed Eliot could have the monies to pay his bills, keep his children in school, etc. but only on the condition that he took illegal distributions to improper parties as others did, which of course he would not break the law, as fully illustrated in the September 13, 2013 hearing before this Court.

287. Where since that September 13, 2013 hearing, Eliot and his family have suffered economic doom that has intentionally been levied upon him by the PR's and Fiduciaries of the Estates and Trusts (excluding Benjamin Brown, Esq. Curator to replace removed PR to Simon's Estate and Brian O'Connell, Esq. Successor PR in Simon's Estate) that continues to this day. Repeated efforts have been made while Eliot was forced to beg the very criminals caught in their crimes for funds or watch each time his family suffer, which he did.

288. That the soon to be DOOMED efforts to force foreclose on the home Eliot's children home they own and further starve out Eliot and his family completely, wholly defeats the wishes of both Simon and Shirley Bernstein.

289. That the elaborate estate planning mechanisms Simon and Shirley put in place to protect Eliot and his family's assets, in some instances these plans were solely for Eliot and his family, knowing that Eliot and his family's lives are in danger, where set up to provide steady monthly income to Eliot to work

on protecting his and Simon's patent interests and to work on protecting himself from another
TERRORIST STYLED CAR BOMBING ASSASSINATION ATTEMPT.

290. That if Eliot had his inheritance in the Shirley Trust as provided for under the terms of the irrevocable trust at this time, Eliot would suffer no financial duress for either he or his children, just on the few assets they are now aware are part of the Shirley Trust corpus or trust res. Again, if the Schedules, Addendums and other referenced attachments were disclosed Eliot would know the true extent of his inheritance and what exactly property was in both the Shirley Trust and Simon Trust.

291. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants for Civil Extortion, jointly and severally, personally and professionally, for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

COUNT 3 - THEFT

292. This is an action for Civil Theft under the Florida Statutes.

293. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 292 inclusive.

294. That theft of property has occurred with illegal Post Mortem use of bank accounts, including POST MORTEM use in accounts held in the Estates and Trusts.

295. That IRA beneficiaries are missing and IRA monies are alleged missing and no accountings exist for these items that were part of Shirley and Simon's Estates and Trusts.

296. That a series of property frauds have left assets missing and unaccounted for at this time, including but not limited to, Jewelry, Artwork and Furnishings, worth tens of millions of dollars, which has been reported to authorities and remains under ongoing investigation.

297. That insurance fraud has occurred and is under ongoing civil actions and criminal investigations.

298. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants for Theft, jointly and severally, personally and professionally, for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

COUNT 4 – FRAUDULENT CONVERSION

299. This is an action for Fraudulent Conversion under Florida Statutes.

300. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 299, inclusive.

301. That Spallina, Tescher, Theodore, Craig, Worth, Manceri, Rose, Pankauski and others have interfered with Eliot and his children’s inheritances by falsifying documents and other criminal acts and civil torts to convert assets to improper parties and seize Dominion and Control of various trusts and estates assets with intent and destroy, suppress and deny Eliot and his family of their inheritances and fraudulently convert and commingle monies to improper parties illegally.

302. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants for Conversion, jointly and severally, personally and professionally, for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

COUNT 5 – INTENTIONAL INTERFERENCE WITH AN INHERITANCE/EXPECTANCY

303. This is an action for Torturous Interference with an Inheritance under Florida Statutes.

304. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 302, inclusive.

305. That Eliot and/or his children had expectancy from the Trusts, Estates and Corporate Entities of Simon and Shirley left to them by Simon and Shirley in their Estates and Trusts and there has been intentional interference with the expectancy through tortuous felonious misconduct by the fiduciaries and their counsel that caused and continues to cause damages.
306. That Spallina, Tescher, Theodore, Craig, Worth, Manceri, Rose, Pankauski and others have interfered with Eliot and his children's inheritances through a number of schemes and artifices to defraud and by falsifying dispositive documents to convert assets to improper parties and seize Dominion and Control of various trusts and estates assets with intent and destroy, suppress and deny Eliot and his family of their inheritances.
307. That Eliot and his family have been denied access to Estate and Trust documents and accountings for now four years in Shirley's Estates and Trusts and two years in Simon's Estates and Trusts in efforts to deny them their inheritances and convert properties to improper parties.
308. That despite the fact that Simon and Shirley's Estate and Trusts were to be distributed to Eliot and his children immediately upon their deaths to provide income for their health, maintenance, schooling and more, through intentional egregious acts of bad faith and criminal activity Eliot and his family have not received any inheritance in almost two years since Simon and four years since Shirley passed, which was intentionally delayed to cause harm to he and his minor children.
309. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants for Intentional Interference with an Inheritance/Expectancy, jointly and severally, personally and professionally and for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

COUNT 6 – CIVIL FRAUD

310. This is an action for Civil Fraud under Florida Statutes.

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 60

311. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 310, inclusive.
312. That a complex set of frauds have taken place in the Estates and Trusts of Simon and Shirley and some are already proven such as improper notarizations of Wills and Trusts of Simon, proven fraudulently notarized Waivers in Shirley's Estate, proven Fraud on this Court through use of a deceased person, Simon, to act as Personal Representative to close an Estate through documents filed by the law offices of Tescher and Spallina on behalf of a dead PR and with no notice to the Court for months that the PR that was filing the documents had passed and this was done with scienter with this Court POST MORTEM through various fraudulent acts.
313. That when Simon died the Estate of Shirley had not been closed and in order to attempt to change her beneficiaries of her Estate and Irrevocable Trusts, the scheme needed Simon to be alive and close the Estate and transfer her Shirley Trust property to him while alive so that it could be stated that he then changed her Shirley Trust irrevocable class of beneficiaries while living. If the estate was not closed nothing could transfer officially and so since Simon did not close her Estate while living and acting as the PR and Trustee to her Shirley Trust, it was done for him Post Mortem to make it appear it happened while he was living.
314. That knowing that Simon's ALLEGED Power of Appointment was Limited and he could not make changes to the Shirley Trust class of beneficiaries after her death legally Simon never exercised his power of appointment while living and therefore Simon was used POST MORTEM for several months while he was dead to close Shirley's Estate. Then allegedly Simon attempted to amend his Simon Trust to try and make changes to Shirley's beneficiary class and his own. It is alleged that this was all done for Simon POST MORTEM, through already proven fraudulent documents and admitted forgeries, admitted altered trust documents and more that is alleged and currently under investigation.

315. That virtually every act of the Fiduciaries and their Counsel has been fraudulent since the altering and changing of dispositive documents to illegally seize Dominion and Control of the Estates, Trusts and Corporate Entities in efforts to loot the Estates, Trusts and Corporate Entities of Simon and Shirley through various subsequently enacted fraudulent acts that remain ongoing and under investigation both civilly and criminally at this time.

316. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants for Frauds, jointly and severally, personally and professionally, for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

COUNT 7 - BREACH OF FIDUCIARY DUTIES

317. This is an action for Breach of Fiduciary Duties under Florida Statutes.

318. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 317, inclusive.

319. That the fiduciaries of the Estates, Trusts and Corporate Entities sued hereunder are alleged to have gained their fiduciary positions through a series of fraudulent documents and other egregious acts of bad faith done with unclean hands through felony misconduct and more. Almost EVERY action the fiduciaries of the Estates and Trusts have taken since using fraudulent and forged documents and fraudulently altering others is a breach of fiduciary duties through combinations of self-dealing transactions, excessive compensations, excessive and unjustified legal fees (including billing for time to respond to investigators and more), improper and illegal investment decisions and a mass of pilfering and stealing of assets.

320. That despite being aware of their involvement in criminal acts, the fact that they are under ongoing investigations, the fact that the dispositive documents have been challenged and found fraught with

fraud and more, the fiduciaries, primarily now Theodore, since the counsel he brought to the Bernstein family, Tescher, Spallina, Manceri and now Pankauski are all removed and withdrawn from these matters citing irreconcilable differences with Theodore.

321. Tescher and Spallina withdrew and cited such irreconcilable differences with Theodore and the Bernstein family entirely after admitting to fraudulently altering trust documents and more.
322. That despite Prima Facie evidence in the dispositive documents Theodore acts under, that states that Theodore specifically cannot be a fiduciary, he continues to act in defiance as a fiduciary for purposes of making distributions he is explicitly prohibited from doing in the documents. The fact that Theodore and his Counsel Rose know that the alleged 2012 Simon Trust and the alleged 2008 Shirley Trust both have language that considers Theodore deceased and further language that considers him predeceased for distributions made under the Shirley Trust and Simon Trust, Theodore continues to act as a non-qualified fiduciary in violation of Probate and Trust Rules and Regulations.
323. That Theodore has multiple and irrefutable conflicts of interest that preclude him from acting as a fiduciary, including conflicts with his own children, conflicts now with other beneficiaries caused by the fraud of his former counsel Tescher and Spallina where his family may lose all interests, conflicts with the Stansbury matter as he is the primary accused party of the bad acts against Stansbury and a defendant in that lawsuit. The Simon Estate, Simon Trust and Shirley Trust are tied up in that litigation as defendants and may have damages awarded against them and so the Estate and Trusts if damaged may end up suing Theodore if they are forced to settle or lose in the litigation. Therefore, Theodore cannot negotiate on the one hand for himself personally and as an officer of companies he owns and then negotiate as Trustee for the interests of the Estate and Trusts as a fiduciary, especially where he has no interests in the Estate and Trusts and would benefit for shifting the liabilities from settlement or suit to the Estate and Trusts instead of himself personally and professionally where he

has everything to lose. These conflicts act as separate and distinct breaches of his fiduciary duties and require his withdrawal under Florida Probate and Trust Rules and Statutes.

324. That Theodore has adverse interests against beneficiaries, in fact he has stated he wants to use “forceful and aggressive” tactics against Eliot in sworn statements in a hearing before this Court that further preclude his involvement forward as fiduciary in the Estates and Trusts of Simon and Shirley and require his withdrawal under Florida Probate and Trust Rules and Statutes.
325. That despite Theodore knowing and being informed repeatedly of the reasons he cannot now serve in any fiduciary capacities in the Estates and Trusts of Simon and Shirley he continues with his counsel to act willfully, wantonly and grossly negligent in disregard of his fiduciary duties.
326. That Theodore is alleged by his counsel to have took distributions against the advice of counsel as claimed by Spallina to Palm Beach County Sheriff Investigators, in transactions that Spallina claimed were legally impossible to them, all in efforts to loot further the Estates and Trusts before he is fully removed in every capacity in the Estates and Trusts of Simon and Shirley by this Court.
327. That all fiduciaries to the Estates, Trusts and Corporate Entities sued hereunder have committed multiple Egregious Acts of Bad Faith with Unclean Hands in violation of their fiduciary duties and in violation of state and federal laws causing a mass of civil torts against Counter Plaintiffs through multiple, separate and distinct breaches of fiduciary duties.
328. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against all Counter Defendants in any fiduciary role for any of the trusts sued hereunder for Breach of Fiduciary Duties under 736.1001 Remedies for breach of trust and other applicable statutes both jointly and severally, personally and professionally, and for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

COUNT 8 - ABUSE OF PROCESS

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 64

329. This is an action for Abuse of Process under Florida Statutes.
330. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 329, inclusive.
331. That improper use of the Court's process through Toxic, Vexatious, Fraudulent and Costly litigations, fraudulent and forged documents submitted to the Court, fraudulently altered trust documents and Toxic, Vexatious, Fraudulent and Costly pleadings and other illegal legal debauchery already defined herein that has taken place repeatedly, including the filing of this instant action with ulterior and improper motives of the Counter Defendants to now make their crimes already committed legal by attempting yet another fraud on this Court and passing further false instruments to this Court.
332. That all of the document frauds have been implemented using Court processes to achieve Dominion and Control of the Estates and Trusts through a series of fraudulent dispositive documents crafted to commit fraud both on the Court and the Beneficiaries, Interested Parties and Creditors.
333. That several instances of Fraud on this Court by Officers and Fiduciaries of this Court are already proven in these matters and this represents irrefutable PRIMA FACIE evidence of Abuse of Process, similar to the abuse of process in this action, whereby the Courts are being used to attempt to diffuse and cover up the crimes that have taken place already.
334. That there are multiple abuses of process that are expensive and abusive to the beneficiaries, including legal harassment in efforts to further harm beneficiaries by causing expensive delays and disputes in estate and trust administration and billing up outrageous attorney fees and costs through frivolous and fraudulent pleadings and litigations such as this.
335. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants, jointly and severally, personally and professionally, for Abuse of Process and for remedies as may be awarded

Counter 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.

COUNT 9 - LEGAL MALPRACTICE

336. This is an action for Legal Malpractice under Florida Statutes.

337. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 336, inclusive.

338. That Attorneys at Law, Spallina, Tescher, Manceri, Rose, Pankauski, Gortz and others have worked together in concert and with others to interfere and deprive in combinations and separately to commit frauds, frauds on the courts through intentional legal malpractice and more in direct efforts to commit a series of criminal wrongdoings and civil torts against parties to the Estates and Trusts of Simon and Shirley, which have enriched them greatly through legal fees and more.

339. That all Attorneys at Law named as Counter Defendants hereunder have committed legal malpractice by subverting their clients' interests and participating in a variety of criminal acts resulting in a mass of civil torts to the true and proper Beneficiaries of the Estates and Trusts of Simon and Shirley and others.

340. That through a web of conflicting interests and adverse interests the Attorneys at Law involved in this action and those involved in the probate of the Estates of Simon and Shirley have worked together in concert and with others, to interfere and deprive in combinations and separately, violating virtually the entire Attorney Conduct Codes, Probate and Trust Rules and Statutes and State and Federal Laws to injure Counter Plaintiff and others through legal malpractice and more.

341. That the Attorneys at Law have enriched themselves through these fraudulent activities they participated in and advanced to the disadvantage of *Eliot* and his family and others involved through

intentional acts where they directly violated their attorney ethics and law and so abused process to enact fraud after fraud.

342. That the Attorneys at Law named hereunder as Counter Defendant, in some instances even admittedly, altered Estate and Trusts documents to enrich themselves and others, including their friend and client Theodore, while intentionally causing problems with the Beneficiaries to gin up disputes that resulted in excessive legal fees for themselves and the fiduciaries, in some cases the Attorneys also acting as the Fiduciaries and then counsel to themselves as the fiduciaries, as the case is with Tescher and Spallina.
343. That Tescher and Spallina conspired together to change and alter Trust documents in Shirley's Estate in efforts to benefit their CLIENT, FRIEND and BUSINESS ASSOCIATE, Theodore.
344. That all Attorneys at Law to the Estates, Trusts and Corporate Entities sued hereunder have committed multiple Egregious Acts of Bad Faith with Unclean Hands in violation of their Attorney Conduct Codes and Law causing a mass of civil torts against Counter Plaintiffs.
345. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants for Legal Malpractice, jointly and severally, professionally and personally and for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

COUNT 10 – EQUITABLE LIEN

346. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 345, inclusive.
347. This is an action to impose an Equitable Lien on the Estates and Trusts Assets in both the Simon and Shirley Estates that were seized illegally from December 08, 2010 when Shirley deceased and then

further from September 13, 2012 when Simon deceased through a series of fraudulent activities that transferred Dominion and Control of the assets to improper parties and have since led to numerous other fraudulent activities under ongoing State and Federal investigations both civil and criminal.

348. That this is an action for an Equitable Lien on the children's Trusts, all Trusts sued hereunder and all Estates, Trusts and Corporate Entities sued hereunder that Simon and Shirley had interests in, due to the fraudulent activity taking place in a wide array of Estate and Trust documents and to preserve and protect the assets from further ongoing loss and theft.

349. That the Counter Defendants have become enriched unjustly due to the criminal acts and civil torts defined herein.

350. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiffs prays for judgment for an Equitable Lien and for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

COUNT 11 - ACCOUNTING

351. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 350, inclusive.

352. This is an action against Theodore, Spallina and Tescher who have failed to provide statutorily required accountings for the Estates and Trusts they allege to be Trustees for to the Beneficiaries and Interested Parties and further for full formal accountings of all Trusts, Estates and Entities involved in the estate plans of Simon and Shirley and sued hereunder.

353. That Theodore has failed to provide accounting in any of his alleged roles as a fiduciary in the Estates and Trusts of Shirley and Simon as required by law since he allegedly began acting as a fiduciary.


COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 68

354. That Theodore states he was appointed by Tescher and Spallina as Successor Trustee in the Simon Trust and has failed to file a transitional accounting since January 2014 in violation of Probate and Trust Rules and Statutes.
355. That Spallina and Tescher and all other current and former trustees (excluding Benjamin Brown, Esq. the Curator of Simon's Estate and the new Successor PR of the Estate of Simon, Brian O'Connell, Esq.) failed to provide accountings or tender documents to Beneficiaries and Interested Parties according to well established probate rules and statutes in their roles as fiduciaries and counsel to the Estates and Trusts of Simon and Shirley as required by law.
356. That Theodore after allegedly becoming Successor Trustee to the Trusts of Simon has failed to provide an accounting or any other evidence that he was elected legally as the Successor Trustee.
357. That Theodore after acting for almost a year in Shirley's Estates and Trusts with no legal authority or notice or accountings to beneficiaries, was then appointed PR of the Estate of Shirley by Judge Colin and since October 2013 when he supposedly received Letters he has failed to provide an accounting, failed to provide his Letters and copies of the Shirley Will and all Schedules and Addendum to the beneficiaries, in violation of Probate Rules and Statutes.
358. All Trustees in ALL of the Trusts created by Simon and Shirley Bernstein and so sued hereunder have failed to perform accounting under;

736.0813 Duty to inform and account.—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee's duty to inform and account includes, but is not limited to, the following:

(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust, the full name and address of the trustee, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

(b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, the right to accountings under this section, and that the

fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, from the date of the last accounting or, if none, from the date on which the trustee became accountable, to each qualified beneficiary at least annually and on termination of the trust or on change of the trustee.

(e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

359. That all Fiduciaries and Attorneys at Law to the Estates, Trusts and Corporate Entities sued

hereunder have committed multiple Egregious Acts of Bad Faith with Unclean Hands in violation of their fiduciary duties by failing to provide legally timely accountings and have intentionally and with scienter have failed to provide accountings causing a mass of civil torts against Counter Plaintiff.

360. That all fiduciaries sued hereunder have failed to provide complete copies and present for inspection upon requests by beneficiaries the complete trusts and wills of Simon and Shirley, in violation of Florida Probate Rules and Statutes.

361. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff demands judgment for accountings for ALL Estate and Trusts of both Shirley and Simon sued hereunder that have been denied in violation of statutes and for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

COUNT 12 – REMOVE COUNTER DEFENDANTS IMMEDIATELY FROM ALL FIDUCIARY AND LEGAL POSITIONS IN THE ESTATES, TRUSTS AND OTHER CORPORATE ENTITIES SUED HEREUNDER

362. This is an action to remove the current ALLEGED Trustee of the Estate and Shirley Trust and the Trustee of the Simon Trust, Theodore.

363. Counter Plaintiff hereby reiterate and incorporate herein by reference, as if fully restated herein, preceding paragraphs 1 through 362, inclusive.

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 70

736.0706 Removal of trustee

364. That on July 11th 2014 Theodore's Motion to be Appointed Personal Representative of the Estate of Simon to replace the Curator, Benjamin Brown, Esq. who was appointed after Tescher and Spallina were removed in all capacities from the Estates and Trusts of Simon and Shirley Bernstein amidst the criminal acts and civil torts proven, admitted and alleged in the Estates and Trusts thus far that they were a part of was withdrawn by Theodore and his counsel at the strong urging of this Court to withdraw the pleading.
365. That Theodore made a bid to become the Successor PR of Simon's Estate, against a tidal wave of opposition and legally sound reasons that do not make him qualified now or ever to act in any fiduciary capacities in either the Estates and Trusts of Simon and Shirley. Theodore withdrew his request after wasting this Court and everyone's time, including a mass of legal fees encumbered by all parties in responding and coming to Court and allowed an independent Third Party Personal Representative to be elected, Brian O'Connell, Esq.
366. That Theodore is not now qualified to be Personal Representative or Trustee or Manager of any of Simon and Shirley's Wills and Trusts and other entities created by them for the beneficiaries, as he has a plethora of Conflicts of Interests, he has absolute Adverse Interests in both Simon and Shirley's Estates and Trusts, he is under ongoing criminal investigations and civil actions that further make him conflicted and unable to legally serve and he must instantly be removed by this Court to preserve and protect the assets of Simon and Shirley from further Fraud and more that Theodore is the central alleged perpetrator of.
367. That Theodore has directly benefited the most from the criminal acts already proven, admitted and alleged.

368. That Theodore has been considered in all Wills and Trusts of Simon and Shirley as PREDECEASED and for purposes of distributions made thereunder and thus cannot be Successor Trustee as he is dead and prohibited by explicit language in the Simon Trust and Shirley Trust.
369. That Theodore has no real beneficial interest in these matters due to his disinheritance and in light of the allegations against him it is strange that he wants to continue to act as a Fiduciary. In fact, he is being sued for Breaches of Duties and due to the fact that all of the ongoing frauds were allowed under his tutelage and were aided and abetted by his Attorneys at Laws that represented him and that are his friends and business associates, all who came in to the Simon and Shirley Estate and Trust matters through their relation to Theodore.
370. Theodore must be removed as he and his sister Pamela are the direct benefactors of all these problems and criminal acts committed thus far, to the disadvantage of other beneficiaries, interested parties and creditors and thus are adverse to other beneficiaries where their families may be wholly disinherited and their children receive nothing if they do not act in their own best interests and not the beneficiaries.
371. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment to REMOVE COUNTER DEFENDANTS IMMEDIATELY FROM ALL FIDUCIARY AND LEGAL POSITIONS IN THE ESTATES AND TRUSTS AND OTHER ENTITIES OF SIMON AND SHIRLEY BERNSTEIN, to SEIZE ALL RECORDS and Estate and Trust Assets from all Counter Defendants regarding the Estates, Trusts and Corporate Entities Sued hereunder and for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

COUNT 13 - PRELIMINARY INJUNCTION

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 72

372. This is an action under Florida Statute 526.312 and any other applicable statutes to prohibit instantly the current ALLEGED Trustee of the Shirley Trust and Simon Trusts, Theodore from taking any further actions in any fiducial capacities without Court approval until these matters of fraud and more can be fully resolved both criminally and civilly before this Court and state and federal civil authorities.

373. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 372, inclusive.

374. That this injunction should freeze all assets held in ALL Trusts, Estates and Entities named hereunder to preserve them from further fraud being committed by fiduciaries and counsel to the fiduciaries, who are all alleged to be directly involved in the prior criminal acts, ongoing alleged criminal acts and admitted criminal acts and that no further acts regarding the assets should be made without direct Court approval, including ALL Attorney at Law fees, costs or any other transactions other than those already arranged by the Court with Brian O'Connell and Benjamin Brown. That this is to include all properties held in all Trusts, Estates and Corporate Entities sued hereunder that Simon and Shirley owned or had interests in.

375. All conditions precedent to this action have been performed or occurred and continue.

376. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Eliot prays for judgment a Preliminary Injunction and for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

WHEREFORE, Eliot further prays further for judgment for the following,

- i. to have 120 days to Amend this Counter Complaint and notices this Court that this complaint was done while Eliot is undergoing dental work that has had him medicated on narcotic analgesics and the muscle relaxer flexeril and therefore request an extension.

- ii. A verified statement by Judge Martin Colin and David French stating that they have no conflicts of interest with these matters where the crimes have occurred in and upon their Courts and further stating that their involvement directly in the case and fact that they will both be material and fact witnesses to the crimes that occurred in their Courts by Officers of the Court that they approved and had Jurisdiction over who committed felonious acts in and upon their Courts. This request is to help overcome any appearance of impropriety that is created by their handling a lawsuit where they and the Officers of their Courts are centrally involved in the criminal misconduct and civil torts. In other words so the general public would not think that any judge could be covering up crimes committed in and upon their court for themselves and officers of their court involved directly and indirectly in the crime. This statement should affirm to the beneficiaries, interested parties and creditors that any involvement in the cases forward would violate no known, attorney conduct codes, judicial canons, state and federal law and in no way can be viewed to prejudice the rights of any parties subject to the lawsuit.
- iii. That Eliot prays this Court demand the alleged Fiduciaries to release funds to Eliot to hire counsel for his family, his children, and for the Trust separate from the Alleged Trustee counsel to protect the innocent beneficiaries from further damage in these matters that they have deemed essential to the administration of the Estate and Trusts of Simon and Shirley and since these legal actions are the direct result of fraud caused by the fiduciaries and their counsel in part and have forced Eliot and his children to need separate and distinct counsel to defend their interests. The PR's and Trustees have refused repeated requests for legal fees even for the minor children and so this Court must Order them to pay.
- iv. That as this case is similar and related to the probate estate and trust cases before this Court already and the Counter Defendants are similar to the Respondents in those matters that

Service of this Counter Complaint be waived by the Court, other than through email service and ECF service to save Eliot monies as he is indigent due to intentional delays in his inheritance caused by Officers of this Court and others to directly harm Eliot and prevent him from having legal representation. Any fees to file this Counter Complaint should also be paid for by the Estates and Trusts until it can be recovered from the responsible parties who caused these costs to be necessary as a result of their frauds and more. That already in the Oppenheimer Counter Complaint many parties that are in the related cases including many attorneys at law are refusing to waive service and force Eliot to send a Marshal instead and waste more monies. Attorneys hiding from service of process, unheard of in matters they created from their criminal acts in many of the instances of service dodging in the Oppenheimer matter by Respondents in the Estate and Trust cases.

Filed on Tuesday, September 2, 2014.

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children and as Trustee of the Eliot Bernstein Family Trust.

X

CERTIFICATE OF SERVICE

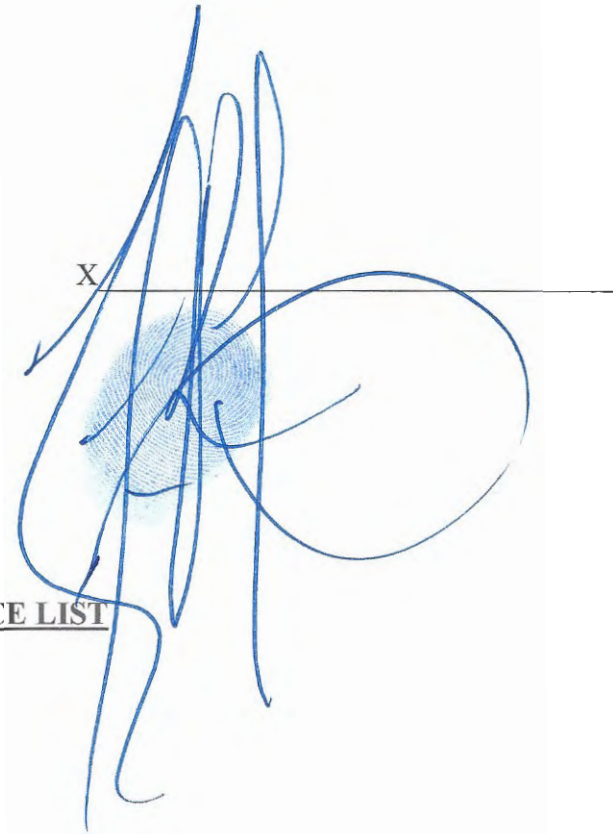
I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Tuesday, September 2, 2014,

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children and Trustee of the Eliot Bernstein Family Trust.

COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 75

BATES NO. EIB 003598
02/27/2017

X



SERVICE LIST

Robert L. Spallina, Esq.,
Tescher & Spallina, P.A.
Wells Fargo Plaza
925 South Federal Hwy Suite 500
Boca Raton, Florida 33432
rspallina@tescherspallina.com
kmoran@tescherspallina.com
ddustin@tescherspallina.com

Ted Bernstein
880 Berkeley
Boca Raton, FL 33487
tbernstein@lifeinsuranceconcepts.com

John J. Pankauski, Esq.
Pankauski Law Firm PLLC
120 South Olive Avenue
7th Floor
West Palm Beach, FL 33401

Pankauski Law Firm PLLC
120 South Olive Avenue
7th Floor
West Palm Beach, FL 33401
courtfilings@pankauskilawfirm.com
john@pankauskilawfirm.com



COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 76

Donald Tescher, Esq.,
Tescher & Spallina, P.A.
Wells Fargo Plaza
925 South Federal Hwy Suite 500
Boca Raton, Florida 33432
dtescher@tescherspallina.com
ddustin@tescherspallina.com
kmoran@tescherspallina.com


Ted Bernstein
Life Insurance Concepts et al.
950 Peninsula Corporate Circle
Suite 3010
Boca Raton, FL 33487
tbernstein@lifeinsuranceconcepts.com

Pamela Beth Simon
950 N. Michigan Avenue
Apartment 2603
Chicago, IL 60611
psimon@stpcorp.com

TESCHER & SPALLINA, P.A.
Wells Fargo Plaza
925 South Federal Hwy Suite 500
Boca Raton, Florida 33432
dtescher@tescherspallina.com
ddustin@tescherspallina.com
kmoran@tescherspallina.com

Alan B. Rose, Esq.
PAGE, MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
arose@pm-law.com
and
arose@mrachek-law.com

Pamela Simon
President
STP Enterprises, Inc.
303 East Wacker Drive
Suite 210
Chicago IL 60601-5210
psimon@stpcorp.com



COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 77

Mark R. Manceri, Esq., and
Mark R. Manceri, P.A.,
2929 East Commercial Boulevard
Suite 702
Fort Lauderdale, FL 33308
mrmlaw@comcast.net
mrmlaw1@gmail.com

L. Louis Mrachek, Esq.
PAGE, MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
lmrachek@mrachek-law.com

Charles D. Rubin
Managing Partner
Gutter Chaves Josepher Rubin Forman
Fleisher Miller PA
Boca Corporate Center
2101 NW Corporate Blvd., Suite 107
Boca Raton, FL 33431-7343
crubin@floridatax.com



COUNTER COMPLAINT
Tuesday, September 2, 2014
Page 78

BATES NO. EIB 003601
02/27/2017

Kimberly Moran
Tescher & Spallina, P.A.
Wells Fargo Plaza
925 South Federal Hwy Suite 500
Boca Raton, Florida 33432
kmoran@tescherspallina.com

Lindsay Baxley aka Lindsay Giles
Life Insurance Concepts
950 Peninsula Corporate Circle
Suite 3010
Boca Raton, FL 33487
lindsay@lifeinsuranceconcepts.com

Estate of Simon Bernstein
Personal Representative
Brian M. O'Connell, Partner
Ciklin Lubitz Martens & O'Connell
515 N Flagler Drive
20th Floor
West Palm Beach, FL 33401
boconnell@ciklinlubitz.com
jfoglietta@ciklinlubitz.com

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com

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



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

IN RE:

Case No.

502011CP000653XXXXNBIH

ESTATE OF SHIRLEY BERNSTEIN,

Deceased.

_____ /

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

IN RE:

Case No.

502011CP000653XXXXNBIH

ESTATE OF SIMON BERNSTEIN,

Deceased.

_____ /

**IN THE CIRCUIT COURT OF THE
15th JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY**

**TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,**

JUDGE: ROSEMARIE SCHER

Plaintiff,

CASE NO.:

502014CP003698XXXXNB

DIVISION: IH

v.

ALEXANDRA BERNSTEIN et al.,

Defendants.

Nov 29, 2016 Hearing Status Conference
LISTING OF OPEN ISSUES AND PENDING FILINGS

Before Any Hearings in Any Cases of Simon and Shirley Bernstein Estates and Trusts

1. **30 Day Extension - Stay: Motions to Vacate Orders of Judge Phillips and Judge Colin issued in Fraud**; All Present Motions by Ted Bernstein and Alan Rose should be Stayed until Motions to Vacate in Fraud are filed; Orders at Minimum to be Vacated include but are not limited to the "Validity Trial" "Final Judgment"; Orders on "Standing"; Orders on "Guardianship" and other. Alan Rose and Ted Bernstein have made numerous False and Fraudulent filings and Representations, for example, now before this Court, where Diana Lewis was Never Appointed in the Shirley Estate or Simon Estate case, nor the Simon Trust case and where No Order exists appointing Diana Lewis for such cases she has acted in; Frauds are complex and will take detailed time to complete while also having to complete Appeals to 4th DCA and action is ongoing in the Federal Court Illinois Insurance Case; thus extension of time needed. Fraud will be shown Directly as it relates to "Standing" issues, and "Construction" / Determination of Beneficiaries. "Standing" presently removed at a Non-Evidentiary UMC Hearing filed upon False and Fraudulent representations by Alan Rose; Orders must be vacated.

Motions by Eliot Bernstein addressing Fraud and related items which have not been heard, not fully heard or need to be re-heard include May 2013 "Emergency Motion" Injunction and others in each of the Estate and Trust Cases. Eliot Bernstein has a neurologist medical doctor order to not undergo stress through December 15, 2016 due to possible life threatening injuries that could result and during evaluations by Cardiologist and ENT regarding course of treatment.

2. **Document Production - Discovery Compliance** : Neither PR O'Connell nor Ted Bernstein as "Trustee" have Complied with Feb. 2014 Order of Judge Colin for Tescher and Spallina to Produce ALL Documents; No Originals have been Produced in Any Case; Failure to Obtain Compliance is basis to Remove Fiduciaries; Falsely represented at "Validity Trial" by Attorney Alan Rose for Ted Bernstein that No Production Order Exists, ALL ORIGINALS must be produced or located of all TS records as otherwise it is Contempt of Court and they should be hauled in for further Show Cause to Court.
3. **Depositions of Alan Rose, Brian O'Connell, Joy Foglietta, Ted Bernstein and Steven Lessnee at Minimum on Chain of Custody of Operative Documents and "Originals" -**
4. **Full Accountings Produced** : No Estates or Trusts should be Closed and No hearings regarding dispositions in any cases regarding any assets Heard until all accountings are in and all objections heard.
5. **Stay - Restrain ANY Distribution of Any Asset Pending Further Hearings:** Simon Bernstein Home Sale must be reviewed entirely based on the evidence of further fraud on the court and beneficiaries. Fraudulent Lions Head Land Trust Transfer of Lions Head Lane Home Vacated; information must be reported to proper authorities, involving Pino, Tescher, Spallina, Rose, Ted. Discovery, depositions, halt further asset transfers
6. **Trust Cases should be heard according to Civil Procedures; Rules for Complex Case Management should be employed**
7. **Motions for Removal of Fiduciaries to then be Heard (Outstanding Motions already filed by Eliot Bernstein, PR O'Connell, etc: Eliot Bernstein to Supplement existing unheard Motions.**
8. **Fraud Hearings - Spallina admissions in Dec 15, 2016 Hearing, Huhem home sale, Tangible Personal Property, etc.**

Shirley Estate

1. Shirley's Entire Inventory of assets is missing and there were millions upon millions in Personal Properties that are unaccounted for. Inventories and Accounting have been challenged by multiple parties.
 - a. Shirley's accounting is challenged and came 5 years late and starts five years late.
2. Eliot is a beneficiary with standing, Alan Rose misleading court no construction hearings in any cases.
3. Diana Lewis is not appointed Guardian in Shirley estate case but yet was given information and gave consent in this case to attempt to reclose Shirley's Estate on behalf of Eliot children, this is reportable and sanctionable.
4. Case to proceed after Fraud hearings, Discovery and Depositions above

Shirley Trust

1. Alan Rose and Ted Bernstein must produce the alleged Simon Bernstein Trusts Dated 9/13/12 with Eliot as Trustee of 3 Children's Trusts dated same or else jurisdiction is stricken and all orders void and hearings were sham in further fraud and cover up;
2. Eliot clearly has "Standing" in the Shirley Trust case;
3. Case to proceed after Fraud hearings, Discovery and Depositions above

Simon Estate

1. Eliot clearly has "Standing" in the Shirley Trust case;
2. Case to proceed after Fraud Hearings, Discovery and Depositions above;

Simon Trust

1. Eliot clearly has Standing.
2. Case to proceed after Fraud hearings, Discovery and Depositions above;

Dated: November 28th, 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 true and correct copy of the foregoing was furnished to counsel of record and the proper parties on the attached Service List via the Court's e-portal system or Email Service on this 28th day of November, 2016.

By: /S/ Eliot Ivan Bernstein
Pro Se
2753 NW 34th Street
Boca Raton, FL 33434
561.245.8588
iviewit@iviewit.tv

SERVICE LIST

<p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	<p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 arose@pm-law.com and arose@mrachek-law.com mhandler@mrachek-law.com</p>	<p>John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 courtfilings@pankauskilawfirm .com john@pankauskilawfirm.com</p>
<p>Robert L. Spallina, Esq., Tescher & Spallina, P.A. Boca Village Corporate Center I</p>	<p>Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com</p>	<p>Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway</p>

<p>4855 Technology Way Suite 720 Boca Raton, FL 33431 rspallina@tescherspallina.com kmoran@tescherspallina.com ddustin@tescherspallina.com</p>	<p>lisa.friedstein@gmail.com lisa@friedsteins.com</p>	<p>Suite 200 Boca Raton, Florida 33432 ijb@ijblegal.com martin@kolawyers.com</p>
<p>Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net mrmlaw1@gmail.com</p>	<p>Donald Tescher, Esq., Tescher & Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 dtescher@tescherspallina.com dtescher@tescherspallina.com ddustin@tescherspallina.com kmoran@tescherspallina.com</p>	<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>
<p>Peter Feaman, Esquire Peter M. Feaman, P.A. 3615 Boynton Beach Blvd. Boynton Beach, FL 33436 pfeaman@feamanlaw.com service@feamanlaw.com mkoskey@feamanlaw.com</p>	<p>Kimberly Moran kmoran@tescherspallina.com</p>	<p>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</p>
<p>Carley & Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 Lisa@friedsteins.com</p>	<p>Lindsay Baxley aka Lindsay Giles lindsay@lifeinsuranceconcepts.com</p>	<p>Brian M. O'Connell, Esq. Joielle A. Foglietta, Esq. Ciklin Lubitz Martens & O'Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900-Telephone 561-833-4209 - Facsimile Email: boconnell@ciklinlubitz.com; ifoglietta@ciklinlubitz.com; service@ciklinlubitz.com;</p>

lisa.friedstein@gmail.com		slobdell@ciklinliibitz.com
---------------------------	--	----------------------------

SERVICE LIST

<p>John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 (561) 833-0766-Telephone (561) 833-0867 -Facsimile Email: John P. Morrissey (iohn@jmoiTisseylaw.com)</p>	<p>Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 lisa@friedsteins.com</p>
<p>Peter M. Feaman, Esq. Peter M. Feaman, P.A. 3695 West Boynton Beach Blvd., Suite 9 Boynton Beach, FL 33436 (561) 734-5552 -Telephone (561) 734-5554 -Facsimile Email: service@feamanlaw.com: mkoskey@feamanlaw.com</p>	<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>
<p>Gary R. Shendell, Esq. Kenneth S. Pollock, Esq. Shendell & Pollock, P.L. 2700 N. Military Trail, Suite 150 Boca Raton, FL 33431 (561)241-2323 - Telephone (561)241-2330-Facsimile Email: gary@shendellpollock.com ken@shendellpollock.com estella@shendellpollock.com britt@shendellpollock.com grs@shendellpollock.com</p>	<p>Counter Defendant Robert Spallina, Esq. Donald Tescher, Esq. Tescher & Spallina 925 South Federal Hwy., Suite 500 Boca Raton, Florida 33432</p>
<p>Brian M. O'Connell, Esq. Joielle A. Foglietta, Esq. Ciklin Lubitz Martens & O'Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900-Telephone 561-833-4209 - Facsimile Email: boconnell@ciklinlubitz.com; ifoglietta@ciklinlubitz.com; service@ciklinlubitz.com; slobdell@ciklinliibitz.com</p>	<p>Counter Defendant John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 courtfilings@pankauskilawfirm.com john@pankauskilawfirm.com</p>
<p>Counter Defendant</p>	<p>Counter Defendant</p>

<p>Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net</p>	<p>Donald Tescher, Esq., Tescher & Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein 880 Berkeley Boca Raton, FL 33487 tbernstein@lifeinsuranceconcepts.com</p>	<p>Counter Defendant TESCHER & SPALLINA, P.A.. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein Life Insurance Concepts, Inc. 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 tbernstein@lifeinsuranceconcepts.com</p>	<p>Counter Defendant Alan B. Rose, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 561-355-6991 arose@pm-law.com arose@mrachek-law.com</p>
<p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	<p>Counter Defendant L. Louis Mrachek, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 561-355-6991 lmrachek@mrachek-law.com</p>
<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>	<p>Counter Defendant Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401</p>
<p>Lisa Sue Friedstein 2142 Churchill Lane Highland Park, IL 60035 lisa.friedstein@gmail.com lisa@friedsteins.com</p>	<p>Dennis McNamara Executive Vice President and General Counsel Oppenheimer & Co. Inc. Corporate Headquarters 125 Broad Street New York, NY 10004 800-221-5588 Dennis.mcnamara@opco.com info@opco.com</p>

<p>Dennis G. Bedley Chairman of the Board, Director and Chief Executive Officer Legacy Bank of Florida Glades Twin Plaza 2300 Glades Road Suite 120 West – Executive Office Boca Raton, FL 33431 info@legacybankfl.com DBedley@LegacyBankFL.com</p>	<p>Hunt Worth, Esq. President Oppenheimer Trust Company of Delaware 405 Silverside Road Wilmington, DE 19809 302-792-3500 hunt.worth@opco.com</p>
<p>James Dimon Chairman of the Board and Chief Executive Officer JP Morgan Chase & CO. 270 Park Ave. New York, NY 10017-2070 Jamie.dimon@jpmchase.com</p>	<p>Neil Wolfson President & Chief Executive Officer Wilmington Trust Company 1100 North Market Street Wilmington, DE 19890-0001 nwolfson@wilmingtontrust.com</p>
<p>William McCabe Oppenheimer & Co., Inc. 85 Broad St Fl 25 New York, NY 10004 William.McCabe@opco.com</p>	<p>STP Enterprises, Inc. 303 East Wacker Drive Suite 210 Chicago IL 60601-5210 psimon@stpcorp.com</p>
<p>Charles D. Rubin Managing Partner Gutter Chaves Josepher Rubin Forman Fleisher Miller PA Boca Corporate Center 2101 NW Corporate Blvd., Suite 107 Boca Raton, FL 33431-7343 crubin@floridatax.com</p>	<p>Ralph S. Janvey Krage & Janvey, L.L.P. Federal Court Appointed Receiver Stanford Financial Group 2100 Ross Ave, Dallas, TX 75201 rjanvey@kjllp.com</p>
<p>Kimberly Moran Tescher & Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 kmoran@tescherspallina.com</p>	<p>Lindsay Baxley aka Lindsay Giles Life Insurance Concepts 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 lindsay@lifeinsuranceconcepts.com</p>
<p>Gerald R. Lewin CBIZ MHM, LLC 1675 N Military Trail Fifth Floor Boca Raton, FL 33486</p>	<p>CBIZ MHM, LLC General Counsel 6480 Rockside Woods Blvd. South Suite 330 Cleveland, OH 44131 ATTN: General Counsel generalcounsel@cbiz.com</p>

	(216)447-9000
Albert Gortz, Esq. Proskauer Rose LLP One Boca Place 2255 Glades Road Suite 421 Atrium Boca Raton, FL 33431-7360 agortz@proskauer.com	Heritage Union Life Insurance Company A member of WiltonRe Group of Companies 187 Danbury Road Wilton, CT 06897 cstroup@wiltonre.com
Estate of Simon Bernstein Brian M O'Connell Pa 515 N Flagler Drive West Palm Beach, FL 33401 boconnell@ciklinlubitz.com	Counter Defendant Steven Lessne, Esq. Gray Robinson, PA 225 NE Mizner Blvd #500 Boca Raton, FL 33432 steven.lessne@gray-robinson.com
Byrd F. "Biff" Marshall, Jr. President & Managing Director Gray Robinson, PA 225 NE Mizner Blvd #500 Boca Raton, FL 33432 biff.marshall@gray-robinson.com	Steven A. Lessne, Esq. Gunster, Yoakley & Stewart, P.A. 777 South Flagler Drive, Suite 500 East West Palm Beach, FL 33401 Telephone: (561) 650-0545 Facsimile: (561) 655-5677 E-Mail Designations: slessne@gunster.com jhoppel@gunster.com eservice@gunster.com
T&S Registered Agents, LLC Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com	David Lanciotti Executive VP and General Counsel LaSalle National Trust NA CHICAGO TITLE LAND TRUST COMPANY, as Successor 10 South LaSalle Street Suite 2750 Chicago, IL 60603 David.Lanciotti@ctt.com
Joseph M. Leccese Chairman Proskauer Rose LLP Eleven Times Square New York, NY 10036 jleccese@proskauer.com	Brian Moynihan Chairman of the Board and Chief Executive Officer 100 N Tryon St #170, Charlotte, NC 28202 Phone:(980) 335-3561
ADR & MEDIATIONS SERVICES, LLC Diana Lewis	

2765 Tecumseh Drive West Palm Beach, FL 33409 (561) 758-3017 Telephone Email: dzlewis@aol.com (Fla. Bar No. 351350)	
---	--

SERVICE LIST

Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com	Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 arose@pm-law.com and arose@mrachek-law.com mchandler@mrachek-law.com	John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 courtfilings@pankauskilawfirm.com john@pankauskilawfirm.com
Robert L. Spallina, Esq., Tescher & Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 rspallina@tescherspallina.com kmoran@tescherspallina.com ddustin@tescherspallina.com	Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com lisa.friedstein@gmail.com lisa@friedsteins.com	Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway Suite 200 Boca Raton, Florida 33432 ijb@ijblegal.com martin@kolawyers.com
Mark R. Manceri, Esq., and	Donald Tescher, Esq., Tescher & Spallina, P.A.	Jill Iantoni 2101 Magnolia Lane

<p>Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net mrmlaw1@gmail.com</p>	<p>Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 dtescher@tescherspallina.com dtescher@tescherspallina.com ddustin@tescherspallina.com kmoran@tescherspallina.com</p>	<p>Highland Park, IL 60035 jilliantoni@gmail.com</p>
<p>Peter Feaman, Esquire Peter M. Feaman, P.A. 3615 Boynton Beach Blvd. Boynton Beach, FL 33436 pfeaman@feamanlaw.com service@feamanlaw.com mkoskey@feamanlaw.com m</p>	<p>Kimberly Moran kmoran@tescherspallina.com</p>	<p>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</p>
<p>Carley & Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 Lisa@friedsteins.com lisa.friedstein@gmail.com</p>	<p>Lindsay Baxley aka Lindsay Giles lindsay@lifeinsuranceconcepts.com</p>	

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 NB

ESTATE OF SIMON
BERNSTEIN,
Deceased.

CLAIMANT, WILLIAM E. STANSBURY'S SUMMARY OF ISSUES

COMES NOW, Claimant and "Interested Person" of the Estate of Simon Bernstein, William Stansbury ("Stansbury"), and in response to the Court's request for a summary of issues in preparation for the Scheduling Conference set for Tuesday, November 29, 2016 at 9:30 a.m., hereby submits the following:

1. Stansbury filed a Complaint seeking damages in excess of \$2,500,000.00 against Simon Bernstein and others on July 30, 2012, Case No. 502012CA013933XXXXMB AN. Other Defendants included, among others, Simon Bernstein's son Ted Bernstein and the companies that employed Stansbury: LIC Holdings, Inc. and Arbitrage International Management, LLC.

2. Simon Bernstein passed away on September 12, 2012 and this Estate was substituted in as a party defendant. A Mediation was held on or about June 9, 2014. As a result of the mediation, Defendants Ted S. Bernstein, LIC Holdings, Inc. and Arbitrage International Management, LLC were dismissed. The Estate of Simon Bernstein (the "Estate") remains as a Defendant.

3. Numerous issues have arisen concerning the Estate with regard to the extent and nature of its assets. For example, at the time of Simon Bernstein's death, he owned a life insurance policy with a death benefit of \$1,700,000.00. A lawsuit was filed in Chicago, Illinois

(the “Chicago Litigation”) by Ted Bernstein, individually and as the purported Trustee of a life insurance trust, seeking to obtain the \$1.7 million life insurance proceeds for the children of Simon Bernstein, in order to keep the proceeds from being paid to the Estate, and out of the hands of Claimant, William Stansbury. Stansbury filed a Motion to force the Estate to attempt to intervene in the action because the former Co-Personal Representatives of the Estate, Donald Tescher, Esq. and Robert Spallina, Esq., would not act on behalf of the Estate. Stansbury’s Motion was granted by Judge Colin, but ordered Stansbury to pay for the costs of the attempted intervention.

4. The Estate’s Motion to Intervene was granted by the Federal District Court in Chicago, and there is now a potential recovery for the Estate in the amount of \$1.7 million. The Chicago action remains pending. One of the Motions before this Court is for Stansbury to be relieved of the obligation of funding the Estate’s intervention in the Chicago litigation and for him to be reimbursed the money he has advanced on behalf of the Estate.

5. Other concerns arose about missing property concerning the Estate. Stansbury, wanting to maximize the assets of the Estate that would be available in the event of a successful recovery by him in his action against the Estate, has also filed a demand for an Accounting as to Missing Personal Property and an Amended Petition to Determine the Whereabouts of Missing Tangible Personal Property, which Motions are also pending.

6. Recently, in October of 2016, Alan Rose asked this Court for permission to represent the Estate in defense of the action by William Stansbury. Upon reviewing the deposition of Ted Bernstein taken in the Chicago Litigation, it was discovered that Alan Rose actively represented Ted Bernstein. Ted Bernstein is suing this Estate in Chicago. Therefore, Alan Rose and his law firm should be disqualified from representing the Estate because his

client, Ted Bernstein, is presently taking a position adverse to the Estate in the Chicago litigation concerning the \$1.7 million dollar life insurance proceeds. That Objection and Motion to Disqualify Alan Rose and his law firm is also pending before this Court.

7. Ted Bernstein, even though he is suing the Estate in Chicago, trying to keep the \$1.7 million life insurance death benefit from being paid to the Estate, is also the Successor Trustee of the Simon Bernstein Revocable Trust (the "Trust"). The Trust is the sole beneficiary (other than personal property) of this Estate. So, another conflict of interest presents. As Plaintiff in the Chicago action, Ted Bernstein is trying to prevent the Estate from receiving the \$1.7 million life insurance proceeds, while simultaneously holding the position of Successor Trustee of the Simon Bernstein Trust, the sole beneficiary of the Estate. This conflict is also the subject of a Motion.

Respectfully submitted,



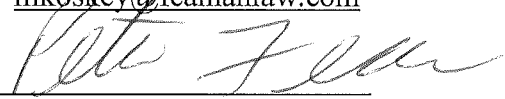
Peter M. Feaman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to: Alan Rose, Esq., Mrachek, Fitzgerald Rose, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 North Flagler Drive, 20th Floor, West Palm Beach, FL 33401, boconnell@ciklinlubitz.com; John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, john@jmorrisseylaw.com; Lisa Friedstein, lisa@friedsteins.com, 2142 Churchill Lane, Highland

Park, IL 60035; Jill Iantoni, jilliantoni@gmail.com, 2101 Magnolia Lane, Highland Park, IL 60035, on this 28th day of November, 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



Peter M. Feaman

The Law Offices
of
PETER M. FEAMAN, P.A.
Strategic Counselors. Proven Advocates.™



www.FeamanLaw.com

Peter M. Feaman, Esq.
Nancy E. Guffey, Esq.
Jeffrey T. Royer, Esq.
Paula S. Marra, Esq. of Counsel

3695 W. Boynton Beach Blvd.
Suite 9
Boynton Beach, FL 33436
Telephone: 561-734-5552
Facsimile: 561-734-5554

November 28, 2016

Via Courier

The Honorable Rosemarie Scher
North County Courthouse
3188 PGA Blvd., Room 2728
Palm Beach Gardens, FL 33410

Re: Estate of Simon Bernstein
Case No. 50 2012 CP 004391 SB
Scheduling Conference: November 29, 2016, 9:30 a.m.

Dear Judge Scher:


In accordance with Your Honor's request made at the Motion calendar hearing on Tuesday, November 22, 2016, enclosed please find William Stansbury's Summary of Issues.

Thank you for your consideration in this regard.

Respectfully,

PETER M. FEAMAN, P.A.

By:


Peter M. Feaman

PMF/sj
Enclosure

cc: Alan Rose, Esq. (via email w/enclosure)
Brian O'Connell, Esq. (via email w/enclosure)
Gary R. Shendell, Esq. (via email w/enclosure)
Diana Lewis, Esq. (via email w/enclosure)
Eliot Bernstein (via email w/enclosure)
Jeffrey Friedstein and Lisa Friedstein (via email w/enclosure)
Pamela Beth Simon (via email w/enclosure)

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 NB

ESTATE OF SIMON
BERNSTEIN,
Deceased.

CLAIMANT, WILLIAM E. STANSBURY'S SUMMARY OF ISSUES

COMES NOW, Claimant and "Interested Person" of the Estate of Simon Bernstein, William Stansbury ("Stansbury"), and in response to the Court's request for a summary of issues in preparation for the Scheduling Conference set for Tuesday, November 29, 2016 at 9:30 a.m., hereby submits the following:

1. Stansbury filed a Complaint seeking damages in excess of \$2,500,000.00 against Simon Bernstein and others on July 30, 2012, Case No. 502012CA013933XXXXMB AN. Other Defendants included, among others, Simon Bernstein's son Ted Bernstein and the companies that employed Stansbury: LIC Holdings, Inc. and Arbitrage International Management, LLC.

2. Simon Bernstein passed away on September 12, 2012 and this Estate was substituted in as a party defendant. A Mediation was held on or about June 9, 2014. As a result of the mediation, Defendants Ted S. Bernstein, LIC Holdings, Inc. and Arbitrage International Management, LLC were dismissed. The Estate of Simon Bernstein (the "Estate") remains as a Defendant.

3. Numerous issues have arisen concerning the Estate with regard to the extent and nature of its assets. For example, at the time of Simon Bernstein's death, he owned a life insurance policy with a death benefit of \$1,700,000.00. A lawsuit was filed in Chicago, Illinois

(the “Chicago Litigation”) by Ted Bernstein, individually and as the purported Trustee of a life insurance trust, seeking to obtain the \$1.7 million life insurance proceeds for the children of Simon Bernstein, in order to keep the proceeds from being paid to the Estate, and out of the hands of Claimant, William Stansbury. Stansbury filed a Motion to force the Estate to attempt to intervene in the action because the former Co-Personal Representatives of the Estate, Donald Tescher, Esq. and Robert Spallina, Esq., would not act on behalf of the Estate. Stansbury’s Motion was granted by Judge Colin, but ordered Stansbury to pay for the costs of the attempted intervention.

4. The Estate’s Motion to Intervene was granted by the Federal District Court in Chicago, and there is now a potential recovery for the Estate in the amount of \$1.7 million. The Chicago action remains pending. One of the Motions before this Court is for Stansbury to be relieved of the obligation of funding the Estate’s intervention in the Chicago litigation and for him to be reimbursed the money he has advanced on behalf of the Estate.

5. Other concerns arose about missing property concerning the Estate. Stansbury, wanting to maximize the assets of the Estate that would be available in the event of a successful recovery by him in his action against the Estate, has also filed a demand for an Accounting as to Missing Personal Property and an Amended Petition to Determine the Whereabouts of Missing Tangible Personal Property, which Motions are also pending.

6. Recently, in October of 2016, Alan Rose asked this Court for permission to represent the Estate in defense of the action by William Stansbury. Upon reviewing the deposition of Ted Bernstein taken in the Chicago Litigation, it was discovered that Alan Rose actively represented Ted Bernstein. Ted Bernstein is suing this Estate in Chicago. Therefore, Alan Rose and his law firm should be disqualified from representing the Estate because his

client, Ted Bernstein, is presently taking a position adverse to the Estate in the Chicago litigation concerning the \$1.7 million dollar life insurance proceeds. That Objection and Motion to Disqualify Alan Rose and his law firm is also pending before this Court.

7. Ted Bernstein, even though he is suing the Estate in Chicago, trying to keep the \$1.7 million life insurance death benefit from being paid to the Estate, is also the Successor Trustee of the Simon Bernstein Revocable Trust (the "Trust"). The Trust is the sole beneficiary (other than personal property) of this Estate. So, another conflict of interest presents. As Plaintiff in the Chicago action, Ted Bernstein is trying to prevent the Estate from receiving the \$1.7 million life insurance proceeds, while simultaneously holding the position of Successor Trustee of the Simon Bernstein Trust, the sole beneficiary of the Estate. This conflict is also the subject of a Motion.

Respectfully submitted,



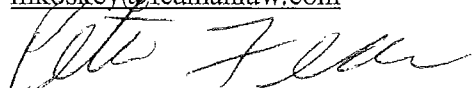
Peter M. Feaman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to: Alan Rose, Esq., Mrachek, Fitzgerald Rose, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 North Flagler Drive, 20th Floor, West Palm Beach, FL 33401, boconnell@ciklinlubitz.com; John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, john@jmorrisseylaw.com; Lisa Friedstein, lisa@friedsteins.com, 2142 Churchill Lane, Highland

Park, IL 60035; Jill Iantoni, jilliantoni@gmail.com, 2101 Magnolia Lane, Highland Park, IL 60035, on this 28th day of November, 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



Peter M. Feaman

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 NB

ESTATE OF SIMON
BERNSTEIN,
Deceased.

**MOTION TO DISQUALIFY ALAN ROSE AND PAGE, MRACHEK, FITZGERALD,
ROSE, KONOPKA, THOMAS & WEISS, P.A. AS LEGAL COUNSEL FOR THE
ESTATE OF SIMON BERNSTEIN DUE TO AN INHERENT CONFLICT OF
INTEREST**

COMES NOW, Plaintiff WILLIAM STANSBURY, claimant and Interested Person in the Estate of Simon Bernstein, (“Stansbury”), and moves this Court for an Order disqualifying Alan Rose (“Rose”) and the law firm of Page, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A (“Page Mrachek”) from representing the Estate of Simon Bernstein in *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida due to an inherent conflict of interest. As grounds, Stansbury states as follows:

I. Background Facts

1. Stansbury filed a lawsuit styled *William E. Stansbury v. Ted Bernstein, et al*, Case No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida against Simon Bernstein (“Simon”), Ted Bernstein (“Ted”) and several corporate defendants in August of 2012 to collect compensation, and other damages due Stansbury arising out of an insurance business in which Stansbury, SIMON and TED were principals. Stansbury asserted claims against Simon and Ted both as agents of the corporate defendants and in their individual capacities (the claims against TED and the companies have settled). The Shirley Bernstein Trust was dropped as a Party.

3. The damages Stansbury claims are in excess of \$2.5 million. After the lawsuit was filed, SIMON BERNSTEIN passed away in September of 2012. The Estate of Simon Bernstein (the "Estate") was substituted as a party defendant. Ted Bernstein now serves as Trustee of the Simon Bernstein Amended and Restated Revocable Trust Agreement dated July 25, 2012 (the "Simon Trust"). The Simon Trust is the sole residuary beneficiary of the Estate.

4. At the time of Simon Bernstein's death, it was determined that there was a life insurance policy issued by Heritage Mutual Insurance Company ("Heritage") insuring Simon's life. Simon was listed on the company records as the owner of the policy. Heritage represented that the death benefit was approximately \$1.7 million. Heritage records also indicated that on November 27, 1995 there was a beneficiary change for the policy to read: "LaSalle National Trust N.A., primary beneficiary and Simon Bernstein Insurance Trust dated 6/21/1995, contingent beneficiary." It was determined by Heritage that the primary beneficiary (LaSalle) no longer had an interest in the death benefit. At the time of Simon Bernstein's death, the trust document establishing this alleged contingent beneficiary Simon Bernstein Insurance Trust dated 6/21/1995 (the "Insurance Trust") was not and, to date, has not been found.

5. Supposedly the beneficiaries of the Insurance Trust were Ted Bernstein and his siblings, Lisa Sue Friedstein, Pamela Beth Simon, Jill Iantoni and Eliot Bernstein (the "Bernstein Children"). Whether they were, in fact, beneficiaries was just an "educated guess" by attorney Robert Spallina, who was counsel to the Bernstein Children. Under Florida law, if the Insurance Trust is no longer in existence, is lost, or if the insurance proceeds are not properly payable to this alleged trust, the proceeds would be payable to the Estate of Simon Bernstein.

6. Because no trust document could be found, Heritage refused to pay the death benefit of the life insurance policy to anyone without a court order. The alleged Insurance Trust

then sued Heritage in the Circuit Court of Cook County, Illinois (the case was removed to Federal Court), styled *Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95 v. Heritage Union Life Insurance Company*, Case No. 13 CV 3643, United States District Court for the Northern District of Illinois (the “Insurance Litigation”). A copy of the Amended Complaint (the “Complaint”) is attached as **Exhibit “1.”** In paragraph 2 of the Amended Complaint, the Plaintiff, the Insurance Trust, although apparently still lost, and requiring an “educated guess” to ascertain its beneficiaries, nonetheless alleges that Ted Bernstein is the “trustee” of the Insurance Trust. No trust document exists establishing the continued existence of the Insurance Trust, let alone that Ted is the Trustee. Ted Bernstein is also suing as Plaintiff in his own name, individually.

7. Ted Bernstein, as the putative “trustee” of the purported insurance trust and as Plaintiff in the Insurance Litigation, is actively pursuing litigation that is contrary to the best interests of the Estate of Simon Bernstein. The Estate intervened in the Insurance Litigation to assert that the Estate, not the Bernstein Children, is the proper beneficiary of the life insurance proceeds. (Interestingly, Ted Bernstein opposed the intervention of the Estate.) As such, the Estate is an adverse party to the Insurance Trust for which Ted Bernstein is identified as trustee AND where Ted Bernstein is also an individual Plaintiff! In the Insurance Litigation, the Estate is now a Defendant and Ted Bernstein is the Plaintiff.

8. This is germane to this Motion because Alan Rose and the Page Mrachek law firm represent Ted Bernstein as Trustee of the Simon Trust, the sole residuary beneficiary of the Estate of Simon Bernstein. Additionally, Alan Rose also represents Ted Bernstein as his personal counsel in the Insurance Litigation in Illinois and even made an appearance on behalf of Ted Bernstein, and made objections of record in Ted Bernstein’s deposition taken by counsel for

the Estate! Therefore, Alan Rose is representing a Party adverse to the Estate of Simon Bernstein and cannot now represent the Estate of Simon Bernstein in a related action.

I. Stansbury has standing to file this Motion

9. 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 . . . The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceeding.

10. Stansbury, as a claimant with a lawsuit pending against the Estate, has an interest in ensuring, to the extent possible, that the personal representative will effectively marshal the assets of the Estate in order to maximize the resources available to pay his and other claims. This includes an interest in ensuring that the Personal Representative retains outside counsel that will act in the best interests of the estate and its beneficiaries, claimants and creditors and will be free of conflicts of interest. 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” with standing to bring to the court’s attention Alan Rose’s conflict of interest that should disqualify him from representing the Estate in Stansbury’s lawsuit.

11. Moreover, an attorney hired by a personal representative is an agent of the personal representative and any conflicts of interest or adverse interest of the attorney are

imputed to personal representative. Estate of Brugh, 306 So. 2d 599 (Fla. 2d DCA 1975); see also, § 733.6171(5), Fla. Stat. (an interested party has standing to challenge compensation paid to personal representative’s agents, including his attorneys). Under § 733.602, Fla. Stat., a personal representative must use his authority “for the best interests of interested parties, including creditors.” Id. Indeed, the fundamental responsibilities of a personal representative are to pursue all assets of the estate. Bookman v. Davidson, 136 So. 3d 1276 (Fla. 1st DCA 2014). An “interested party” may seek to remove a personal representative (or its agent) when the personal representative (or its agent) holds or acquires “conflicting or adverse interests against the estate that will or may interfere with the administration of the estate as a whole.” See §§ 733.506, 733.504(9), Fla. Stat.

12. In the present case, Stansbury clearly has standing to challenge the personal representative’s hiring of Alan Rose and his law firm because they have an inherent conflict of interest with the Estate which will interfere with the administration of the Estate. These attorneys currently represent Mr. Ted Bernstein, individually, in the Insurance Litigation that is directly opposed to the interests of the Estate and its beneficiaries, creditors and claimants.

13. Specifically, these attorneys are currently seeking to keep assets from the Estate and to instead have the life insurance proceeds paid to their individual client, Ted Bernstein. The existence of this inherent adverse interest of these attorneys to the Estate precludes them from representing the Estate in Stansbury’s litigation against the Estate. Indeed, Mr. Stansbury has been incurring significant expenses on behalf of the Estate in the Chicago litigation. It would be unconscionable to permit these attorneys, who are litigating against the Estate in Chicago, to, at the same time, defend the Estate in Stansbury’s lawsuit against it.

II. Alan Rose has a Conflict of Interest and Should Be Disqualified.

14. When considering whether disqualification of an attorney is appropriate based on a conflict of interest, courts recognize that the Rules Regulating the Florida Bar govern. *See, Morse v. Clark*, 890 So.2d 496 (Fla. 5th DCA 2004).

Rule 4-1.7(a) provides:

(a) Representing Adverse interests. Except as provided in subdivision (b), a lawyer must not represent a client if:

- (1) the representation of 1 client will be directly adverse to another client; or
- (2) there is a substantial risk that the representation of 1 or more clients will be materially limited by lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

As the court in *Morse* stated:

The existing client rule is based on the ethical-concept requirement that a lawyer should act with undivided loyalty for his client and not place himself or herself in a position where a conflicting interest may affect the obligation of an ongoing professional relationship. It is difficult to imagine how a lawyer could appear in court one day arguing vigorously for a client, and then face the same client the next day and vigorously oppose him in another matter, without seriously damaging their professional relationship. Such unseemly conduct, if permitted, would further erode the public's regard for the legal profession. *Id.* at 498

15. The fact that Alan Rose has a conflict of interest is beyond question. It has recently been discovered that Alan Rose represents Ted Bernstein as personal counsel in the Insurance Litigation filed in Chicago. Rose appeared as counsel for Ted Bernstein in the Chicago Insurance Litigation. Ted Bernstein is an adverse Party to the Simon Bernstein Estate. Rose participated and interposed objections in Ted Bernstein's deposition taken by James Stamos, the attorney hired by the Estate to pursue the life insurance benefits on its behalf. Excerpts from the deposition establishing Rose's representation of Ted Bernstein and showing Rose's participation in the deposition adverse to the Estate are attached hereto as **Composite Exhibit "2."**

16. Under Rule 4-1.7(a) of Rules Regulating the Florida Bar, the representation of one client, Ted Bernstein, in his action seeking to deprive the Estate of \$1.7 million (the Insurance Litigation), is directly adverse to Rose's representation of the Estate in Stansbury's lawsuit for damages against the Estate.

17. Due to the existence of the conflict of interest by Alan Rose, the entire Page, Mrachek firm is similarly disqualified. See Rule 4-1.10(a) of Rules Regulating the Florida Bar.

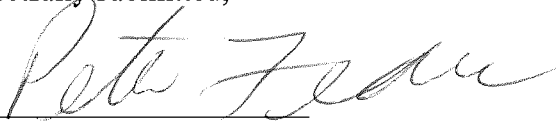
WHEREFORE, William Stansbury requests that this court:

A. Alan Rose and the law firm of Page, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A ("Page Mrachek") be disqualified from representing the Estate of Simon Bernstein in *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida due to an inherent conflict of interest;

B. Award Stansbury his costs herein expended; and,

C. Such other relief as this court deems just and proper.

Respectfully submitted,



Peter M. Feaman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to: Alan Rose, Esq., Mrachek, Fitzgerald Rose, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mhandler@pm-law.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 North Flagler Drive, 20th Floor, West Palm Beach, FL 33401,

boconnell@ciklinlubitz.com; John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, john@jmorrisseylaw.com; Lisa Friedstein, lisa@friedsteins.com, 2142 Churchill Lane, Highland Park, IL 60035; Jill Iantoni, jilliantoni@gmail.com, 2101 Magnolia Lane, Highland Park, IL 60035, on this 28th day of November, 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 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
by Ted S. Bernstein, its Trustee, Ted)
Bernstein, an individual,)
Pamela B. Simon, an individual,)
Jill Iantoni, an individual and Lisa S.)
Friedstein, an individual.)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

-----)
HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

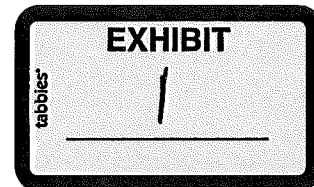
SIMON BERNSTEIN IRREVOCABLE)
TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)

Case No. 13 cv 3643
Honorable Amy J. St. Eve
Magistrate Mary M. Rowland



Irrevocable Insurance Trust Dtd 6/21/95,
and ELIOT BERNSTEIN)

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B. SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)

PLAINTIFFS' FIRST AMENDED COMPLAINT

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, and TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually, PAMELA B. SIMON, individually, JILL IANTONI, individually, and LISA FRIEDSTEIN, individually, by their attorney, Adam M. Simon, and complaining of Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, ("HERITAGE") states as follows:

BACKGROUND

1. At all relevant times, the BERNSTEIN TRUST was a common law irrevocable life insurance trust established in Chicago, Illinois, by the settlor, Simon L. Bernstein, ("Simon Bernstein" or "insured") and was formed pursuant to the laws of the state of Illinois.
2. At all relevant times, the BERNSTEIN TRUST was a beneficiary of a life insurance policy insuring the life of Simon Bernstein, and issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the "Policy").
3. Simon Bernstein's spouse, Shirley Bernstein, was named as the initial Trustee of the BERNSTEIN TRUST. Shirley Bernstein passed away on December 8, 2010, predeceasing Simon Bernstein.
4. The successor trustee, as set forth in the BERNSTEIN TRUST agreement is Ted Bernstein.
5. The beneficiaries of the BERNSTEIN TRUST as named in the BERNSTEIN TRUST Agreement are the children of Simon Bernstein.

6. Simon Bernstein passed away on September 13, 2012, and is survived by five adult children whose names are Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein. By this amendment, Ted Bernstein, Pamela Simon, Jill Iantoni and Lisa Friedstein are being added as co-Plaintiffs in their individual capacities.

7. Four out five of the adult children of Simon Bernstein, whom hold eighty percent of the beneficial interest of the BERNSTEIN TRUST have consented to having Ted Bernstein, as Trustee of the BERNSTEIN TRUST, prosecute the claims of the BERNSTEIN TRUST as to the Policy proceeds at issue.

8. Eliot Bernstein, the sole non-consenting adult child of Simon Bernstein, holds the remaining twenty percent of the beneficial interest in the BERNSTEIN TRUST, and is representing his own interests and has chosen to pursue his own purported claims, pro se, in this matter.

9. The Policy was originally purchased by the S.B. Lexington, Inc. 501(c)(9) VEBA Trust (the "VEBA") from Capitol Bankers Life Insurance Company ("CBLIC") and was delivered to the original owner in Chicago, Illinois on or about December 27, 1982.

10. At the time of the purchase of the Policy, S.B. Lexington, Inc., was an Illinois corporation owned, in whole or part, and controlled by Simon Bernstein.

11. At the time of purchase of the Policy, S.B. Lexington, Inc. was an insurance brokerage licensed in the state of Illinois, and Simon Bernstein was both a principal and an employee of S.B. Lexington, Inc.

12. At the time of issuance and delivery of the Policy, CBLIC was an insurance company licensed and doing business in the State of Illinois.

13. HERITAGE subsequently assumed the Policy from CBLIC and thus became the successor to CBLIC as "Insurer" under the Policy and remained the insurer including at the time of Simon Bernstein's death.

14. In 1995, the VEBA, by and through LaSalle National Trust, N.A., as Trustee of the VEBA, executed a beneficiary change form naming LaSalle National Trust, N.A., as Trustee, as primary beneficiary of the Policy, and the BERNSTEIN TRUST as the contingent beneficiary.

15. On or about August 26, 1995, Simon Bernstein, in his capacity as member or auxiliary member of the VEBA, signed a VEBA Plan and Trust Beneficiary Designation form designating the BERNSTEIN TRUST as the "person(s) to receive at my death the Death Benefit stipulated in the S.B. Lexington, Inc. Employee Death Benefit and Trust and the Adoption Form adopted by the Employer".

16. The August 26, 1995 VEBA Plan and Trust Beneficiary Designation form signed by Simon Bernstein evidenced Simon Bernstein's intent that the beneficiary of the Policy proceeds was to be the BERNSTEIN TRUST.

17. S.B. Lexington, Inc. and the VEBA were voluntarily dissolved on or about April 3, 1998.

18. On or about the time of the dissolution of the VEBA in 1998, the Policy ownership was assigned and transferred from the VEBA to Simon Bernstein, individually.

19. From the time of Simon Bernstein's designation of the BERNSTEIN TRUST as the intended beneficiary of the Policy proceeds on August 26, 1995, no document was submitted by Simon Bernstein (or any other Policy owner) to the Insurer which evidenced any change in his intent that the BERNSTEIN TRUST was to receive the Policy proceeds upon his death.

20. At the time of his death, Simon Bernstein was the owner of the Policy, and the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

21. The insured under the Policy, Simon Bernstein, passed away on September 13, 2012, and on that date the Policy remained in force.

22. Following Simon Bernstein's death, the BERNSTEIN TRUST, by and through its counsel in Palm Beach County, FL, submitted a death claim to HERITAGE under the Policy including the insured's death certificate and other documentation.

COUNT I

BREACH OF CONTRACT

23. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶22 as if fully set forth as ¶23 of Count I.

24. The Policy, by its terms, obligates HERITAGE to pay the death benefits to the beneficiary of the Policy upon HERITAGE'S receipt of due proof of the insured's death.

25. HERITAGE breached its obligations under the Policy by refusing and failing to pay the Policy proceeds to the BERNSTEIN TRUST as beneficiary of the Policy despite HERITAGE'S receipt of due proof of the insured's death.

26. Despite the BERNSTEIN TRUST'S repeated demands and its initiation of a breach of contract claim, HERITAGE did not pay out the death benefits on the Policy to the BERNSTEIN TRUST instead it filed an action in interpleader and deposited the Policy proceeds with the Registry of the Court.

27. As a direct result of HERITAGE's refusal and failure to pay the Policy proceeds to the BERNSTEIN TRUST pursuant to the Policy, Plaintiff has been damaged in an amount equal to the death benefits of the Policy plus interest, an amount which exceeds \$1,000,000.00.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for a judgment to be entered in its favor and against Defendant, HERITAGE, for the amount of the Policy proceeds on deposit with the Registry of the Court (an amount in excess of \$1,000,000.00) plus costs and reasonable attorneys' fees together with such further relief as this court may deem just and proper.

COUNT II

DECLARATORY JUDGMENT

28. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶27 above as ¶28 of Count II and pleads in the alternative for a Declaratory Judgment.
29. On or about June 21, 1995, David Simon, an attorney and Simon Bernstein's son-in-law, met with Simon Bernstein before Simon Bernstein went to the law offices of Hopkins and Sutter in Chicago, Illinois to finalize and execute the BERNSTEIN TRUST Agreement.
30. After the meeting at Hopkins and Sutter, David B. Simon reviewed the final version of the BERNSTEIN TRUST Agreement and personally saw the final version of the BERNSTEIN TRUST Agreement containing Simon Bernstein's signature.
31. The final version of the BERNSTEIN TRUST Agreement named the children of Simon Bernstein as beneficiaries of the BERNSTEIN TRUST, and unsigned drafts of the BERNSTEIN TRUST Agreement confirm the same.
32. The final version of the BERNSTEIN TRUST Agreement named Shirley Bernstein, as Trustee, and named Ted Bernstein as, successor Trustee.
33. As set forth above, at the time of death of Simon Bernstein, the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

34. Following the death of Simon Bernstein, neither an executed original of the BERNSTEIN TRUST Agreement nor an executed copy could be located by Simon Bernstein's family members.

35. Neither an executed original nor an executed copy of the BERNSTEIN TRUST Agreement has been located after diligent searches conducted as follows:

- i) Ted Bernstein and other Bernstein family members of Simon Bernstein's home and business office;
- ii) the law offices of Tescher and Spallina, Simon Bernstein's counsel in Palm Beach County, Florida,
- iii) the offices of Foley and Lardner (successor to Hopkins and Sutter) in Chicago, IL; and
- iv) the offices of The Simon Law Firm.

36. As set forth above, Plaintiffs have provided HERITAGE with due proof of the death of Simon Bernstein which occurred on September 13, 2012.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for an Order entering a declaratory judgment as follows:

- a) declaring that the original BERNSTEIN TRUST was lost and after a diligent search cannot be located;
- b) declaring that the BERNSTEIN TRUST Agreement was executed and established by Simon Bernstein on or about June 21, 1995;
- c) declaring that the beneficiaries of the BERNSTEIN TRUST are the five children of Simon Bernstein;

- d) declaring that Ted Bernstein, is authorized to act as Trustee of the BERNSTEIN TRUST because the initial trustee, Shirley Bernstein, predeceased Simon Bernstein;
- e) declaring that the BERNSTEIN TRUST is the sole surviving beneficiary of the Policy;
- f) declaring that the BERNSTEIN TRUST is entitled to the proceeds placed on deposit by HERITAGE with the Registry of the Court;
- g) ordering the Registry of the Court to release all of the proceeds on deposit to the BERNSTEIN TRUST; and
- h) for such other relief as this court may deem just and proper.

COUNT III

RESULTING TRUST

37. Plaintiffs restate and reallege the allegations contained in ¶1-¶36 of Count II as ¶37 of Count III and plead, in the alternative, for imposition of a Resulting Trust.

38. Pleading in the alternative, the executed original of the BERNSTEIN TRUST Agreement has been lost and after a diligent search as detailed above by the executors, trustee and attorneys of Simon Bernstein's estate and by Ted Bernstein, and others; its whereabouts remain unknown.

39. Plaintiffs have presented HERITAGE with due proof of Simon Bernstein's death, and Plaintiff has provided unexecuted drafts of the BERNSTEIN TRUST Agreement to HERITAGE.

40. Plaintiffs have also provided HERITAGE with other evidence of the BERNSTEIN TRUST'S existence including a document signed by Simon Bernstein that designated the BERNSTEIN TRUST as the ultimate beneficiary of the Policy proceeds upon his death.

41. At all relevant times and beginning on or about June 21, 1995, Simon Bernstein expressed his intent that (i) the BERNSTEIN TRUST was to be the ultimate beneficiary of the life insurance proceeds; and (ii) the beneficiaries of the BERNSTEIN TRUST were to be the children of Simon Bernstein.

42. Upon the death of Simon Bernstein, the right to the Policy proceeds immediately vested in the beneficiary of the Policy.

43. At the time of Simon Bernstein's death, the beneficiary of the Policy was the BERNSTEIN TRUST.

44. If an express trust cannot be established, then this court must enforce Simon Bernstein's intent that the BERNSTEIN TRUST be the beneficiary of the Policy; and therefore upon the death of Simon Bernstein the rights to the Policy proceeds immediately vested in a resulting trust in favor of the five children of Simon Bernstein.

45. Upon information and belief, Bank of America, N.A., as successor Trustee of the VEBA to LaSalle National Trust, N.A., has disclaimed any interest in the Policy.

46. In any case, the VEBA terminated in 1998 simultaneously with the dissolution of S.B. Lexington, Inc.

47. The primary beneficiary of the Policy named at the time of Simon Bernstein's death was LaSalle National Trust, N.A. as "Trustee" of the VEBA.

48. LaSalle National Trust, N.A., was the last acting Trustee of the VEBA and was named beneficiary of the Policy in its capacity as Trustee of the VEBA.

49. As set forth above, the VEBA no longer exists, and the ex-Trustee of the dissolved trust, and upon information and belief, Bank Of America, N.A., as successor to LaSalle National Trust, N.A. has disclaimed any interest in the Policy.

50. As set forth herein, Plaintiff has established that it is immediately entitled to the life insurance proceeds HERITAGE deposited with the Registry of the Court.

51. Alternatively, by virtue of the facts alleged herein, HERITAGE held the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein and since HERITAGE deposited the Policy proceeds the Registry, the Registry now holds the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein.

WHEREFORE, PLAINTIFFS pray for an Order as follows:

- a) finding that the Registry of the Court holds the Policy Proceeds in a Resulting Trust for the benefit of the five children of Simon Bernstein, Ted Bernstein, Pamela Simon, Eliot Ivan Bernstein, Jill Iantoni and Lisa Friedstein; and
- b) ordering the Registry of the Court to release all the proceeds on deposit to the Bernstein Trust or alternatively as follows: 1) twenty percent to Ted Bernstein; 2) twenty percent to Pam Simon; 3) twenty percent to Eliot Ivan Bernstein; 4) twenty percent to Jill Iantoni; 5) twenty percent to Lisa Friedstein
- c) and for such other relief as this court may deem just and proper.

By: s/Adam M. Simon

Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601

Phone: 313-819-0730

Fax: 312-819-0773

E-Mail: asimon@chicagolaw.com

Attorneys for Plaintiffs and Third-Party
Defendants

*Simon L. Bernstein Irrevocable Insurance Trust
Dtd 6/21/95; Ted Bernstein as Trustee, and
individually, Pamela Simon, Lisa Friedstein
and Jill Iantoni*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

2

3

4 SIMON BERNSTEIN IRREVOCABLE
INSURANCE TRUST DTD 6/21/95,

5

Plaintiff,

6 v.

Case No. 13 cv 3643

7 HERITAGE UNION LIFE INSURANCE
COMPANY,

8

Defendant,

9

10 HERITAGE UNION LIFE INSURANCE
COMPANY,

11

Counter-Plaintiff

12

v.

13

SIMON BERNSTEIN IRREVOCABLE
14 INSURANCE TRUST DTD 6/21/95

15 Counter-Defendant

16 and,

17 FIRST ARLINGTON NATIONAL BANK
as Trustee of S.B. Lexington, Inc.

18 Employee Death Benefit Trust,
UNITED BANK OF ILLINOIS, BANK OF

19 AMERICA, Successor in interest to
LaSalle National Trust, N.A., SIMON

20 BERNSTEIN TRUST, N.A., TED BERNSTEIN,
individually and as purported Trustee

21 of the Simon Bernstein Irrevocable
Insurance Trust Dtd 6/21/95, and

22 ELIOT BERNSTEIN

23 Third-Party Defendants.

24

25

0002

1 ELIOT IVAN BERNSTEIN,

2 Cross-Plaintiff

v.

3



4 TED BERNSTEIN, individually and as
alleged Trustee of the Simon Bernstein
Irrevocable Insurance Trust Dtd

5 6/21/95,

Cross-Defendant

6

and,

7

PAMELA B. SIMON, DAVID B. SIMON, both
8 Professionally and Personally, ADAM
SIMON, both Professionally and Personally,
9 THE SIMON LAW FIRM, TESCHER & SPALLINA,
P.A., DONALD TESCHER, both Professionally
10 and Personally, ROBERT SPALLINA, both
Professionally and Personally, LISA
11 FRIEDSTEIN, JILL IANTONI, S.B. LEXINGTON,
INC. EMPLOYEE DEATH BENEFIT TRUST, S.T.P.
12 ENTERPRISES, INC., S.B. LEXINGTON, INC,
NATIONAL SERVICE ASSOCIATION (OF FLORIDA),
13 NATIONAL SERVICE ASSOCIATION (OF ILLINOIS),
AND JOHN AND JANE DOES

14

Third-Party Defendants.

15

16

DEPOSITION OF
TED BERNSTEIN

17

18 Taken on behalf of the Estate of Simon Bernstein

19

20 DATE TAKEN: May 6, 2015

TIME: 5:06 p.m. - 8:15 p.m.

21

PLACE: 2385 N.W. Executive Center Drive
Boca Raton, Florida

22

23

24 Stenographically Reported by:

25

Lisa Gropper, R.P.R., F.P.R.

0003

1

APPEARANCES

2

ON BEHALF OF TED BERNSTEIN:

3

ADAM M. SIMON, ESQ.
4 THE SIMON LAW FIRM
303 East Wacker Drive

5 Suite 2725
Chicago, Illinois 60601

6

ALAN B. ROSE, ESQ.
7 MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
8 505 South Flagler Drive
Suite 600
9 West Palm Beach, Florida 33401

10

ON BEHALF OF THE ESTATE OF SIMON BERNSTEIN:

11

JAMES J. STAMOS, ESQ.
12 KEVIN P. HORAN, ESQ.
STAMOS & TRUCCO, LLP
13 One East Wacker Drive
Suite 300
14 Chicago

12 that's what you're asking. I didn't object.

13 MR. STAMOS: Well, our position, for the
14 record, is that you may not selectively employ the
15 privilege.

16 Q So my question is, was this an attorney-client
17 communication, as far as you were concerned?

18 A In every communication I had with Robert
19 Spallina, I would expect that that privilege was there.

20 MR. ROSE: This is Alan Rose, just for the
21 record, since I'm Mr. Bernstein's personal counsel.
22 He's not asserting the privilege as to
23 communications of this nature as responded in your
24 email. He's asserting privilege to private
25 communications he had one-on-one with Robert
0064

1 Spallina, who he considered to be his counsel.
2 That's the position for the record and that's why
3 the privilege is being asserted.

4 Continue.

5 MR. STAMOS: No, I understand that. It's just
6 that our position is that, if one has an
7 attorney-client relationship, in particular with
8 regard to discussions concerning a particular
9 topic, the privilege is waived when you do not
10 maintain the privilege with respect to certain
11 communications and you do with others, and that's
12 our position. So --

13 MR. ROSE: Okay. But for the record, since
14 you're going to argue this in Illinois potentially,
15 in every piece of litigation, certain things that
16 you communicate with your lawyer eventually find
17 their way into pleadings or communication with the
18 other side. That does not mean that private
19 communication you have one-on-one with your lawyer
20 about various things when you're seeking legal
21 advice on a confidential basis are not privileged.
22 That's the sole basis upon which the privilege is
23 being asserted and it's going to continue to be
24 asserted.

25 MR. STAMOS: Can we proceed?
0065

1 MR. ROSE: Absolutely. Thanks.

2 MR. STAMOS: Got it.

3 Q (By Mr. Stamos) In any event, looking at
4 Exhibit 11, this was a -- whatever it says, this was an

17 owner of this policy and that I think he was learning
18 about the -- the chain of -- of ownership of the policy
19 from the very beginning and its iterations over time
20 when -- after speaking with the insurance company.

21 Q Did you understand this to be that
22 Mr. Spallina was told by the insurance company that
23 there was a break in title and beneficiary designation?

24 A Well, I -- I'm -- only because I'm reading
25 what he said. I don't know what he assumed that meant,
0069

1 but I'm assuming from what I'm reading that he is saying
2 that there was some break there.

3 Q And this was in response to your email from --
4 it looks like --

5 Well, it looks like the times are a little bit
6 odd there. I'm not sure why that is.

7 A Right.

8 Q I wonder if one is eastern time and one is
9 central time?

10 A Between me and Robert?

11 Q Yeah. Could that have been possible?

12 A Anything's possible, but unlikely, I think.

13 Q Well, in any event, when you received that,
14 did you understand what he was talking about?

15 A At the time, I probably did not.

16 Q Now, looking at Exhibit 16, please.

17 (Exhibit 16 was marked for identification.)

18 Q Do you know who Mr. Welling is, before I ask
19 you any questions about the document?

20 A I believe that he was someone connected to the
21 insurance company.

22 Q I'd like you, if you will, to take a moment
23 and read Exhibit Number 12 -- I'm sorry, Exhibit
24 Number 16, back to front, and then I want to ask you
25 some questions about it. It's not all that long.

0070

1 A So you'd like me to read all the pages in the
2 email?

3 Q Yeah.

4 A Okay.

5 Q Just take a moment to read it. The messages
6 are actually pretty brief.

7 MR. ROSE: While he's looking at that, I'd
8 just state for the record that TS5253, at the
9 bottom, clearly supports the assertion of the

10 privilege.

11 MR. STAMOS: In as much as it includes Scott
12 Welling on it, I'd have a hard time understanding
13 how that supports the existence of a privilege,
14 but --

15 MR. ROSE: Okay.

16 Q (By Mr. Stamos) Have you had a chance to read
17 that yet, Mr. Bernstein?

18 A Yes. I'm -- yes, I have.

19 Q I bet you recall this email string, correct?

20 A Yes.

21 Q It ends with a message from Mr. Spallina to
22 you which would have included all the rest of it,
23 correct?

24 A Yes.

25 Q What's this about? What's the genesis of this
0071

1 dispute that results in Mr. Spallina saying, "Ted, I'm
2 done with this matter"? What did you understand was
3 going to happen?

4 A The change in who was going to be handling the
5 life insurance policy at -- at around this time.

6 Q It was changed from whom to whom?

7 A From the Tescher & Spallina firm to Adam
8 Simon.

9 Q Were there any discussions with the insurance
10 company about that prior to the lawsuit being filed in
11 Chicago?

12 MR. SIMON: Objection; speculation.

13 A I've -- I simply don't know.

14 Q You don't?

15 A I do not.

16 Q Now, when you then look at --

17 I'm sorry, we'll go to the next exhibit, which
18 is -- it looks like Exhibit 17.

19 (Exhibit 17 was marked for identification.)

20 Q Now, looking at Exhibit Number 17, where
21 Mr. Tescher writes, "I feel that we have serious
22 conflicts in continuing to represent you as trustee to
23 the life insurance trust and need to withdraw from
24 further representation," do you see that?

25 A I do.

0072

1 Q Now, first, this document is an email string
2 that ends with Mr. Tescher sending an email to

3 Mr. Welling, Mr. Spallina and also to yourself, as well
4 as the Simons, correct?

5 A Yes.

6 Q You recall receiving this, do you?

7 A Now that I see it, I recall.

8 Q Now, where Mr. Tescher says that, "There's a
9 serious conflict continuing to represent you as trustee
10 of the life insurance trust," is he referring to the
11 1995 trust?

12 MR. SIMON: Objection; speculation.

13 A I believe that that's what he's referring to
14 here.

15 Q I take it that he withdraw from representing
16 you in that capacity as of this email?

17 A I -- I believe that to be the case.

18 Q Did they continue to represent you in any
19 other capacity after that date?

20 A Yes.

21 Q In what capacities did they continue to
22 represent you?

23 A As the -- counsel for the Shirley Bernstein
24 Trust.

25 Q Do they continue to be your attorney in that
0073

1 capacity?

2 A Currently?

3 Q Yes.

4 A They are not.

5 Q When did they cease being your attorney in
6 that capacity?

7 A Early 2014 is my recollection.

8 Q What led to that?

9 A What led to that was --

10 MR. ROSE: Well, let me -- to the extent he's
11 discussing communications he had with his former
12 counsel, they would be privileged, and I would
13 instruct him not to answer based upon any
14 communications with his counsel.

15 MR. STAMOS: Okay.

16 Q I don't agree with that, but I assume you're
17 going to follow your attorney's instruction not to
18 answer that?

19 A Yes.

20 Q All right. We don't need to say anymore, but
21 we'll certify that.

22 Leaving aside conversations then with
23 Mr. Spallina or Mr. Tescher, what led to their ceasing
24 to be your attorneys?

25 A My recollection is that they withdrew.

0074

1 Q Okay.

2 A Again, we're going back quite a while, but I
3 believe what led to them not being my attorneys is that
4 they withdrew.

5 MR. ROSE: And just for the record, there are
6 aspects of that that are not privileged, but you
7 asked him about his -- I just advised him not to
8 disclose his private, confidential communication
9 with them while they were still his lawyers. That
10 does not foreclose your questioning.

11 MR. STAMOS: No, what I asked him was what
12 other circumstances led to that other than --
13 without reference to such conversations, and he
14 said they withdrew.

15 Q Do you know why they withdrew?

16 A I -- I do know why they withdrew. There were
17 some questions within their firm about documents and
18 irregular -- irregularity around documents, and they
19 withdrew because I felt it was best for them to
20 withdraw.

21 Q What documents were there -- with regard to
22 what documents were there irregularities, as far as you
23 knew?

24 A There was an amendment to a trust document.

25 Q Which trust?

0075

1 A Shirley Bernstein Trust.

2 Q And finally Exhibit Number 18.

3 (Exhibit 18 was marked for identification.)

4 Q Are you ready?

5 A Yes.

6 Q Let me just back up a second. The document
7 that you were talking about that there was a problem
8 with was a document which it appeared that the Tescher &
9 Spallina firm had participated in backdating a signature
10 by your father, correct? Is that your understanding of
11 it?

12 A Something along those lines. I'm not quite
13 sure that it's backdating or creation of a document.
14 I'm not sure that backdating would be the right way to

25 A I can't answer that question without reading
0086

1 the whole document.

2 MR. SIMON: Go ahead.

3 Q Well, it speaks for itself.

4 Let me ask you this: Are you aware of whether
5 it does without reading it? Are you aware of whether it
6 references any 1995 trust or any other trust?

7 MR. SIMON: Objection; speculation. Not
8 allowing him to read it.

9 MR. STAMOS: No, no. I'm just asking if he's
10 aware of it without reading it. It says what it
11 says. His reading is not going to change what it
12 says. I'm asking his state of mind.

13 Q Are you aware of whether or not that document
14 references the 1995 trust without having read it?

15 MR. SIMON: Objection; relevance.
16 Go ahead.

17 Q Do you know?

18 A I'm not -- I'm not aware.

19 Q Do you think that if this document did
20 reference the 1995 trust, that Mr. Spallina would have
21 commented on that?

22 MR. SIMON: Objection; speculation.

23 Q Would you have expected him to tell you that
24 it did?

25 A Can you ask me that question again?
0087

1 Q Yeah. If this document said, for example,
2 "I'm replacing the '95 trust with this 2000 trust,"
3 would you have expected that Mr. Spallina would have
4 given you advice with regard to that fact, if it were a
5 fact?

6 MR. ROSE: I'm going to object, instruct him
7 not to answer based on communications he had with
8 Mr. Spallina, but you can ask the question with
9 regard to information that Spallina disseminated to
10 third parties or --

11 Q Well, other than conversations that just
12 involved you and Mr. Spallina, but not excluding
13 communications that involved your siblings, like so many
14 of these emails did, would you have expected in such
15 communications when you and he were talking about
16 whether we're going to use the 2000 trust and so forth,
17 if the 2000 trust had referenced the existence of a

11 Q Okay. That's what 2012 talks about, correct?

12 A Correct.

13 Q Not only are you not a beneficiary, none of
14 your siblings are beneficiaries, correct?

15 A You are correct.

16 Q Was there a dispute in the family when you all
17 learned that your father was going to, in effect,
18 disinherit his singling? I'm sorry, the siblings?

19 MR. ROSE: What time was that? Did you --

20 MR. STAMOS: Let me start again.

21 Q Prior to his death, you became aware that it
22 was his plan that he was not going to leave money to his
23 children, correct?

24 A I did -- I'm aware of that.

25 Q And that lead to some discord in the family,
0090

1 correct?

2 A It did.

3 Q Was there a call in which he participated, as
4 did the siblings, in which you attempted to get him to
5 change his mind or explain why his plan was not
6 appropriate?

7 A No.

8 Q There was no such call?

9 A There was no such call based on what you just
10 said that call was about.

11 Q Was there a call prior to his death that
12 involved inheritance, that involved the siblings and
13 your father?

14 A Yes.

15 Q Who said what to whom in that conference?

16 A Robert Spallina explained that my father was
17 going to leave the -- his assets to ten grandchildren
18 equally.

19 Q When -- I ask you to -- if you could pick up
20 Exhibit Number 26, please.

21 (Exhibit 26 was marked for identification.)

22 Q Exhibit Number 26 was one of the documents
23 produced by the Tescher & Spallina firm. Have you seen
24 it before?

25 A Yes.

0091

1 Q The third page is a transcription so that we
2 could read what it actually said. Do you see that?

3 A Do I see what the third page is?

23 Q Ultimately, he left the estate plan in place
24 so that upon his death none of his estate passed to the
25 siblings, correct?

0093

1 MR. ROSE: Object to the form.

2 Oh, that's your objection.

3 A He left the -- he left it in place.

4 Q Meaning that each of you and your siblings was
5 deemed to have been predeceased for the purpose of his
6 estate planning?

7 MR. SIMON: Objection; form.

8 Q Is that your understanding? If it's not, tell
9 me. I mean, I don't -- I'm not going to --

10 MR. SIMON: Well, the first time you said
11 "estate" and the second time you said "estate
12 planning", which is much more general.

13 MR. STAMOS: I didn't mean a distinction.

14 Q I just want to establish, upon his death, no
15 money as a consequence of his death passed or will have
16 passed to you and your siblings if the '95 trust is
17 never enforced and receives money through the insurance
18 policy, right?

19 A Correct.

20 Q But the money will otherwise pass to all of
21 your children, correct?

22 A To all of his grandchildren.

23 Q All of Simon's grandchildren, including your
24 children as well, correct?

25 A Correct.

0094

1 MR. STAMOS: Give me just one second.

2 THE WITNESS: Sure.

3 Q This is my final question, or just about:
4 When you learned that Mr. Spallina had filed a claim
5 identifying himself as trustee of the '95 trust, did you
6 ever report to anyone in the insurance company or any
7 authority that he, in fact, was never the trustee of the
8 '95 trust?

9 A I did not.

10 Q Did you ever instruct him to take steps to
11 correct any misimpression he might have caused others to
12 form as a result of him having made that claim?

13 A I'm not sure he caused misimpressions in
14 anybody, so I don't know, and I didn't have any
15 conversations with insurance companies.

19 asking me questions about things.

20 Q Like?

21 A Medication, what -- what amounts of
22 medication, if I knew what kind of medication he took or
23 was taking or things like that.

24 Q Why were they there?

25 MR. SIMON: Objection; speculation.

0098

1 Q Well, you met with the sheriff. Didn't you
2 wonder why he was at your father's house on the day he
3 died and you were giving statements to him?

4 MR. SIMON: Same objection.

5 A You -- did you ask me why were they there?

6 Q Yeah.

7 A I don't know. I can't remember why they were
8 there.

9 Q And you had no involvement in the call. Did
10 your attorney have any involvement in the call to the
11 sheriff that you're aware of?

12 A I don't -- I can't -- I don't think so. I
13 don't think so.

14 Q So you, to the best of your recollection, you
15 don't know who called the sheriff or contacted them?

16 MR. SIMON: Objection; form.

17 Q Are you aware the night your father died that
18 a call had been made to the hospital claiming that he
19 had been poisoned?

20 A I'm not -- I'm not aware of a call that was
21 made where -- where it was claimed that he was poisoned.

22 Q You weren't aware of that?

23 A (Nonverbal response.)

24 Q Okay.

25 MR. ROSE: Can you hear this okay in Chicago?

0099

1 I can't tell if you're acting like you're not able
2 to hear.

3 MR. STAMOS: No, we can hear. We got it.

4 MR. ROSE: Okay.

5 MR. STAMOS: Thank you.

6 MR. ROSE: You're welcome. I just saw your
7 face, so...

8 MR. STAMOS: Thanks.

9 Q (By Mr. Eliot Bernstein) So you became aware
10 at some point that there was a coroner's inquiry and you
11 were aware that there was claims about his medication,

3 answer. Compound questions.

4 Q Were you requested by any parties to turn
5 those documents over to them?

6 A I don't believe so.

7 MR. ELIOT BERNSTEIN: I'd like to submit this
8 as an exhibit. Can we get a copy of that real
9 quick.

10 (Recess taken.)

11 (Exhibit A was marked for identification.)

12 MR. STAMOS: Can you describe that for us? We
13 don't have a copy.

14 Q (By Mr. Eliot Bernstein) Ted, could you
15 describe that document.

16 MR. ROSE: (Indicating.)

17 MR. STAMOS: Is that the police report
18 document?

19 MR. ELIOT BERNSTEIN: Yes.

20 MR. STAMOS: Yeah, we have that. I think we
21 have that.

22 MR. ROSE: I'm just trying to be helpful.

23 MR. STAMOS: Thank you.

24 Is that topped by the February 11, 2014 fax
25 number -- fax legend?

0109

1 MR. ROSE: This one says January 31, '13.

2 MR. STAMOS: Oh.

3 MR. ROSE: The report entry though is --
4 starts with the words "On 9/13/12 at 12:11 hours."

5 MR. STAMOS: Oh, okay. We don't have that
6 one. All right.

7 THE WITNESS: Okay.

8 Q (By Mr. Eliot Bernstein) You were talking to
9 the sheriff's department on this day, correct?

10 A Yes, I was.

11 Q And that's the day your father died, right?

12 A Yes.

13 Q Did you advise the sheriff's department that
14 your father might have been overdosed or the likes by
15 his girlfriend?

16 A No.

17 Q No?

18 A No.

19 Q Okay. Were you advised by anybody that your
20 father could have been overdosed?

21 A Yes.

Susan Johnson

From: Susan Johnson
Sent: Friday, October 07, 2016 3:50 PM
To: 'ARose@mrachek-law.com'; 'mchandler@mrachek-law.com'; 'iviewit@iviewit.tv'; 'boconnell@ciklinlubitz.com'; 'jfoglietta@ciklinlubitz.com'; 'john@jmorrisseylaw.com'; 'dzlewis@aol.com'; 'lisa@friedsteins.com'; 'jilliantoni@gmail.com'
Cc: Peter M. Feaman; Jeff Royer; Nancy Guffey; Trish Roth; Maryanne Koskey
Subject: SERVICE OF COURT DOCUMENT - CASE NO. 502012CP004391XXXXNB (IH)
Attachments: Motion to vacate in part Court's Ruling on September 7 2016.pdf

COURT CASE PENDING IN:	In the Circuit Court of the 15 th Judicial Circuit in and for Palm Beach County, Florida
CASE NUMBER:	502012CP004391XXXXNB (IH)
STYLE OF CASE:	Estate of Simon L. Bernstein
TITLE OF DOCUMENT(S) ATTACHED:	Letter to Honorable John L. Phillips, dated July 15, 2016 (with enclosures)
SENDER'S NAME & TELEPHONE NUMBER:	Peter M. Feaman, Esq. (561) 734-5552

Per Judicial Rule of Administrative Procedure 2.516, this will be the only service upon you of this document. You will not receive a paper copy.

Susan L. Johnson
Legal Assistant
PETER M. FEAMAN, P.A.
3695 West Boynton Beach Boulevard
Suite 9
Boynton Beach, FL 33436
Telephone: 561-734-5552
Facsimile: 561-734-5554
www.feamanlaw.com

Confidentiality: The email message and any attachment to this email message may contain privileged and confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you receive this communication in error, please immediately notify the sender by return email and delete this message.

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.

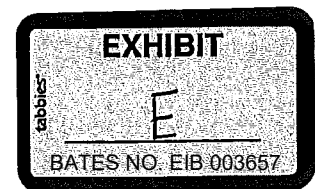
Division: IY

_____ /

**DEMAND FOR ACCOUNTING AS TO MISSING PERSONAL PROPERTY
OF THE ESTATE**

COMES NOW Creditor and Interested Person of the Estate of Simon Bernstein,
WILLIAM STANSBURY, by and through his undersigned counsel, and hereby submits his
demand for an accounting of the missing personal property of the Estate of Simon Bernstein, as
follows:

1. William Stansbury is a creditor of the Estate, having lodged a claim in excess of \$2,500,000.00.
2. Mr. Stansbury's claim is pending and the matter is being litigated in the Circuit Court of Palm Beach County, Case No.: 502012CA013933XXXXMB (AA).
3. At the time of the passing of the Decedent, the Estate became the owner of significant and valuable personal property held in the oceanfront condominium in Boca Raton known as the "Aragon" with the address of 2494 South Ocean Boulevard, Unit C-5, Boca Raton, FL, and held at the Decedent's homestead at St. Andrews Country Club, 7020 Lions Head Lane, Boca Raton, FL.
4. That Aragon unit was sold but the personal property was not part of the sale. The personal property was separately listed on a Fair Market Value Appraisal that was



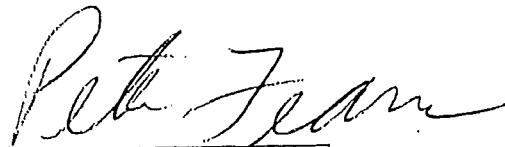
performed on behalf of the Estate, effective September 13, 2012, the date of the death of the Decedent. A copy of the Fair Market Value Appraisal is attached hereto as **Exhibit "A."** As shown on Exhibit "A," the fair market appraisal value for the personal property located at the Aragon was \$14,865.00.

5. On March 27, 2015 and March 30, 2015, a second Appraisal was conducted by Hall and Hall Appraisals, Inc. The second Appraisal totals the value of personal property that had been held at the Aragon to wit: 2494 South Ocean Boulevard, Unit C-5, Boca Raton, FL, at \$2,408.00. Therefore, unless there was, for some unknown reason, a precipitous drop in value or depreciation of the personal property, there is missing approximately \$12,400.00 worth of personal property that at one time was the property of the Estate.
6. As to the personal property located at the Decedent's homestead, a comparison of the Fair Market Value Appraisal, effective September 13, 2012, and the second Appraisal conducted on or about March 27, 2015 and March 30, 2015, as reflected in the Report dated April 21, 2015, reveals that there are numerous items of personal property that were located in the residence that are now missing and no longer accounted for.
7. Pages 26 through 32 of the Fair Market Value Appraisal (Exhibit "A") lists approximately 80 specific items of personal property clearly in existence at the time of the Decedent's passing, which are now utterly unaccounted for.
8. Further, the Decedent maintained personal property at his office at LIC Holdings, Inc., where the Decedent worked and along with his son, Ted, owned a controlling interest in the corporation. There has been no accounting for the art work and other items of personal property held in his business office, nor has there been any attempt

by the Estate to value the Decedent's stock in LIC or determine if the Estate should have been receiving renewal commission checks since his death.

9. Creditor, Stansbury, having worked at LIC for many years, believes that hundreds of thousands of dollars in renewal commissions may have been received by LIC to which the Estate may be entitled.

WHEREFORE, Creditor, William Stansbury, as an interested person in the Estate requests this Honorable Court to enter an Order requiring the Personal Representative to account for the missing personal property of the Estate, and to exercise all necessary due diligence to ascertain who is responsible for the disappearance of the personal property referenced herein, together with an award of reasonable attorney's fees incurred herein.




Peter M. Feaman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to: Alan Rose, Esq., MRACHEK, FITZGERALD ROSE, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 North Flagler Drive, 20th Floor, West Palm Beach, FL 33401, boconnell@ciklinlubitz.com; John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, john@jmorrisseylaw.com; and Gary R. Shendell, Esq., Shendell & Pollock, P.A., 2700 N. Military Trail, Suite 150, Boca Raton, FL 33431, gary@shendellpollock.com; Lisa Friedstein, 2142 Churchill Lane, Highland Park, IL 60035, lisa@friedsteins.com; Jill Iantoni, 2101 Magnolia Lane, Highland Park, IL 60035, jilliantoni@gmail.com, on this 21st day of May, 2015.

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

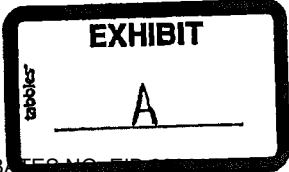
**FAIR MARKET VALUE
APPRAISAL**

PERSONAL PROPERTY OF

Simon L. Bernstein

Effective Date: September 13, 2012

Prepared by
Robert A. Hittel, ASA, ISA AM
3038 North Federal Highway
Building I
Fort Lauderdale, Florida 33306
(954) 563-2819



DESCRIPTIONS AND VALUES

Any damages will be noted in the appraisal report. Measurements, if provided, are in the order of HEIGHT first, WIDTH second, and DEPTH third. Measurements are approximate. The appraiser has seen all of the items listed.

7020 LIONS HEAD LANE, BOCA RATON, FL

FOYER

1.	NEEDLEPOINT RUG - 5 ½' X 3 ½' All over floral design with border, with additional colors of green, pink and brown	\$60.00
2.	COPPER BOWL - 36" Turned, circular, undecorated	100.00
3.	BENCH Early 20 th Century, Art Nouveau, mahogany, inlaid decoration, upholstered seat and back	400.00
4.	STATUES (2) Carved wood Lion, one standing, one sitting, glass eyes, modern decorative	700.00
5.	ORIENTAL RUG - 6' 2" X 3' 11" Hand knotted, wool on cotton, blue field, leafy scrolls and flowers, three borders, additional colors of tan, pink and ivory	100.00
6.	CENTER TABLE Octagonal beveled glass top, cast urn base with ring handles	350.00
7.	DECORATIONS	245.00
	- Ceramic sculpture by Fisher, couple kissing	20.00
	- (4) Glass cylinders with twigs, stones and silk orchids, various heights	175.00
	- Large covered pot with incised decoration, pottery	50.00
8.	TALL CASE CLOCK 19 th Century, oak, scroll bonnet, full turned columns flanking handpainted dial, Roman numerals, two key holes, second hand, calendar aperture, dial signed, "Hugh Roberts, Llangefni, Wales", paneled door flanked by half turned columns, bracket feet CONDITION: Refinished, restored	400.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

9.	PAINTING - 60" X 40" sight size Oil on canvas, flowering branches, no apparent signature, in wood frame	100.00
	TOTAL FOR FOYER:	\$2,455.00
	LIVING AREA	
10.	MIRROR - 87" X 31 1/2" Square, gold and silver lacquered frame	\$200.00
11.	LITHOGRAPH - 12 1/4" X 9 3/4" paper size Pierre August Renoir, French, (1841-1919) "Claude Renoir, Tête Baisée", "Cat. # Ruger-Marx #14", in gold frame Provenance: The J. L. Hudson Gallery, Michigan	1,000.00
12.	MISCELLANEOUS DECORATIONS	320.00
	- (2) White composition floor vases, over-all circle decoration	60.00
	- Mirror, gold oval frame	10.00
	- Statue - 60", pottery, Pre-Colombian style figure wearing head ornament and traditional costume	100.00
	- Large metal bowl and pot, each with ring handles	70.00
	- (2) Chargers, 31" and 27" round, lacquered on stands, Made in Vietnam	80.00
13.	ARTIFICIAL FLORAL ARRANGEMENTS Silk lily and hydrangea in glass vase; silk orchid in ceramic vase; (7) silk calla lilies	55.00
14.	STANDS (2) Metal powder coated square tops on four footed pedestal base, two heights	75.00
15.	FLOOR SCREEN 6-fold, gold background with purple glitter flower outlines, black lacquer "frame", mounted on wall	300.00
16.	SECTIONAL SOFAS (2) Gold fabric upholstery, each in two sections, curved, skirted, together with eight toss pillows	1,000.00
17.	COCKTAIL TABLE Oval glass top, "hammered" metal base with concave shelf	300.00
18.	ORIENTAL RUG - 12' X 9' Hand knotted, wool on cotton, black field with all-over flower design, three borders, additional colors of tan and ivory, "washed" finish	600.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

19.	BOWL - 19" diameter Waterford, "Evolution", round amber colored glass		75.00
20.	MISCELLANEOUS		85.00
	- Bowl - 18", ceramic with handpainted woman holding flower vase, signed, "Marsha B"	30.00	
	- Candlesnuffer	10.00	
	- (3) Silver composition candlesticks	45.00	
21.	MANTEL CLOCK - 12 1/2" X 19 1/2" Onyx, round enamel dial with Roman numerals, time and strike, sold through J.E. Caldwell & Co., Philadelphia		500.00
22.	FIREPLACE ACCESSORIES (2) Metal gate; black iron grate		50.00
23.	MISCELLANEOUS		215.00
	- (3) Silver metal candlesticks	30.00	
	- Standing Iron Menorah	35.00	
	- Covered Urn - 56", pottery, with incised decoration	150.00	
	TOTAL FOR LIVING AREA:		\$4,775.00
	POWDER ROOM		
24.	MIRROR Carved and painted wood, birds on flowering trees, Mexico		\$100.00
25.	MISCELLANEOUS Plastic figural towel holder; mirror with woven frame; framed print of four 19th century girls, in gold frame; domed trunk with floral painted decoration; framed portrait of a man, signed, "Daniel Lanzig, 1977", in silver frame		125.00
	TOTAL FOR POWDER ROOM:		\$ 225.00
	DINING AREA		
26.	MISCELLANEOUS DECORATIONS		\$285.00
	- Blue ceramic vase with dried material	15.00	
	- Lucite Menorah - 24", blue and clear	50.00	
	- (3) Vases, purple and clear cased glass, elongated, various heights, "Nouvell"	60.00	
	- (2) Murano glass birds, pink	30.00	
	- Mezuzah, Lladro doves; enamel tulip decoration and Jay Strongwater box	55.00	(25)
	- Cobalt blue glass vase with Orchidum orchids	50.00	
	- Mirrored vase with silk flowers	25.00	

David Rosenthal
50th Anniversary
Gold Mezuzah

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

27.	SCULPTURE - 15 1/2" X 31" Lladro, "Gondola of Love", Ref. No: 1870	550.00
28.	ENGRAVINGS (8) - 7" X 10" image size Scenes of Jewish figures engaged in various gatherings, each signed and titled, in wood frames	200.00
29.	PAINTING - 28" X 19" sight size William Weintraub, American, 20 th Century Oil on canvas, signed and dated, "Weintraub '73", young man with rifle, in wood frame	200.00
30.	LITHOGRAPH William Weintraub, American, 20 th Century 85/200, portrait of two elderly men, in wood frame	75.00
31.	ARMOIRE English pine with whitewashed finish, carved basket and scroll crest, two paneled doors above two short and two long drawers, interior with shelves and three drawers	750.00
32.	CONTENTS OF ARMOIRE	1,180.00
	- Dinnerware (68) piece set, Wedgwood Etruria, "Embossed Queensware", blue and white, consisting of (16) cups, (14) saucers, (13) dinner plates, (14) bowls, (14) bread and butter plates, (13) luncheon plates	200.00
	- Pair English porcelain salt and pepper shakers, birds; (9) colored glass water goblets; (6) colorless glass champagne stems	35.00
	- (7) Waterford crystal wine glasses	215.00
	- Pair of ceramic Garson Pakele candleholders	40.00
	- Lenox footed cup; (8) glass cordial stems; (14) colorless glass balloon wines	30.00
	- Versace plate, "Le Jardin de Versace"	25.00
	- Portuguese ceramic dinner service, (12) pieces; (5) handpainted wine glasses; (4) martini glasses	35.00
	- Group of (5) modern Asian porcelain plates and bowl; ceramic handpainted bowl; handmade ceramic sugar bowl; (3) metal and enamel Julia Knight bowls	100.00
	- (8) Tracy Porter ceramic square plates; personalized ceramic wedding tray; Mexican ceramic tray	50.00
	- Assorted napkin rings; chopsticks; napkins; (6) servicing pieces with crystal handles (matches set in Family Room); placemats	50.00
	- Wood and sterling silver Judaica tray marked "Hazorfim" 925, (weight of silver unknown) 10 1/2" x 13"	400.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

33.	FARM TABLE - 10' Bleached oak, rectangular top with breadboard ends, trestle base	750.00
34.	DINING CHAIRS (10) Whitewashed with rush seats, ladder back, consisting of (2) arm and (8) side chairs	550.00
35.	ETCHING - 7" X 5" sight size 3 / 4, portrait of a man, illegible pencil signature lower right, in frame	25.00
	TOTAL FOR DINING AREA:	\$4,565.00
 KITCHEN		
36.	MISCELLANEOUS	\$430.00
	- MacKenzie-Child's 2-handled vase and glass cake cover; (8) assorted ceramic bowls and pitchers; porcelain compote; glass pitcher with insert decoration; glass vase; glass bowl on stand	200.00
	- (10) Assorted Italian/Portuguese ceramics, including vases, covered jars and planters	230.00
37.	MISCELLANEOUS AND KITCHENWARE Serving trays and bowls; ceramic platters; assorted ceramic and porcelain dishes, plates; glass vase; (8) pieces Portuguese dinnerware (matches #32 in Dining Room); glass plates; stemware; Waterford crystal salt and pepper shakers; Japanese porcelain tea service; Franciscanware bowls; Waterford crystal pitcher; (8) Tracy Porter plates (matches #32 in Dining Room); McKenzie-Child's three piece canister set; (2) pieces purple enamel and metalware bowl and tray	800.00 (460)
	FRANCOLI PASTA BOWLS PINE CONE DESIGN	
38.	STEMWARE (16) Waterford crystal, consisting of red wines, white wines and champagne flutes	240.00
39.	MISCELLANEOUS KITCHENWARE Assorted everyday bake ware, cookware, flatware, serving pieces, cutlery, utensils; trivets; microwave oven; Keurig coffee machine; toaster; can opener; blender	160.00
40.	SCULPTURES (3) Contemporary glazed pottery, signed, "Polly Cook", bust of man holding arrow, bust of a women holding heart and bust of man and woman kissing	150.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL -- EFFECTIVE DATE SEPTEMBER 13, 2012

41.	COMPUTER Dell, model no. 1908PL, LCD monitor, wireless key pad, together with Altec Lansing speakers	60.00
42.	PRINTER HP All-In-One Deskjet F380	20.00
43.	SIDE CHAIRS (3) Brown leather and chrome, contemporary style	150.00
44.	DISH - 7" Daum, France, purple and green pate de verre glass with lizard rim	80.00
45.	MIRROR Metal, enamel and crystal, oval mirror plate	25.00
	TOTAL FOR KITCHEN:	\$2,115.00
	FAMILY ROOM	
46.	MISCELLANEOUS	\$200.00
	- Giuseppe Armani porcelain figural group, boy and girl on swing	50.00
	- Ceramic Menorah; clock; glass and metal box; pair Italian glass figural candlesticks; crystal bunny figure; crystal rhinoceros - chipped; etched glass paperweight of soldier at Wailing Wall - chipped	45.00
	- Swarovski flower vase and humming bird on branch	30.00
	- Murano glass fish - 15" x 15"	60.00
	- Waterford crystal golf club	15.00
47.	SCREEN PRINT / GICLEE Ben (Benjamin) Schonzeit, American, (b.1942) Still life of flowers in a vase, signed, "Schonzeit", in silver metal frame	300.00
48.	SERVER Rectangular glass top and carved sliding door, wood base with chrome supports and rail, interior shelves and two drawers	375.00
49.	CONTENTS OF SERVER Assorted plates; plastic and silver metal flatware; flatware set with crystal handles	50.00
50.	BAR STOOLS (4) Steel with blue ultrasuede seats, contemporary style	300.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

51.	SCULPTURES (2) - 36 1/2" Black metal, each an abstract bust with cutout, no apparent signature, together with wood cube pedestals	250.00
52.	SECTIONAL SOFA Leather and suede, brown and beige with sections, contemporary style, with toss pillows and throws	650.00
53.	COCKTAIL TABLE Two round glass tops on circular chrome supports, round base	100.00
54.	LACQUER BOXES Set of three, graduated sizes, Sklar Furnishings	105.00
55.	DISPLAY CABINET Oval wood with silver finish, two curved glass doors, lighted	150.00
56.	CONTENTS OF DISPLAY CABINET	1,100.00
	- Shofar horn; (3) hand blown Italian glass pitchers; Mezuzah; Halcyon Days enamel box	50.00
	- Lladro - 12", Japanese woman and bocage, "Geisha", Ref. No. 4807	75.00
	- Pair of Lladro porcelain nudes, approximately 10"	300.00
	- Lladro - 10", "Puppy Love", Ref. No. 1127	50.00
	- (2) Figures, composition, Bichon dog	10.00
	- Lladro - 12 1/2", Japanese rickshaw with man and passenger, "Ride in China", Ref. No. 1383	500.00
	- Lladro - 11", girl seated in chair, "Appreciation", Ref. No. 1798	100.00
	- Royal Doulton, "Queen of the Dawn"	15.00
57.	MISCELLANEOUS	655.00
	- Large Shofar, metal mounted	45.00
	- Lladro, Moses with tablets, "Moses", Ref No. 5170	60.00 25.00
	- Green glass figure of an Asian man	400.00
	- Lladro - 15", woman on balcony with flower pots, "Far Away Thoughts", Ref. No. 1798	25.00
	- Metal sculpture of dancer	100.00
	- Lladro - 14", "Wine Taster", Ref. No. 5239	
58.	ELECTRONICS	125.00
	- VCR, Sanyo, model no. VWM900	5.00
	- DVD player, Panasonic, model no. DVD-527	10.00
	- Compact Disc Player, Nakamichi, model no. CDC-3A	40.00
	- Audio Speaker/Amp Selector, Niles, model no. MSA-10A	25.00
	- Receiver, Onkyo, model no. TX-SR602	45.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

59.	TELEVISION - 60" Mitsubishi, model no. VS60111, rear screen projection, 2002 CONDITION: Obsolete - no commercial value	0.00
60.	CARD TABLE SET (5) Square red glass top, metal base, contemporary style, together with (4) side chairs, gray plastic and silver metal frame	200.00
61.	VASE - 15 1/2" Anthony Corradetti, art glass, signed, "Corradetti 1995", hand blown with colored abstract decoration	125.00
	TOTAL FOR FAMILY ROOM:	\$4,685.00
 POWDER ROOM II		
62.	MISCELLANEOUS	\$120.00
	- Pietra dura clowns - 6 1/2" x 4 1/2"	30.00
	- Phantom of the Opera poster, basket; (2) painted wood boxes; "Princess" painting	40.00
	- Indian wood carved mirror	50.00
	TOTAL FOR POWDER ROOM II:	\$ 120.00
 WEST HALL		
63.	CONTENTS OF CLOSET Assorted pillows	\$40.00
64.	ETCHING - 11" X 9" sight size Pencil signed lower right, "H. Bender", seated man, in wood frame	25.00
65.	SERIGRAPH - 18" X 12" sight size Stanley Handelman, American / Israeli, (20 th - 21 st Century) 28/250, pencil signed lower right, "Handelman (imp)", Israeli soldiers, in gold metal frame	25.00
66.	DRAWING - 27" X 18" sight size Moshe Gat, Israeli, (b.1935) Ink and wash on paper, signed lower right, "Moshe Gat", portrait of a man, in silver wood frame	150.00
67.	SERIGRAPH - 12" X 18" sight size Stanley Handelman, American / Israeli, (20 th - 21 st Century) 32/250, pencil signed lower right, "Handelman (imp)", Wailing Wall, in silver wood frame	25.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

68.	ETCHING - 12" X 9" sight size Pencil signed lower right, "H. Bender", two figures, in wood frame	25.00
69.	PHOTOGRAPHS (5) Assorted travel subjects, portraits, in silver wood frame (4) - 7" x 9" (1) - 12" x 10"	50.00
70.	SERIGRAPH - 20" X 23" sight size Yaacov Agam, American/Israeli, (b. 1928) "EA", pencil signed lower right, "Agam", multicolor geometric design, in silver metal frame	350.00
71.	LITHOGRAPHS (3) - 22" X 18" sight size Romain (Erte) de Tlroff, American/Russian, (1892-1990) Figures "6", "8" and "9", in wood frames	225.00
72.	CHEST Floral decorated wood, nailhead trim	25.00
73.	SCULPTURE - 28" Porcelain, standing lady, Marked "Austin Productions 1988"	50.00
74.	LITHOGRAPH - 28" X 26" sight size Norman Rockwell, "Shuffleton's Barbershop", in gold metal frame	75.00
75.	MIRROR - 32" X 30" Round top, beveled mirror plate, wormwood frame	50.00
76.	WALL PLAQUE - 38" X 20" Resin, female figure in relief	25.00
77.	MIRROR - 29" Painted and carved wood, circular, with conforming beveled mirror plate	100.00
78.	VASES (2) - 14", glazed pottery, Polly Cook, woman with a hat 50.00 - 13", glass, Kosta Boda, woman 75.00	
79.	NEEDLEPOINT PICTURE - 12" X 14" Young man seated, in silver wood frame	10.00
80.	CONTENTS OF CLOSET Assorted kitchenware, appliances, vases; (2) silverplate trays; cleaning equipment	100.00
	TOTAL FOR WEST HALL:	\$1,475.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

FIRST FLOOR NORTHWEST GUEST ROOM

81.	PAINTING Oil on ridged canvas, multicolor, in gallery wrap frame	\$100.00
82.	MIRRORS (2) - 30" X 18" Metal and glass, rectangular mirror plate	80.00
83.	SIDE TABLE Painted wood, circular top with shell decoration, "Made in China"	25.00
84.	LAMP Glass and polished metal, square fabric shade NOTE: Matches # 96 and 179	25.00
85.	SLEEPER SOFA Blue and beige striped fabric, with accessory pillows	75.00
86.	END TABLES (2) Polished metal cubes	40.00
87.	FIGURAL GROUP - 12" X 19" X 14" Capo-di-Monte, children around a table	60.00
88.	FLOOR LAMP Black metal tripod body and base, white ceramic shade	30.00
89.	SIDE CHAIR Seated woman painted on wood, metal base, "Made in China" NOTE: Matches # 109	25.00
90.	CABINET Medium stain pine, rectangular top, golfing scene on two painted doors, single drawer	40.00
91.	WALL PLAQUE - 32" X 44" Oval painted wood, "St. Andrews", with two wood shaft club attached	25.00
92.	MISCELLANEOUS (2) Glass stemware; lamp with white fabric shade; porcelain sculpture of woman, repairs - no commercial value; figural sculpture; assorted games	75.00
	TOTAL FOR FIRST FLOOR NORTHWEST GUEST ROOM:	\$ 600.00

FIRST FLOOR WEST GUEST ROOM

93.	FIGURINE - 13 1/2" Lladro, "Golfing Couple", Ref. No. 1453	\$100.00
-----	---	----------

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

94.	CONTENTS OF CLOSET Luggage; (2) lamps; pillows; table linens	75.00
95.	NESTING TABLES (3) Lacquered wood, tapered legs, "Made in Vietnam"	30.00
96.	LAMP Glass and polished metal, square fabric shade NOTE: Matches # 84 and 179	25.00
97.	BED Maple and maple parquet veneer headboard, queen size, together with mattress only	100.00
98.	NIGHTSTAND Faux painted wood, single drawer, single shelf	10.00
99.	FIGURINE Plaster, standing man, Austin Production	25.00
100.	LAMP Silver wood, glass decoration, gray fabric shade	25.00
101.	PAINTING - 30" X 23" sight size Oil on canvas, Van Gogh copy, in wood frame	50.00
102.	MISCELLANEOUS (2) Porcelain figurines; purple glass plate; vase with artificial arrangement	30.00
103.	DESK CHAIR Black fabric, metal base	10.00
104.	ARMOIR Green antique stain wood with floral painted panels, single door, interior shelves, single drawer	100.00
105.	SIDE CHAIR Seated woman painted on wood, metal base, "Made in China" NOTE: Matches # 89	25.00
	TOTAL FOR FIRST FLOOR WEST GUEST ROOM:	\$ 605.00
	EAST SITTING ROOM	
106.	BAR Brown metal and oval clear glass top, bow front, polished metal support	\$100.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

107.	BARSTOOLS (2) Enameled wood and metal, black fabric seat, swivel	90.00
108.	VASES (2) Clear glass, with arrangement; polished metal in rectangular glass stand	50.00
109.	SERIGRAPH - 20" X 15" sight size Woman holding a cigarette, no apparent signature, in gold metal frame	50.00
110.	CONTENTS OF CABINET Small amount of assorted every day dinnerware, glassware, flatware	40.00
111.	DECORATIVE ITEMS Metal openwork footed bowl; fruit decorated painted chest, ring pulls, metal paw feet	50.00
112.	PAINTING - 60" X 24" sight size Oil on canvas, flowers in vase, no apparent signature, in black wood frame	50.00
113.	CONTENTS OF CABINET Small amount of dinner and glass ware; Murano green glass vase; (4) painted terracotta female figures	60.00
114.	END TABLE Circular glass top, metal base	10.00
115.	LAMP Bronze color wood, glass decoration, purple fabric shade	25.00
116.	SOFAS (2) Red Ultrasuede upholstery, crescent form, with single ottoman, by "American Leather"	250.00
117.	AREA RUG - 5' 3" X 8' Wool, hand tufted, multicolor circles, "Made in China"	75.00
118.	END TABLE Half oval glass top, polished metal support and base	40.00
119.	ELECTRONICS	55.00
	- Television - 50", Samsung, DLP, model no. HLR5087W, 2005	50.00
	- DVD, Sony, model no. DVP-NS41P	5.00
120.	MISCELLANEOUS Color halftone print, "St. Andrews"; ceramic vase with artificial arrangement; pewter bowl	25.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

121.	MIRROR Whitewashed wood, rectangular frame, conforming beveled mirror plate	25.00
	TOTAL FOR EAST SITTING ROOM:	\$ 995.00
	STAIRWELL	
122.	PAINTING - 72" X 64" sight size Oil on canvas, abstract scene, no apparent signature, in wood frame	\$100.00
	TOTAL FOR STAIRWELL:	\$ 100.00
	STUDY	
123.	TILT TOP TABLE Late 19 th - early 20 th Century, papier maché, shaped top, painted and mother-of-pearl decoration	\$250.00
124.	FLOOR VASES (2) Belge ceramic, with artificial tree arrangements	100.00
125.	GLOBE Plastic, earth with mother-of-pearl countries, on polished metal stand	35.00
126.	BOOKS Approximately (500) books, hardcover, novels, cookery, art, reference	150.00
127.	FIGURINES (4)	85.00
	- Lladro - 4 1/2", seated clown, "Pierrot with Puppy", Ref. No: 5277	25.00
	- Lladro - 3", "Rabbit Eating, Ref. No: 4772	25.00
	- Lladro - 4" X 6", plaque, seated Don Quixote	10.00
	- Lladro - 4 3/4", kneeling clown, "Pierrot with Puppy and Ball", Ref. No: 5278	25.00
128.	TELEVISION - 17" Zenith, LCD, model no. L17W36, 2003	25.00
129.	DESK ORGANIZER Painted wood, gallery, two doors, interior shelves and cubbies	25.00
130.	FIGURINES (4)	325.00
	- Lladro - 12", "Anniversary Dance", Ref. No: 1372	75.00
	- Lladro - 13 1/4", "Golfing Couple", Ref. No: 1453	100.00
	- Lladro - 10 1/2", "Golfer", Ref. No: 4824	50.00
	- Lladro - 10 1/2", "Daisy", Ref. No: 5118	100.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

131.	KALEIDOSCOPIES (2) Brass, mirror and glass; plastic on Lucite stand		20.00
132.	ELECTRONICS		145.00
	- Laptop, Dell Latitude, model no. D830, 2008	50.00	
	- Scanner, Visioneer, model no. 9750USB	75.00	
	- Monitor - 17", Dell, flat panel	20.00	
133.	MISCELLANEOUS		75.00
	Porcelain dog; Murano style glass woman; plaster figure, "Fiddler on the Roof", chipped - no commercial value; resin figure, seated woman, "Florence"; "Red Ryder" BB gun		
134.	FIGURE - 9" Lladro, standing girl CONDITION: Missing stick		25.00
135.	STEUBEN GLASS (2) Etched signatures		275.00
	- "American Eagle" - 6 1/4", # 8304	200.00	
	- Seashell - 3 1/2" x 4"	75.00	
136.	TABLE Light stain wood, rectangular top, trestle support		40.00
137.	DESK CHAIR Gray upholstery, metal base, flipper arms		10.00
138.	SIDE TABLE Circular mosaic top, metal base		20.00
139.	ARM CHAIRS (2) Rattan and metal, circle back, tapered legs		50.00
140.	SIDE TABLE Circular marble top, tripod metal base		30.00
141.	TELESCOPE - 21" Reproduction 18 th Century style reflecting telescope, brass, "Culpepper Instruments, England", "12=059/1982", tripod base		350.00
142.	PLANTER Painted with relief decoration, made in Mexico		50.00
143.	BENCH Black painted metal, scroll arms		40.00
	TOTAL FOR STUDY:		\$2,125.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

UPSTAIRS WEST HALL

144.	PAINTING - 23" X 31" sight size Oil on canvas, river, trees and city, illegible signature, in gold wood frame	\$50.00
145.	LITHOGRAPH 22/275, pencil signed lower right, "Joy", Japanese style, seated woman with bird, in wood frame	30.00
146.	FLOOR VASE Asian style painted ceramic, with artificial arrangement	25.00
147.	CONTENTS OF KITCHEN Small amount of everyday dinnerware, glassware; microwave; coffee maker	40.00
148.	RUNNER - 2 1/2' X 10' Wool, beige and tan squares, black accents	10.00
	TOTAL FOR UPSTAIRS WEST HALL:	\$ 155.00

WEST UPSTAIRS BATH / CLOSET

149.	TELEVISION - 19" Vizio, LCD, model no. VA19L HDTV10T	\$30.00
150.	MISCELLANEOUS ON COUNTER Enameled crab; (9) assorted glass perfume bottles, some with chips; silverplate tray	50.00
151.	PRINT - 12" X 9" sight size 96/200, "713", pencil signed lower right, "Mike Levy", King David at Jerusalem, in silver metal frame	25.00
152.	BAKER'S RACK Brown metal, scroll legs, four tiers	30.00
153.	MISCELLANEOUS Potpourri basket; vase with artificial arrangement; pot with arrangement; tree form metal towel rack; ceramic couple; (2) area rugs	25.00
154.	SLIPPER CHAIR Green floral upholstery	25.00
155.	TELEVISION - 19" Vizio, model no. VA19L HDTV10T	30.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

156.	GARMENT STEAMER Rowenta		10.00
	TOTAL FOR UPSTAIRS BATH / CLOSET:		\$ 225.00
 WEST UPSTAIRS BEDROOM			
157.	CHEST OF DRAWERS Late 19 th - early 20 th Century, stripped finish, shaped top, three drawers		\$75.00
158.	MISCELLANEOUS ON CHEST Plaster sculpture - 22", girl with dog; artificial arrangement in wood pot; lamp, ceramic and wood body, fabric shade		30.00
159.	ARMOIRE Whitewashed pine, overhanging rounded cornice, two doors, fitted interior		400.00
160.	ELECTRONICS		110.00
	- Television - 47", Vizio, model no. M470NV, 2011	100.00	
	- VCR, Panasonic, model no. DVD-S27	10.00	
161.	DOUBLE CHAIR Carved wood frame, leather with nailhead trim, floral fabric seat with accent pillows, by Robb and Stuckey		250.00
162.	NIGHTSTAND Mirror and silver metal, single drawer, two doors		50.00
163.	LAMP Polished metal, white glass shade, adjustable		10.00
164.	SLEIGH BED Medium stain wood, kingsize, together with mattress, box spring and frame		150.00
165.	CHEST Whitewashed pine, carved decoration		40.00
166.	AREA RUG - 8 1/2' X 5' Wool, all over floral decoration on tan field, lightly sculpted		50.00
167.	NIGHTSTAND Medium stain wood, bow front, three drawers, by Tommy Bahama		50.00
168.	LAMP Tiffany style, bronze colored metal base, stained glass shade		45.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

169.	MISCELLANEOUS Upholstered stool; (2) throw rugs - 24" x 34"	30.00
170.	TREADMILL Life Fitness, T3	100.00
171.	PAINTING - 54" X 60" Multi media, abstract flowers, squares, no apparent signature	100.00
172.	FIGURINE - 28" Lladro, Gres finish, woman with paint palette, "Portrait", Ref. No: 4942	600.00
173.	PLANTER Painted with relief decoration, made in Mexico	50.00
174.	BISTRO SET (3) Black painted metal, circular table top, together with (2) side chairs	60.00
175.	BENCH Black painted metal, scroll arms	40.00
	TOTAL FOR WEST UPSTAIRS BEDROOM:	\$2,240.00
 NORTH UPSTAIRS GUEST ROOM		
176.	CHILD'S BENCH Pine, "L" form with storage	\$40.00
177.	CHILD'S ROCKER Rattan and wicker, with pink cushion	25.00
178.	NIGHTSTAND Pine, rectangular top, single drawer	20.00
179.	LAMP Glass and polished metal, square fabric shade NOTE: Matches # 84 and 96	25.00
180.	BED Light stain wood, fullsize, together with mattress, box spring and frame	75.00
181.	SCREEN - 61" X 36" Light stain wood, three panels, cutouts for photographs	10.00
182.	TELEVISION - 20" JVC, CRT, with VCR CONDITION: Obsolete - no commercial value	0.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

183.	STAND Medium stain wood, bamboo and cane accents	25.00
	TOTAL FOR NORTH UPSTAIRS GUEST ROOM:	\$ 220.00
 SOUTH UPSTAIRS GUEST ROOM		
184.	CHEST Bombé, shaped marble top, medium stained wood, floral decorations, three drawers	\$30.00
185.	LOW CHAIR Woven rattan, wood legs	35.00
186.	ARMOIRE Medium stain wood, overhanging cornice, two doors with lattice inserts, over two solid doors	75.00
187.	TELEVISION - 32" Vizio, LCD, model no. VO32OE, 2009	45.00
188.	WOOD CARVING Painted and carved, seated figure	20.00
189.	GICLÉE - 46" X 64" On canvas, "The Beatles", 353/950, stylized photograph of the album cover of the Beatles first album release in the United States in 1964	100.00
190.	NIGHTSTANDS (2)	65.00
	- Early 20 th Century, stripped pine, painted floral decoration, single drawer over door	40.00
	- Medium stain pine, rectangular top, three drawers, bracket feet	25.00
191.	LITHOGRAPHS (2) - 11" X 17" Late 19 th Century, landscape with figures and animals, in black and gold wood frames	50.00
192.	SLEIGH BED Medium stain wood, Queen size, head and foot board, together with mattress, box spring, and frame	75.00
193.	LAMP Gold wood, glass decoration, purple shade	25.00
	TOTAL FOR SOUTH UPSTAIRS GUEST ROOM:	\$ 520.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

WEST GARAGE

194.	GOLF CART Club Car, white, roof console, headlights, Serial No. CCI102519301, 2010	\$2,000.00
195.	WALL UNITS (2) Mica, brass pulls - no commercial value	0.00
196.	CONTENTS OF WALL UNIT Assorted shoes, towels - no commercial value	0.00
197.	PAINTING - 84" X 48" sight size Barry Leighton Jones, English, (1932 - 2011) Oil on canvas, signed lower right, "Leighton Jones", European dock scene with boats, in gallery wrap frame	100.00
198.	CABINET Medium stain and painted wood, magazine rack	25.00
199.	MISCELLANEOUS (2) Sets golf clubs, with bags; assorted golf bags; step ladder; assorted household items	100.00
	TOTAL FOR WEST GARAGE:	\$2,225.00

EAST GARAGE

200.	MISCELLANEOUS Mica cabinet - no commercial value; step ladder; cleaning equipment; vases; shredder	\$30.00
201.	REFRIGERATOR Amana, top freezer, red, 18 cubic foot, Model No. ATF1822MRH00	75.00
	TOTAL FOR EAST GARAGE:	\$ 105.00

PATIO / POOL AREA

202.	PATIO FURNITURE Woodard, brown powder coated aluminum with sling seating, consisting of (2) double gliders, serving cart, (6) dining arm chairs, oval dining table/umbrella, (8) swivel bar stools, (2) ottoman, (4) chaise lounges, (3) side tables	\$2,000.00
------	---	------------

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

203.	METAL STATUARY		2,800.00
	- (2) Metal cranes, 5' and 6'	400.00	
	- (3) Cherubs on a swan	300.00	
	- (3) Children on a log fishing	300.00	
	- Angel holding fish	100.00	
	- Seated boy on stump with fishing pole	300.00	
	- Nude woman on chaise, Leonardo Ross	1,000.00	
	- Golfer holding clubs and lantern	150.00	
	- Young girl dressed in her mother's clothes, Jim Davidson (located at front entrance)	250.00	
204.	PLANTERS		500.00
	- (4) Large pottery with incised decoration	200.00	
	- (2) Mexican, round	100.00	
	- (3) Assorted ceramic frogs and turtle	100.00	
	- Tall pottery with line decoration (front entrance)	50.00	
	- Pottery with fish decoration	50.00	
205.	MISCELLANEOUS		440.00
	- Cast cement pelican	100.00	
	- Metal pedestal	50.00	
	- Cast cement turtle	35.00	
	- Curved cement and tile bench	50.00	
	- Assorted silk flowers - no commercial value	0.00	
	- Cement succulent; (2) ladles; (6) metal watering cans; (2) terracotta clocks; terracotta pot	60.00	
	- Mexican ceramic giraffe	40.00	
	- (2) Mexican sun plaques	70.00	
	- (2) Plastic pots with silk plant	35.00	
	TOTAL FOR PATIO / POOL AREA:		\$5,740.00
	TOTAL FOR LIONS HEAD LANE:		\$36,270.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

2494 SOUTH OCEAN BLVD, BOCA RATON, FL

ELEVATOR AREA

206.	ARM CHAIRS (2) Tan leather, wood legs, designed by Umberto Assnago for Giorgetti	\$600.00
207.	CONSOLE TABLE Rectangular marble top, chrome "U" shape support	150.00
208.	OCCASIONAL TABLE Brown metal, circular top, shaped base	50.00
209.	MISCELLANEOUS Painted fabric sun; pewter bowl; artificial arrangement with ceramic vase	40.00
TOTAL FOR ELEVATOR AREA:		\$ 840.00

LIVING / DINING AREA

210.	PAINTING - 48" X 48" sight size Oil on canvas, signed lower left, "R. A. Braudes", landscape with abstract squares, in gold wood frame	\$250.00
211.	WALL UNIT Dark stain oak, three cabinets, two open shelves NOTE: Attached to wall	500.00
212.	ELECTRONICS - Television - 46", Samsung, LCD, model no. LNT4665 FX/XAA, 2007 - Bose AV18 Media Center, with subwoofer and (5) speakers - Dish box, VIP 822 DVR - not owned	450.00 150.00 300.00 N/A
213.	MISCELLANEOUS DECORATIVE ITEMS (3) Wood picture frames on stands; (3) vases; candlestick; vase; bowl; floor vase with artificial arrangement	75.00
214.	MIRROR - 23" X 21" Jay Strongwater, enameled birds and butterflies, style no. SHM3012455	2,000.00
215.	SECTIONAL SOFA Beige upholstery, square form, "L" shape, with accessory pillows, rear wood shelving, Bowetepi	400.00
216.	COCKTAIL TABLE Square glass top, chrome supports, smoked glass base	150.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

		30.00
217.	AREA RUG - 7' X 5' Wool, light tan with black stripes, made in India	
		1,000.00
218.	CANDELABRA - 7" X 30" Jay Strongwater, 54/250, branches with leaves and butterflies	
		400.00
219.	TUB CHAIRS (2) Beige leather with dark stain wood trim, by Montbel, with accessory pillows	
		100.00
220.	END TABLE Circular glass mirror top, metal tulip base, by Arteriors	
		200.00
221.	FLOOR LAMP - 75" Designed by Orlando Favaretto, (6) gooseneck lamps, chrome body, plastic shades, by De Majo	
		125.00
222.	MISCELLANEOUS (4) - (2) Orange glass, (1) black and white terracotta, all with artificial arrangements - Artificial arrangement, in glass vase	100.00 25.00
		175.00
223.	TILES (7) Multicolor abstract geometric designs, verso reads, "Lineage Tile"	
		300.00
224.	SOFA AND OTTOMAN Designed by Rick Lee, rust leather upholstery, symmetrical form, "Arclounge" by American Leather	
		250.00
225.	END TABLE - 18" X 10" X 12" Circular top, appears to be petrified wood, tripod tapered leg base	
		50.00
226.	PLANT STAND Polished gray metal, square form, single shelf	
		40.00
227.	MISCELLANEOUS Artificial arrangement in glass vase; black metal candlestick	
		250.00
228.	DINING TABLE - 72" diameter Circular glass top, circular six legged metal base	
		1,200.00
229.	DINING CHAIRS (8) Designed by Chi Wing Lo, tan leather back and seat, maple trim and legs, by Giorgetti	
		20.00
230.	ARTIFICIAL ARRANGEMENT In white glazed pot	
		150.00
231.	MIRROR - 84" X 48" Silver wood, wavy form, rectangular mirror plate	

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

232.	SIDE TABLE Designed by Fabio Di Bartolomei, circular glass top, twist glass support, on wood base, by "Fiam", Italy	200.00
233.	VASE Painted frosted glass with artificial arrangement CONDITION: Paint loss	5.00
234.	FLOOR CANDLESTICKS (3) Dark stain wood, Arts and Craft style	30.00
235.	SCULPTURE - 92" Wood, resin, glass, folk art style, painted and decorated board, with glass inset and resin base	100.00
236.	CONTENTS OF HALL BATH Mirror - 28"x 24", gold wood, beveled mirror plate; (2) wall sconces; (2) artificial arrangements in pots	75.00
	TOTAL FOR LIVING / DINING AREA:	\$8,525.00
	 MASTER BEDROOM	
237.	PAINTINGS (2) - 18" X 14" sight size Larry Laslo, American, (20 th - 21 st Century) Picasso style figures, in wood frames	\$600.00
238.	PAINTING - 30" X 43" sight size Kirt G. Brown, American, (20 th - 21 st Century) Oil on board, titled, "River Bend" signed lower right, "Kirt G. Brown", riverscape, in silver wood frame	150.00
239.	SOFA Tan leather, single arm, loose cushion back and seat, polished metal legs	200.00
240.	OCCASIONAL TABLE Circular glass top, painted metal base	40.00
241.	VASE Blown glass, brown color, bulbous form, with artificial arrangement	25.00
242.	FLOOR LAMP Gray metal base and body, square beige fabric shade	75.00
243.	DOUBLE DRESSER Medium stain wood veneer, rectangular top, six drawers with metal pulls	250.00
244.	TELEVISION - 40" Samsung, LCD, model no. LN40A650S1FXZA, 2008	150.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

245.	<p>BED Medium stain wood veneer and polished metal, king size, two built in night stands, together with mattress, box spring and frame</p>	350.00
246.	<p>LAMPS (2) Plastic and brushed metal, square form, gray fabric shade, by Anthony</p>	80.00
247.	<p>PAINTING - 17" X 16" sight size Kirt G. Brown, American, (20th - 21st Century) Oil on board, titled, "Forever", signed lower right, "Kirt G. Brown", landscape with trees, in silver wood frame</p>	100.00
248.	<p>CONTENTS OF BATH Assorted vases; flower arrangements; bathroom accessories</p>	25.00
	TOTAL FOR MASTER BEDROOM:	\$2,045.00

NORTHEAST GUEST ROOM

249.	<p>BED Queen size, together with mattress, box spring and frame, accessory pillows</p>	\$75.00
250.	<p>SIDE TABLE Demilune, glass top, black and brown metal base, single shelf</p>	60.00
251.	<p>LAMP Brass and leather, oval body, beige fabric shade</p>	40.00
252.	<p>PRINTS (4) Color halftones, assorted tropical subjects, in wood frames</p>	60.00
253.	<p>CHEST OF DRAWERS Light stain wood, pinched waist, seven drawers</p>	100.00
254.	<p>ARTIFICIAL ARRANGEMENTS (2) Roses, in glass vase; lilac flowers in green bowl</p>	35.00
255.	<p>END TABLE Circular wood top, gray metal base</p>	30.00
256.	<p>LOUNGE CHAIR Black leather and tubular steel, recliner, with matching ottoman</p>	100.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

257.	FLOOR LAMP Chrome, adjustable	15.00
TOTAL FOR NORTHEAST GUEST ROOM:		\$ 515.00
KITCHEN / FAMILY AREA		
258.	PAINTING - 60" X 36" sight size Oil on canvas, abstract square, yellow, beige, brown, no apparent signature, in gallery wrap frame	\$100.00
259.	TREADMILL Life Fitness, T3.0	75.00
260.	SOFA Beige leather, two seats with attached circular glass table and lamp	300.00
261.	NESTING TABLES (3) Maple tops, triangle form, tripod base	75.00
262.	MIXED MEDIA (2) - 16" X 16" sight size Scott Hile, American (20 th - 21 st Century) Abstracts, titled "Shifting gears", "Germination", pencil signed lower right, "S. Hile", in gold wood frame	100.00
263.	COCKTAIL TABLE Multi-pane rectangular glass tops on metal supports, rectangular wood base, metal legs	250.00
264.	MISCELLANEOUS Pewter tray; (3) artificial arrangements in vases; "Athletic Club" plate; fish tray; bowl; assorted books	75.00
265.	AREA RUG - 6' X 8' Dhurrie, flat weave, geometric design	35.00
266.	PRINTS (2) Color halftone, abstract, in silver wood frames CONDITION: Faded - no commercial value	0.00
267.	DECANTERS (2) ① Clear glass	50.00
268.	TOP SHELF	55.00
	② (2) Miscellaneous Asian style bowls	20.00
	③ Shallow glass bowl - 11", with decoration in relief	15.00
	④ Asian style bowl, George Briard	20.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

269.	SECOND SHELF		40.00
	(8) Glass and metal shakers	10.00	
	- 9" - Glass religious object	10.00	
	- Cream jug and covered sugar on plate	20.00	
	(2) Cut glass bowl, chips, imperfections - no commercial value	0.00	
270.	THIRD SHELF		90.00
	- (2) Bavarian plates with cups	15.00	
	- (2) Laure Japy plates - 12", green trim, decorative center	15.00	
	- (8) Laure Japy plates - 12 1/2", full color center	60.00	
271.	FOURTH SHELF		85.00
	- (5) Tulip flutes - 8"	25.00	
	- (8) Martinis, clear glass bowl, green bubble base	40.00	
	- (4) Martinis, clear glass bowl, twist glass stem	20.00	
272.	BOTTOM SHELF		25.00
	Serving platter, with matching dip bowl, "China"		
273.	TELEVISION - 40"		150.00
	Samsung, LCD, model no. LNT4065FX, 2008		
274.	POT		10.00
	Terracotta		
275.	BAR STOOLS (6)		240.00
	Maple with polished steel support, fabric pillow back with upholstered seat, by Heltzer		
(276.)	SERIGRAPH - 33" X 23" sight size		50.00
	Janet Bauman, American (20 th - 21 st Century)		
	Abstract, Resten Series, 12P-1, pencil signed lower right, "J. Baughman ©2000", in silver wood frame		
277.	DINNERWARE		110.00
	Laure Japy, consisting of (6) plates - 12"; (8) plates - 9"; (8) bowls - 9"		
(278.)	MISCELLANEOUS KITCHENWARE		150.00
	Assorted everyday dinnerware, glassware, cookware, small appliances		
	TOTAL FOR KITCHEN / FAMILY AREA:		\$2,065.00
	NORTHWEST GUEST ROOM		
279.	WALL MOUNTED SHELF UNIT		\$150.00
	Medium stain wood, two panels, adjustable shelves		

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

280.	MISCELLANEOUS ON SHELF UNIT (5) Wood artist mannequins; (2) hurricane candle holders; (2) artist signed pottery vases, brown and tan; (4) assorted vases; artificial plant in pot	100.00
281.	LOUNGE CHAIR AND OTTOMAN Tan leather, art deco style	250.00
282.	NIGHTSTANDS (2) Light stain wood, two drawers, tapered legs	80.00
283.	LAMPS (2) Gold and silver wood, bulbous stepped form, silver paper shade	70.00
284.	BED Polished metal headboard and footboard, full size, together with mattress, box spring and frame	75.00
285.	LITHOGRAPHS (3) - 10" X 5" Abstracts, Geometric "J", Geometric "I", Geometric "H", illegibly pencil signed lower right, in silver frames	60.00
286.	MISCELLANEOUS Green vase with dried branches; color halftone geometric abstract in wood frame	40.00
TOTAL FOR NORTHWEST GUEST ROOM:		\$ 825.00
BALCONY		
287.	OUTDOOR FURNITURE Brown Jordan, consisting of (4) chaise lounges, (2) end tables CONDITION: Pitted	\$50.00
TOTAL FOR BALCONY:		\$ 50.00
TOTAL FOR SOUTH OCEAN BLVD:		\$14,865.00
REPORT TOTAL:		\$51,135.00

SUMMARY

7020 Lions Head Lane, Boca Raton, FL

FOYER	\$2,455.00
LIVING AREA	4,775.00
POWDER ROOM	225.00
DINING AREA	4,565.00
KITCHEN	2,115.00
FAMILY ROOM	4,685.00
POWDER ROOM 2	120.00
WEST HALL	1,475.00
FIRST FLOOR NORTHWEST GUEST ROOM	600.00
FIRST FLOOR WEST GUEST ROOM	605.00
EAST SITTING ROOM	995.00
STAIRWELL	100.00
STUDY	2,125.00
UPSTAIRS WEST HALL	155.00
WEST UPSTAIRS BATH / CLOSET	225.00
WEST UPSTAIRS BEDROOM	2,240.00
NORTH UPSTAIRS GUEST ROOM	220.00
SOUTH UPSTAIRS GUEST ROOM	520.00
WEST GARAGE	2,225.00
EAST GARAGE	105.00
PATIO POOL AREA	5,740.00
TOTAL FOR LIONS HEAD LANE:	\$36,270.00

SIMON L. BERNSTEIN FAIR MARKET VALUE APPRAISAL - EFFECTIVE DATE SEPTEMBER 13, 2012

2494 South Ocean Blvd., Unit C-5, Boca Raton, FL

ELEVATOR AREA	\$840.00
LIVING / DINING AREA	8,525.00
MASTER BEDROOM	2,045.00
NORTHEAST GUEST ROOM	515.00
KITCHEN / FAMILY AREA	2,065.00
NORTHWEST GUEST ROOM	825.00
BALCONY	50.00
TOTAL FOR SOUTH OCEAN BLVD.:	\$14,865.00
REPORT TOTAL:	\$51,135.00

Approx 15,235
MISSING

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

IN RE: ESTATE OF SIMON BERNSTEIN,
Deceased

Case No.: 50 2012 CP 004391 NB
JUDGE JOHN L. PHILIPS

WILLIAM STANSBURY,
Petitioner

v.

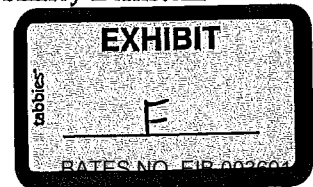
TED BERNSTEIN, Trustee of the Shirley
Bernstein Trust Agreement dated
May 20, 2008

**AMENDED PETITION TO DETERMINE THE WHEREABOUTS OF MISSING
TANGIBLE PERSONAL PROPERTY AND FOR PAYMENT OF RESTITUTION
TO THE ESTATE OF SIMON BERNSTEIN**

COMES NOW, William E. Stansbury ("Stansbury"), creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein (the "Estate"), et al., by and through his undersigned counsel, and pursuant to Fla. Prob. R. 5.025 (2015), files this Amended Petition to Determine the Whereabouts of Missing Tangible Personal Property belonging to the Estate and for Payment of Restitution to the Estate of Simon Bernstein ("Amended Petition"), and states as follows:

1. Stansbury expressly incorporates by reference as if fully restated herein the facts, arguments and Exhibits set forth in the Petition to Determine the Whereabouts of Missing Tangible Personal Property belonging to the Estate and for Payment of Restitution to the Estate of Simon Bernstein (the "Original Petition") previously filed by Stansbury.

2. In addition to the items identified as missing in the Original Petition, there are a substantial number of jewelry items that were known to exist after the death of Shirley Bernstein



and before the death of Simon Bernstein that do not appear in the most recent Inventory of the Estate of Simon Bernstein filed by Personal Representative Brian M. O'Connell.

3. More specifically, in 2009, for the Policy Period 8/10/2009-8/10/2010, Simon and Shirley Bernstein renewed a policy of insurance that covered items of jewelry owned by them. The policy included an itemized description of each piece of jewelry insured under the policy along with the amount for which each item was insured. Presumably each item was insured for its then-appraised fair market value. The aggregate value represented by the total of the coverage amounts for each jewelry item equals \$613,932. The Declarations Page and itemized property endorsement are attached hereto as **Composite Exhibit "1."**

4. Shirley died four months later on December 8, 2010. Under the terms of Shirley's Will, Article I, Simon was bequeathed all of Shirley's "personal effects, jewelry, collections, household furnishings and equipment . . ." Article I of Shirley's Will is attached as **Exhibit "2."** After Shirley's death all of the jewelry became Simon's property and part of his estate.

5. Simon died on September 13, 2012. The Co-Personal Representatives of Simon's Estate, Donald Tescher and Robert Spallina, filed an Inventory of the property of the Estate of Simon Bernstein on June 11, 2013 (the "T&P Inventory") and it reflected jewelry items valued at \$63,205. Tescher and Spallina have since resigned as Co-Personal Representatives of the Estate. A copy of the T&P Inventory is attached as **Composite Exhibit "3."** The current Personal Representative, Brian M. O'Connell, filed the most recent Inventory (the "Recent Inventory"), and it also reports the same jewelry valued at \$63,205. The Recent Inventory is attached as **Composite Exhibit "4."**

6. The discrepancy between the value of the itemized pieces of jewelry insured by Simon and Shirley in 2010 and the jewelry reported in the estate property Inventories is

significant. This missing jewelry constitutes a staggering diminution of \$550,727, representing approximately 50% of the Estate's total value of \$1,121,325, as reported in the Recent Inventory!

19. When the Court hears evidence relating the whereabouts of the tangible personal property as issue as raised in the Original Petition, along with evidence relating to the missing jewelry, those responsible should be required by the Court to make restitution to the Estate of Simon Bernstein, jointly and severally, or have Judgment entered against them.

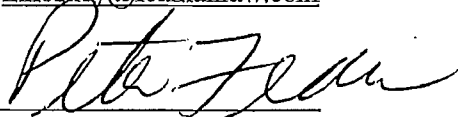
WHEREFORE, Petitioner, WILLIAM STANSBURY, requests that this Court conduct an evidentiary hearing to determine the whereabouts of the missing items of personal property, including the missing jewelry, and if not found, that the Court Order the culpable parties to make full restitution to the Estate of Simon Bernstein, or for the entry of a Final Judgment for the value of the missing property, together with Petitioner's costs, reasonable attorney fees incurred in the bringing of this Petition, and such other relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to those listed on the attached service list, on this 10th day of February, 2016.

PETER M. FEAMAN, P.A.
3695 West Boynton Beach Blvd., #9
Boynton Beach, FL 33436
Telephone: (561) 734-5552
Facsimile: (561) 734-5554
Service: service@feamanlaw.com
mkoskey@feamanlaw.com

By: _____


Peter M. Feaman
Florida Bar No. 0260347

SERVICE LIST

Alan Rose, Esq.
Mrachek, Fitzgerald Rose
505 S. Flagler Drive, #600
West Palm Beach, FL 33401
Tel. 561-655-2250
Counsel for Ted Bernstein
arose@pm-law.com and
mchandler@pm-law.com

John P. Morrissey, Esq.
330 Clematis Street, #213,
West Palm Beach, FL 33401
Tel. 561-833-0766
john@jmorrisseylaw.com
*Counsel for Molly Simon, et
al.*

Lisa Friedstein and
Carley Friedstein, Minors
c/o Jeffrey and Lisa Friedstein
Parent and natural Guardian
2142 Churchill Lane
Highland Park, IL 60035
lisa@friedsteins.com
lisa.friedstein@gmail.com

Eliot Bernstein
2753 NW 34th Street, Boca
Raton, FL 33434
Tel. 561-245-8588
iviewit@iviewit.tv

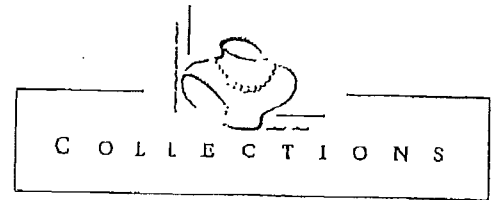
Joshua , Jacob and Daniel
Bernstein, Minors
c/o Eliot Bernstein
2753 NW 34th Street, Boca
Raton, FL 33434,
iviewit@iviewit.tv

Pamela Beth Simon
950 N. Michigan Ave., #2603
Chicago, IL 60611
psimon@stpcorp.com

Brian O'Connell, Esq.
Ashley N. Crispin, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens &
O'Connell
515 N. Flagler Drive, 20 Flr.
West Palm Beach, FL 33401
Tel. 561-832-5900
Personal Representative
boconnell@ciklinlubitz.com
service@ciklinlubitz.com

Gary Shendell, Esq.
Shendell & Pollock, P.L.
2700 N. Military Tr., Ste. 150
Boca Raton, FL 33431
*Counsel for Donald R.
Tescher & Robert L. Spallina*
gary@shendellpollock.com
ken@shendellpollock.com
britt@shendellpollock.com
grs@shendellpollock.com

Private Client Group
A division of AIU Holdings



American Home Assurance Co.
Name of Issuing Company

Renewal Declarations Page

Declarations Page

Your Declarations Page shows at a glance the coverage you have and your premium. Your Declarations Page is part of your policy. Please read your policy carefully, including your Declarations Page and any attached Endorsements, for a description of your coverage.

Policy Number:
PCG 0001332360

Policy Period: 08/10/2009 - 08/10/2010
At 12:01 A.M. standard time at your mailing address shown below

Name of Insured and Mailing Address:
Simon & Shirley Bernstein
7020 Lions Head Lane
Boca Raton, FL 33496

Agency Name, Address, Phone # & Code:
MarketScout Corporation-IL
40 W222 LaFox Rd Suite Q2
St. Charles, IL 60175

(630) 377-9430

0053923

YOU WILL BE BILLED SEPARATELY FOR ANY PREMIUM DUE.

The kind of losses that are covered and any special limits or deductibles that apply are explained in detail in your Policy.

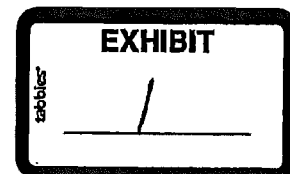
Summary of Coverage

Class	Scheduled Items Amount of Coverage	Blanket Items Amount of Coverage	Blanket Items Single Article Limit	Premium
JEWELRY				

Citizens Property Insurance Corporation Emergency Assessment: \$80.00

Total Premium: \$8,061.00

ENDORSEMENTS ATTACHED TO THIS POLICY:
PCP (03/06), PCG-GLBA (03/06), PCP-AEFL (03/06)



PCP-DEC-FL (09/07)

Schedule of Items

Endorsement Effective Date : 08/10/09

Policy Number: PCG 0001332360

JEWELRY

Item Description	Amount Insured
1 1 LDS 18K YG DIA BANGLE BRACELET 4.70 CT	\$22,045
2 LDS 18K YG ROLEX WATCH PRESIDENT MODEL	\$12,175
3 LDS 18K YG DIAMOND AND PEARL RING	\$14,995
4 1 PR 18K YG DIAMOND & PEARL EARRINGS 1.50 CTS	\$16,406
5 18K YG & WG DIAMOND RING	\$19,097
6 18K WG DIAMOND & JADE RING SET	\$4,357
7 18K YG & PLAT DIAMOND RUBY SAPPE EMERALD RING	\$16,406
8 18K YG LAPIS & DIAMOND MARQUISE SHAPE	\$3,460
9 18K YG PLAT DIA DOME RING 71 ROUND DIAMONDS	\$9,869
10 PR 18K YG DIAMOND HOOP EARRINGS 4.48 CTS	\$13,842
11 18K YG AND WG MOBE PEARL & DIAMOND RING	\$2,820
12 18K YG PLAT MULTI COLOR DIAMOND CLUSTER RING	\$30,503
13 14K YG PLAT DIAMOND CLUSTER RING 2.25 CTS	\$6,023
14 18K YG & WG BLACK OPAL & DIAMOND RING	\$23,454
15 18K YG 3/8" WIDE DOG COLLAR NECKLACE 38.5 DWT	\$3,717
16 18K YG GARNET & DIAMOND PENDANT	\$13,202
17 18K YG COMMEMORATIVE ISRAEL MEDALLION PEND WATCH	\$8,587
18 18K WG CHOPARD LDS DIA BANGLE BRACELET WATCH	\$17,302
19 18K YG & DIAMOND W/ GREEN ENAMEL BANGLE BRACELET	\$7,691
20 18K YG BANGLE BRACELET SET W/ OPALS RUBY SAP DIA	\$8,587
21 18K YG 27" OVAL AND TWIST LINK NECKLACE	\$3,460
22 18K YG TWISTED LINK & ROPE BAR LINK NKLC 15 1/2	\$3,844
23 18K YG & WG 36" DOUBLE ROPE CIRCLE WG ROPE SQUARE	\$4,486
24 1 JADE BEAD NECKLACE 1 JADE PENDANT	\$6,153
25 LADIES DIAMOND RING 1 ROUND 4.77 CT & 2 TAPERED BAGUETTE .60 TOTAL WEIGHT SET IN PLATINUM	\$51,652
26 ONE PAIR DIA/PLATINUM EARRINGS 2.07 CTW H/SI	\$17,174
27 1BK DIAMOND NECKLACE	\$12,303
28 18KT LADIES DIAMOND NECKLACE SET WITH ROUND BRILLIANT CUT PAVE DIAMONDS 5.81 CTS VS1 CLARITY, F-G COLOR	\$13,072
29 RING SET IN PLATINUM, MTG RECTANGLE CUT DIAMOND 7.17 CARAT WEIGHT, COLOR H, CLARITY SI-2, WITH TWO TRILLIANTS DIAMONDS 1.45 CARAT	\$247,250

TOTAL JEWELRY AMOUNT COVERED \$613,932

WILL OF

SHIRLEY BERNSTEIN

I, SHIRLEY BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. My spouse is SIMON L. BERNSTEIN ("SIMON"). My children are TED S. BERNSTEIN ("TED"), PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to SIMON, if SIMON survives me, my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if SIMON does not survive me, I give this property to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical, and if neither SIMON nor any child of mine survives me, this property shall pass with the residue of my estate.

ARTICLE II. RESIDENCES

I give to SIMON, if SIMON survives me, my entire interest in any real property used by us as a permanent or seasonal residence, subject to any mortgage or other lien. If SIMON does not survive me, such interest shall pass with the residue of my estate.

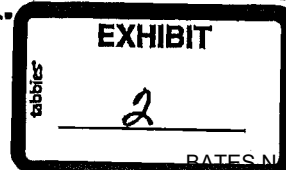
ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate to the Trustee then serving under my revocable Trust Agreement dated today, as may be amended and restated from time to time (the "Existing Trust"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

LAST WILL
OF SHIRLEY BERNSTEIN

Shirley BERNSTEIN

TESCHER & SPALLINA, P.A.



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF PROBATE DIVISION
SIMON BERNSTEIN File No. 502012CP004391IZXXXXSB
Deceased.

AMENDED INVENTORY

The undersigned co-personal representatives of the estate of SIMON BERNSTEIN, deceased, who died on September 13, 2012, and whose social security number is XXX-XX-5211, submits this Amended Inventory of all the property of the estate, that has come into the hands, possession, control, or knowledge of these personal representatives:

REAL ESTATE IN FLORIDA – Exempt (Protected) Homestead:

Description

NONE

REAL ESTATE IN FLORIDA – Non-Exempt Homestead:

Description

Estimated Fair Market Value

NONE

(Whether homestead property is exempt from the claims of creditors, whether it is properly devised and whether it is a probate asset may have to be determined by appropriate proceedings.)

OTHER REAL ESTATE IN FLORIDA:

Description

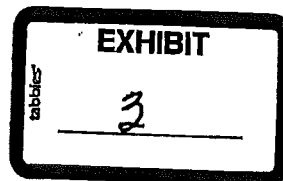
Estimated Fair Market Value

NONE

\$

Total Real Estate in Florida – Except Exempt (Protected) Homestead

\$



Estate of Simon Bernstein
File No. 502012CP00439JIZXXXX SB
AMENDED INVENTORY

PERSONAL PROPERTY WHEREVER LOCATED:

<u>Description</u>	<u>Estimated Fair Market Value</u>
Legacy Bank of Florida - Acct. Ending 2587	\$384.25
Wells Fargo - Acct. Ending 1945	1,599.49
Sabadell Bank - Acct. Ending 9414	15,153.18
JP Morgan (4788015220)	77,491.27
JP Morgan (W32585007)	519,266.37
LIC Holdings, Inc. (33% ownership)	UNDETERMINED
Furniture, furnishings, household goods and personal effects	51,135.00
Jewelry	63,205.00
US Life Proceeds	50,800.08
Monarch Life Proceeds	4,000.00
Cincinnati Life Proceeds	7,685.00
Promissory Note from Bernstein Family Realty, LLC (not including accrued interest)	365,000.00
TOTAL OF ALL PERSONAL PROPERTY AND FLORIDA REAL ESTATE	\$ <u>1,155,719.40</u>

All real estate located outside the State of Florida owned by the decedent of which the personal representative is aware, if any, is described on a schedule attached hereto. [If none, so indicate]

NONE

NOTICE: Each residuary beneficiary in a testate estate or heir in an intestate estate has the right to request a written explanation of how the inventory value of any asset was determined, including whether the personal representative obtained an independent appraisal for that asset and from whom the appraisal was obtained. Any other beneficiary may request this information regarding all assets distributed to or proposed to be distributed to that beneficiary.



Estate of Simon Bernstein
File No. S02012CP004391IZXXXX SB
AMENDED INVENTORY

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

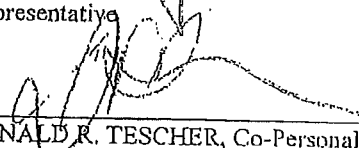
Signed on this 24th day of Dec, 2013.



ROBERT L. SPALLINA, Esq.
Attorney for Personal Representative
Florida Bar No. 497381
Teschler & Spallina, P.A.
4855 Technology Way, Suite 720
Boca Raton, FL 33431
Telephone: (561) 997-7008
Primary: rspallina@tescherspallina.com
Secondary: kmoran@tescherspallina.com



ROBERT L. SPALLINA, Co-Personal Representative



DONALD R. TESCHER, Co-Personal Representative



IN THE CIRCUIT COURT FOR PALM BEACH
COUNTY, FLORIDA PROBATE DIVISION

IN RE: ESTATE OF

SIMON L. BERNSTEIN
Deceased.

FILE NO: 502012CP004391XXXXSB

INVENTORY BY BRIAN M. O'CONNELL, AS
SUCCESSOR PERSONAL REPRESENTATIVE

The undersigned Successor Personal Representative of the estate of SIMON L. BERNSTEIN, deceased, who died September 12, 2012 submits this inventory of all the property of the estate, that has come into the hands, possession, control, or knowledge of this Personal Representative:¹

REAL ESTATE IN FLORIDA - Exempt (Protected) Homestead: NONE

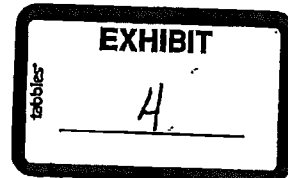
REAL ESTATE IN FLORIDA - Non Exempt Homestead: NONE

(Whether or not homestead property is exempt from the claims of creditors, is properly devised and is a probate asset may have to be determined by appropriate proceedings.)

OTHER REAL ESTATE IN FLORIDA: NONE

Total Real Estate in Florida - Except Exempt (Protected) Homestead \$ 0.00

¹ This Inventory reports all assets which have come into the possession and knowledge of the undersigned as Successor Personal Representative as of this date. The undersigned plans on conducting discovery as to possible additional assets and an Amended Inventory will be filed, if necessary.



PERSONAL PROPERTY WHEREVER LOCATED:

Description	Estimated Fair Market Value
Sabadell Bank – estate checking account # 15346	\$ 11,735.84
JP Morgan – estate checking account	25,531.59
JP Morgan – estate inherited IRA account # 8004	559,217.78
Promissory Note dated July 1, 2008, payable to Decedent by Bernstein Family Realty LLC	365,000.00
Jewelry (as of 5/14/13 appraisal by A. Matteini & Co.)	63,205.00
Furniture & furnishings (as of 1/22/13 appraisal by Robert A. Hittel)	51,135.00
Reimbursements owed to the Estate by Bernstein Family Realty LLC for expenses and legal fees per Schedule D of the T&S Accounting and per Schedule E of the Amended Accounting of Curator	25,500.00
Reimbursements owed to the Estate by the Simon Bernstein Insurance Trust for legal fees per Schedule D of the T&S Accounting and per Schedule E of the Amended Accounting of Curator	20,000.00
LIC Holdings, Inc. (Company stock held at corporate office per Schedule E of the Amended Accounting of Curator)	Unknown
Objection to the Final Accounting of Personal Representative for the time period of September 13, 2012 through February 28, 2014, dated August 13, 2014	Unknown
Claim for insurance proceeds pending under <u>Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company</u> , Case Number 13 cv 3643 (N.D. Ill., E. Div.)	Unknown
Total Personal Property – Wherever Located	\$1,121,325.21

TOTAL OF ALL PERSONAL PROPERTY AND FLORIDA REAL ESTATE
 (Except exempt (protected) homestead) \$ 1,121,325.21

All real estate located outside the State of Florida owned by the decedent of which the Personal Representative is aware, if any, is described on a schedule attached hereto, [If none, so indicate]

NONE KNOWN AT THIS TIME.

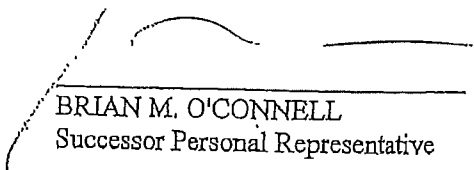
NOTICE: Each residuary beneficiary in a testate estate or heir in an intestate estate has the right to request a written explanation of how the inventory value of any asset was determined, including whether the Personal Representative obtained an independent appraisal for that asset and, if so, a copy of the appraisal. Any other beneficiary may request this information regarding all assets distributed to or proposed to be distributed to that beneficiary.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

Signed on December 1, 2014.

94238


ASHLEY N. CRISPIN
Florida Bar # 37495
FKR
CIKLIN, LUBITZ, MARTENS, & O'CONNELL
515 North Flagler Drive, 20th Floor
West Palm Beach, FL 33401
Telephone No. (561) 832-5900
Facsimile: (561) 833-4209
Primary e-mail: service@ciklinlubitz.com
Secondary email: probateservice@ciklinlubitz.com



BRIAN M. O'CONNELL
Successor Personal Representative

[Print or Type Names Under All Signature Lines]

The Law Offices
of
PETER M. FEAMAN, P.A.
Strategic Counselors. Proven Advocates.™

Peter M. Feaman, Esq.
Nancy E. Guffey, Esq.
Jeffrey T. Royer, Esq.
Paula S. Marra, Esq. of Counsel



www.FeamanLaw.com

3695 W. Boynton Beach Blvd.
Suite 9
Boynton Beach, FL 33436
Telephone: 561-734-5552
Facsimile: 561-734-5554

August 26, 2016

Via Federal Express

Honorable John L. Phillips
NORTH COUNTY COURTHOUSE
3188 PGA Boulevard, Room 1414
Palm Beach Gardens, FL 33410

Re: Estate of Simon L. Bernstein; Case No.: 502012CP004391XXXXNB (IH)

Dear Judge Phillips:

With regard to *Trustee's Motion to Approve Retention of Counsel and, to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim against Estate by William Stansbury*, set for hearing on **September 1, 2016 at 8:30 a.m.**, enclosed please find the following documentation:

1. Notice of Hearing;
2. Trustee's Motion to Approve Retention of Counsel and, to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim against Estate by William Stansbury;
3. Objection to Trustee's Motion to Appoint Ted Bernstein as Administrator Ad Litem to Defend Claim Against Estate by William Stansbury; and,
4. Case law, Florida Statutes and Probate Code cited in the above-listed Objection:
 - A. *Funchess v. Gulf Stream Apartments of Broward County, Inc.*, 611 So.2d 43 (Fla. 4th DCA 1993);
 - B. *Arzuman v. Estate of Prince Bander BIN Saud Bin, etc.*, 879 So.2d 675 (Fla. 4th DCA 2004);
 - C. *Montgomery v. Cribb*, 484 So.2d 73 (Fla. 2d DCA 1986);
 - D. *Estate of Bell v. Johnson*, 573 So.2d 57 (Fla. 1st DCA, 1990)
 - E. §731.201(23), Fla. Stat. (2013);
 - F. §733.602(1), Fla. Stat. (2013); and,
 - G. Fla. Prob. R. 5.440.

Honorable John L. Phillips
Re: In Re: Estate of Simon L. Bernstein
Case No. 502012CP004391XXXXNB (IH)
August 26, 2016
Page 2 of 2

Thank you for your consideration of this matter.

Respectfully submitted,
PETER M. FEAMAN, P.A.

By: _____


Peter M. Feaman

PMF/tr

Enclosures

cc: Alan Rose, Esq. (via email w/enclosures)
Brian O'Connell, Esq. (via email w/enclosures)
Gary R. Shendell, Esq. (via email w/enclosures)
Diana Lewis, Esq. (via email w/enclosures)
Eliot Bernstein (via email w/enclosures)
Jeffrey Friedstein and Lisa Friedstein (via email w/enclosures)
Pamela Beth Simon (via email w/enclosures)

1

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

IN RE:

CASE NO. 502012CP004391XXXXNBIH

ESTATE OF SIMON L. BERNSTEIN,
_____ /

NOTICE OF HEARING
Uniform Motion Calendar

YOU ARE HEREBY NOTIFIED that the undersigned has called up for a hearing on the following:

DATE: Thursday, September 1, 2016

TIME: 8:30 a.m.

JUDGE: Honorable John L. Phillips

PLACE: Palm Beach North County Courthouse, 3188 PGA Blvd., Courtroom 3, Palm Beach Gardens, FL 33410

MATTER(S) TO BE HEARD:

TRUSTEE'S MOTION TO APPROVE AGREEMENT BETWEEN TED S. BERNSTEIN, TRUSTEE, AND BRIAN O'CONNELL, AS PR OF THE ESTATE OF SIMON BERNSTEIN, REGARDING THE ESTATE'S PERSONAL PROPERTY SOLD WITH TRUST'S REAL ESTATE

TRUSTEE'S MOTION TO APPROVE RETENTION OF COUNSEL AND, TO APPOINT TED S. BERNSTEIN AS ADMINISTRATOR AD LITEM TO DEFEND CLAIM AGAINST ESTATE BY WILLIAM STANSBURY

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: Facsimile U.S. Mail; U.S. Mail; E-mail Electronic Transmission; FedEx; Hand Delivery this 23rd day of August, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone | (561) 655-5537 Facsimile
Email: arose@mrachek-law.com
Secondary: mchandler@mrachek-law.com
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST - CASE NO. 502012CP004391XXXXNBIJH

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
Email: (iviewit@iviewit.tv)

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

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035
lisa@friedsteins.com
Individually and as trustee for her children, and
as natural guardian for M.F. and C.F., Minors

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com
Individually and as trustee for her children, and
as natural guardian for J.I. a minor

Max Friedstein
2142 Churchhill Lane
Highland Park, IL 60035

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3695 West Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
(561) 734-5552 - Telephone
Email: service@feamanlaw.com;
mkoskey@feamanlaw.com
Counsel for William Stansbury

Gary R. Shendell, Esq.
Kenneth S. Pollock, Esq.
Matthew A. Tornincasa, Esq.
Shendell & Pollock, P.L.
2700 N. Military Trail, Suite 150
Boca Raton, FL 33431
(561) 241-2323 - Telephone
Email: gary@shendellpollock.com
ken@shendellpollock.com
matt@shendellpollock.com
estella@shendellpollock.com
britt@shendellpollock.com
grs@shendellpollock.com
robbyne@shendellpollock.com

Robert Spallina, Esq.
Donald Tescher, Esq.
Tescher & Spallina
925 South Federal Hwy., Suite 500
Boca Raton, Florida 33432

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.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."

SPANISH

Si usted es una persona minusvalida que necesita algun 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 numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente 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.

CREOLE

Si ou sè youn moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi 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; téléfonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal 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.

2

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

CASE NO. 502012CP004391XXXXNB-IH
Probate – Judge John L. Phillips

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

_____ /

**TRUSTEE'S MOTION TO APPROVE RETENTION OF COUNSEL AND, TO APPOINT
TED S. BERNSTEIN AS ADMINISTRATOR AD LITEM TO DEFEND CLAIM
AGAINST ESTATE BY WILLIAM STANSBURY**

Ted S. Bernstein, Successor Trustee of the Simon Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon's Trustee"), moves the Court to approve the retention of the law firm Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. ("Mrachek-Law") as counsel to defend the Estate in an independent action brought by William Stansbury, and to appoint Ted Bernstein as Administrator Ad Litem to defend the claim against the estate by William Stansbury and states:

1. Claimant, William Stansbury, has sued the Estate of Simon Bernstein for more than \$2.5 million, a claim which vastly exceeds the value of all of the current assets and potential recoveries by the Estate in third party litigation. The Estate attempted to resolve Stansbury's claim in good faith at mediation, but was unable to reach agreement with Stansbury during the mediation and does not believe it is likely that the claim can be settled. In light of that, the Estate must vigorously defend the claim.

2. Stansbury's claim relates to his business relationship with the decedent, Simon Bernstein, through an entity known as Life Insurance Concepts, Inc. ("LIC"). That entity was a closely-held corporation owned primarily by Simon Bernstein and Ted Bernstein, with Stansbury

at one time owning 10% of non-voting stock. LIC was operated and managed by Simon Bernstein and Ted Bernstein, who had sole voting rights, and served on the Board of Directors.

3. Stansbury's claim arises from his employment by and ownership interest in LIC. Before Simon died, Stansbury sued Simon Bernstein, Ted Bernstein, LIC, and various subsidiaries of LIC, asserting a variety of claims. The Complaint was filed on July 30, 2012. Simon Bernstein died 45 days after the Complaint was filed, before any responsive pleading or motion to dismiss was filed. A suggestion of death was filed.

4. LIC actively defended and litigated against Stansbury's claim, and pursued a counterclaim against Stansbury, under the direction of Ted Bernstein. During this litigation, Ted Bernstein was the primary client contact for the defense of the claim for approximately two years before Stansbury settled his differences with LIC. Along the way, Stansbury also asserted a claim against The Shirley Bernstein Trust, which Ted Bernstein as Trustee defended.

5. LIC and the other defendants initially hired Greenberg Traurig. In April, 2013, LIC and Ted Bernstein retained Mrachek-Law, which formally appeared on April 12, 2013. Shortly thereafter, Stansbury served summonses on the co-PRs of Simon's Estate, and the Estate retained Mark Manceri as its counsel.

6. Alan Rose of Mrachek-Law served as lead counsel for LIC, Ted Bernstein, and The Shirley Bernstein Trust, and coordinated the defense work with the co-PRs and Mr. Manceri, taking the lead role in the discovery, depositions, and court hearings. Specifically, for more than a year until the claims against LIC, Ted Bernstein, and Shirley Bernstein Trust were settled, Mrachek-Law handled the production of substantial business records; interviewed witnesses; coordinated the defense strategy with Ted Bernstein and counsel for the Estate; and worked with LIC's accountants

and professionals in preparing the defense of the claims. As a result of that work, Mrachek-Law is familiar with the facts, circumstances, and events, and is prepared to represent this Estate if hired.

7. As a result of his involvement as a founder and a shareholder of LIC, and his participation in this litigation for approximately two years, Ted Bernstein is fully familiar with the issues in the case, the nature of the claims, the relevant documents, and has firsthand knowledge of certain of the facts. As Successor Trustee of the Simon Bernstein Trust, Ted Bernstein has a substantial and direct interest in seeing that the claim of Stansbury is properly defended and ultimately defeated. He has conferred with the beneficiaries of The Simon Bernstein Trust, including the Guardian *Ad Litem*, and all are in favor of Ted Bernstein directing the defense of the claim through the Mrachek-Law firm.

8. In contrast, and through no fault of his own, Brian O'Connell, successor PR of the estate has more limited knowledge of the factual and legal underpinnings of Stansbury's claim and LIC. Neither Mr. O'Connell nor his law firm has ever done work for Simon Bernstein (while alive) or LIC; they never worked for, at or with LIC; they never met Simon Bernstein; and they have no firsthand personal knowledge of any facts relevant to the case.

9. Accordingly, and having conferred with the Trustee and the beneficiaries of the Trust, Mr. O'Connell has agreed to have Mrachek-Law retained to represent the Estate in the Stansbury litigation so long as the Court appoints Ted Bernstein as Administrator *Ad Litem* to stand as the Estate's representative in defending and protecting the estate's interests in the Stansbury litigation. Although the estate will be responsible for the reasonable costs and attorneys' fees incurred by Mrachek-Law in defending the claim (as it would regardless of which law firm was retained), Ted Bernstein has agreed to serve as Administrator *Ad Litem* for no additional fee. In other words, there

will be no fee for the time Ted Bernstein expends working on the defense of the independent action by Stansbury against the estate, whereas there might be some additional expense incurred were Brian O'Connell forced to assume that role. The reasonable fees and costs relating to the defense of Simon's claim, and the eventual pursuit of attorneys' fees awards against Stansbury, will be paid by the Estate.

10. Thus, this plan will result in some significant savings to the Estate due to (a) Mrachek-Law's prior knowledge and involvement; and (b) Ted Bernstein's prior knowledge and involvement, and his willingness to serve for no additional fee.

11. For the foregoing reasons, Ted Bernstein believes it is in the best interests of the estate to retain the Mrachek-Law firm, rather than some other law firm which has no prior knowledge or involvement in this matter. The Trustee believes the granting of this motion will result in an overall reduced cost to defend the claim; will employ attorneys skilled in commercial litigation who happen to be very familiar already with the facts, circumstances, events, and documents relating to Stansbury's claim. As indicated above, the Trustee has conferred with not only Mr. O'Connell, but each of the beneficiaries of the Trust, which is the sole beneficiary of the estate, and all are in agreement.

WHEREFORE, Ted S. Bernstein respectfully requests that this Court enter an order approving the retention of Mrachek-Law to defend the Stansbury independent action and appointing Ted S. Bernstein as Administration *Ad Litem* to oversee the estate's defense.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: Facsimile **and** U.S. Mail; U.S. Mail; E-mail Electronic Transmission; FedEx; Hand Delivery this 5th day of August, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone | (561) 655-5537 Facsimile
email: arose@mrachek-law.com; mchandler@mrachek-law.com
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST

SERVICE LIST - CASE NO. 502012CP004391XXXXNBIJH

Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0766 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035
lisa@friedsteins.com
Individually and as trustee for her children, and
as natural guardian for M.F. and C.F., Minors

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3695 West Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
(561) 734-5552 - Telephone
(561) 734-5554 - Facsimile
Email: service@feamanlaw.com;
mkoskey@feamanlaw.com
Counsel for William Stansbury

Gary R. Shendell, Esq.
Kenneth S. Pollock, Esq.
Matthew A. Tornincasa, Esq.
Shendell & Pollock, P.L.
2700 N. Military Trail, Suite 150
Boca Raton, FL 33431
(561) 241-2323 - Telephone
(561) 241-2330 - Facsimile
Email: gary@shendellpollock.com
ken@shendellpollock.com;
matt@shendellpollock.com
estella@shendellpollock.com
britt@shendellpollock.com
grs@shendellpollock.com
robyne@shendellpollock.com

Diana Lewis, Esq.
ADA & Mediations Services, LLC
2765 Tecumseh Drive
West Palm Beach, FL 33409
Telephone (561) 758-3017
Email: dzlewis@aol.com
Guardian *Ad Litem* for
Eliot Bernstein's minor children,
Jo.B., Ja.B., and D.B.

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com
Individually and as trustee for her children, and
as natural guardian for J.I. a minor

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
Telephone 561-832-5900
Facsimile 561-833-4209
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

3

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 NB

ESTATE OF SIMON
BERNSTEIN,
Deceased.

_____ /

**OBJECTION TO TRUSTEE'S MOTION TO APPOINT
TED S. BERNSTEIN AS ADMINISTRATOR *AD LITEM*
TO DEFEND CLAIM AGAINST ESTATE BY WILLIAM STANSBURY**

COMES NOW Interested Person, William Stansbury, by and through his undersigned counsel and objects to Trustee's Motion to Appoint Ted S. Bernstein as Administrator *Ad Litem* to Defend His Claim Against Estate of Simon L. Bernstein, and as grounds therefor would show unto the Court as follows:

I. Stansbury has standing to assert this Objection.

Florida law provides that an administrator ad litem is akin to a personal representative, with the same duties of neutrality and fidelity as a personal representative. *See Funchess v. Gulf Stream Apartments of Broward County, Inc.*, 611 So.2d 43 (Fla. 4th DCA 1993). 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 object to the appointment of a particular individual as an administrator ad litem.

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..."

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. Stansbury, as a claimant of the Estate, has an interest in ensuring that the individual appointed by the court to serve as administrator ad litem, if any is appointed at all, will be free of conflicts of interest and will act without bias and in the best interests of the claimants, 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 proceeding which will determine whether Ted Bernstein should be appointed administrator ad litem.

II. Ted Bernstein has Conflicts of Interest with the Estate which should preclude him from serving as Administrator Ad Litem. Ted Bernstein is a Plaintiff in a pending action where the Simon Bernstein Estate is a Defendant.

At the time of Simon Bernstein's ("Simon") death, it was determined that there was a life insurance policy issued by Heritage Mutual Insurance Company ("Heritage") insuring his life. Simon was listed on the company records as the owner of the policy. Heritage represented that the death benefit was approximately \$1.7 million. Heritage records also indicated that on November 27, 1995 there was a beneficiary change for the policy to read: LaSalle National Trust N.A., primary beneficiary and Simon Bernstein Ins. Trust dated 6/21/1995, contingent beneficiary. It was determined by Heritage that the primary beneficiary (LaSalle) no longer had

an interest in the death benefit and the contingent beneficiary would be paid the proceeds. At the time of Simon Bernstein's death the trust document establishing this alleged trust was not and, to date, has not been found.

Supposedly the beneficiaries of the Insurance Trust were Ted Bernstein and his siblings, Lisa Sue Friedstein, Pamela Beth Simon, Jill Iantoni and Eliot Bernstein (the "Bernstein Children"). Whether or not they were, in fact, beneficiaries was just an "educated guess" by attorney Robert Spallina, who was counsel to the Bernstein Children. See e-mail correspondence from Spallina to the Bernstein Children dated October 23, 2012, attached as **Exhibit "1."** If the Insurance Trust is no longer in existence, is lost, or if the insurance proceeds are not properly payable to this alleged trust, the proceeds would be payable to the Simon Bernstein Estate under Florida law.

Because no trust document could be found, Heritage refused to pay the claim for 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 was removed to Federal Court), styled *Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95 v. Heritage Union Life Insurance Company*, Case No. 13 CV 3643, United States District Court for the Northern District of Illinois (the "Insurance Litigation"). A copy of the Amended Complaint (the "Complaint") is attached as **Exhibit "2."** In paragraph 2 of the Complaint, the Plaintiff, the Insurance Trust, although apparently still lost, and requiring an "educated guess" to ascertain its beneficiaries, nonetheless also alleges that Ted Bernstein is the "trustee" of the Insurance Trust. No trust document exists establishing the continued existence of the Insurance Trust, let alone that Ted is the Trustee. As a result, the representation in the Complaint that he is the trustee of the missing trust appears false.

More importantly, Ted Bernstein, as the putative “trustee” of the purported insurance trust and Plaintiff in the Illinois Action, is actively pursuing litigation that is contrary to the best interests of the Estate which he now seeks to represent as Administrator Ad Litem. The Estate intervened in the Insurance Litigation to assert that it, not the Bernstein Children, is the proper beneficiary of the life insurance proceeds. (Interestingly, Ted Bernstein opposed the intervention of the Estate.) As such, the Estate is an adverse party to the Insurance Trust for which Ted Bernstein is identified as trustee. The Estate is now a Defendant where Ted Bernstein is a Plaintiff. Thus, Ted Bernstein is actively and directly litigating against the very Estate for which he now seeks to serve as a fiduciary. His Motion to be appointed Administrator Ad Litem should be denied on this basis alone.

It is also important for the Court to note that Ted Bernstein is the Successor Trustee of the Simon Bernstein Amended and Restated Trust Agreement Dated 7/25/2012 (the “Residuary Trust”). The Residuary Trust is the residuary legatee of the Estate, and its beneficiaries are the grandchildren of Simon Bernstein. As a result of Ted Bernstein’s prosecution of the Insurance Litigation, Ted is, on the one hand, seeking to deprive the Estate of \$1.7 million in life insurance proceeds, while at the same time he serves as Successor Trustee of the Residuary Trust which will be deprived of the life insurance proceeds if he, Ted, succeeds in the Insurance Litigation. The conflict of interest is obvious and should disqualify Ted Bernstein from serving in any fiduciary capacity in the Estate.

Section 733.602(1), Fla. Stat. (2013), expressly provides that “. . . A personal representative (which in this case would mean an administrator ad litem) 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.) While the ultimate outcome of the adjudication of the issues surrounding the Heritage life

insurance proceeds is as yet unknown, what is clear is that Ted Bernstein has advocated, and continues to advocate a position that is contrary to the best interests of the Estate and its beneficiaries. These two conflicting and contrary positions between the interests of Ted Bernstein as a Plaintiff in the Insurance Litigation versus his duty as an Administrator Ad Litem to act in the best interests of the Estate, including the claimants, creditors and beneficiaries, renders Ted Bernstein unfit to serve as fiduciary. *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).

Finally, Ted Bernstein seeks to serve as Administrator Ad Litem to oversee the litigation between Stansbury and the Estate arising out of Stansbury's employment relationship with companies of which Ted Bernstein and Simon Bernstein were principle owners. Ted Bernstein is a key witness, if not the most important witness in the case, other than perhaps Stansbury. Ted Bernstein is conflicted in that, on the one hand, he seeks to serve as a fiduciary with respect to the management of the Stansbury litigation, but, on the other hand, as a key witness in the case, his testimony could contribute to an adverse result against the Estate, depending upon how the testimony is received by the trier of fact. This inherent conflict of interest should also serve to disqualify Ted Bernstein.

III. It was Simon Bernstein's intent, both expressed and implied, that Ted Bernstein not serve in a fiduciary capacity in his Estate.

The appointment of Ted Bernstein as Administrator Ad Litem for the Estate of Simon Bernstein conflicts with both the expressed intent and implied intent of the deceased, Simon Bernstein.

--- The 2008 Testamentary Documents ---

In 2008, Simon Bernstein prepared and executed his Last Will and Testament and his Revocable Trust. The designated Personal Representative under his 2008 Last Will and Testament was his wife, Shirley Bernstein and William Stansbury as Co-Personal Representatives, or either of them alone if the other was unable to serve. In his 2008 Trust, he designated himself as Trustee, and in the event a successor trustee was necessary, Shirley Bernstein and William Stansbury were appointed as Successor Co-Trustees, or either of them if the other was unable to serve. In the 2008 trust document, he specifically excluded Ted Bernstein by indicating that he was to be considered as having pre-deceased him:

Notwithstanding the foregoing [the definitions of "Children" and "Lineal Descendants"], as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children TUD S. BERNSTEIN ("**TED**") and PAMELA B. SIMON ("**PAM**") and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me.

See, Simon L. Bernstein Trust Agreement dated May 20, 2008, Article III, Section E(1), page 7.

--- The 2012 Last Will and Testament ---

In 2012, Simon Bernstein revised and re-executed his Last Will and Testament (the "2012 Will") and amended his 2008 Trust (the "2012 Trust").

Even though Simon Bernstein could have appointed Ted Bernstein as his Personal Representative or as his Alternate Personal Representative under the 2012 Will, again he specifically chose not to. Rather, Simon Bernstein appointed Donald Tescher and Robert Spallina as Co-Personal Representatives of his Estate. When they were forced to resign, this Court appointed a Curator, Benjamin Brown, Esq. Even though Ted Bernstein filed a Motion to have himself appointed Curator or Administrator Ad Litem, the Court, through Judge Colin, denied his motion. *See* Order of Judge Colin dated February 19, 2014, **Exhibit "3"** attached.

Thereafter, when Curator Benjamin Brown passed away and a Successor Personal Representative was appointed, the Court again chose not to appoint Ted Bernstein, but instead appointed Brian O'Connell, Esq. who presently serves as Personal Representative. It is interesting that in this motion presently before the Court, the Movant is not the Personal Representative, Brian O'Connell, but rather Ted Bernstein, the Successor Trustee to the Trust.

--- The 2012 Trust ---

In 2012, Simon Bernstein also amended his Revocable Trust. Simon again specifically excluded Ted Bernstein, and he stated in even stronger language that Ted Bernstein should be considered as having predeceased him for all purposes of the Trust:

Notwithstanding the foregoing [the definitions of "Children" and "Lineal Descendants"], for all purposes of this Trust and dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL LANTONI and LISA FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012, Article III, Section E(1), page 6. (emphasis added)

A copy of the Trust is attached hereto as **Exhibit "4."** Obviously, Simon Bernstein did not want Ted Bernstein to ever serve in a fiduciary capacity in connection with his Estate and Trust matters.

IV. Ted Bernstein has failed to provide a Trust accounting to the trust beneficiaries as required by statute.

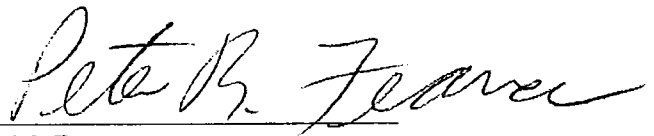
On or about January 14, 2014 Ted S. Bernstein became Successor Trustee of the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012. He was appointed by the previously disgraced Trustees, Donald Tescher and Robert Spallina. Despite having been the Successor Trustee since January of 2014, Ted S. Bernstein has never prepared and submitted and accounting to the beneficiaries. This violates his general duty to inform and account to the

beneficiaries as required by Section 736.0183, Fla. Stat., and specifically his duty to provide at least an annual accounting as mandated by Section 736.0183(1)(d), Fla. Stat.

WHEREFORE, for all of the foregoing reasons, to wit:

1. Ted Bernstein has a conflict of interest with the Estate;
2. Simon Bernstein's expressed intent;
3. Ted Bernstein's failure to account as a Successor Trustee;

Interested Person to the Estate of Simon Bernstein, William Stansbury, requests this Honorable Court to deny the Motion of Ted Bernstein to be appointed Administrator Ad Litem.


Peter M. Feaman

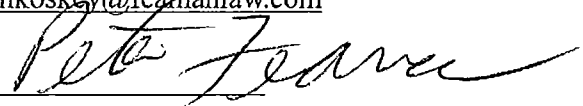
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to: Alan Rose, Esq., MRACHEK, FITZGERALD ROSE, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; Diana Lewis, Esq., ADA & Mediations Services, LLC, 2765 Tecumseh Dr., West Palm Beach, FL 33409, dzlewis@aol.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; Gary R. Shendell, Esq., Shendell & Pollock, P.L., 2700 N. Military Trail, suite 150, Boca Raton, FL 33431, gary@shendellpollock.com; Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 North Flagler Drive, 20th Floor, West Palm Beach, FL 33401, boconnell@ciklinlubitz.com; 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; Jill Iantoni, 2101 Magnolia Lane, Highland Park, IL 60035,
jilliantoni@gmail.com, on this 22nd 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

Eliot Bernstein

Subject: FW: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Tuesday, October 23, 2012 2:34 PM
To: Jill Iantoni; Eliot Bernstein; Ted Bernstein; Ted Bernstein; Pamela Simon; Lisa Friedstein
Subject: RE: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

As discussed, I need the EIN application and will process the claim. Your father was the owner of the policy and we will need to prepare releases given the fact that we do not have the trust instrument and are making an educated guess that the beneficiaries are the five of you as a result of your mother predeceasing Si. Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust instrument. A call regarding this is not necessary. We have things under control and will get the claim processed expeditiously after we receive the form.

Thank you for your help.

Robert L. Spallina, Esq.
TESCHER & SPALLINA, P.A.
4855 Technology Way, Suite 720
Boca Raton, Florida 33431
Telephone: 561-997-7008
Facsimile: 561-997-7308
E-mail: rspallina@tescherspallina.com

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at www.tescherspallina.com

The information contained in this message is legally privileged and confidential information intended only for the use of the individual or entity named above. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. If you have received this communication in error, please immediately notify us by e-mail or telephone. Thank you.



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
by Ted S. Bernstein, its Trustee, Ted)
Bernstein, an individual,)
Pamela B. Simon, an individual,)
Jill Iantoni, an individual and Lisa S.)
Friedstein, an individual.)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

-----)
HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)

Case No. 13 cv 3643
Honorable Amy J. St. Eve
Magistrate Mary M. Rowland



Irrevocable Insurance Trust Dtd 6/21/95,
and ELIOT BERNSTEIN)

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)

PLAINTIFFS' FIRST AMENDED COMPLAINT

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, and TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually, PAMELA B. SIMON, individually, JILL IANTONI, individually, and LISA FRIEDSTEIN, individually, by their attorney, Adam M. Simon, and complaining of Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, ("HERITAGE") states as follows:

BACKGROUND

1. At all relevant times, the BERNSTEIN TRUST was a common law irrevocable life insurance trust established in Chicago, Illinois, by the settlor, Simon L. Bernstein, ("Simon Bernstein" or "insured") and was formed pursuant to the laws of the state of Illinois.
2. At all relevant times, the BERNSTEIN TRUST was a beneficiary of a life insurance policy insuring the life of Simon Bernstein, and issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the "Policy").
3. Simon Bernstein's spouse, Shirley Bernstein, was named as the initial Trustee of the BERNSTEIN TRUST. Shirley Bernstein passed away on December 8, 2010, predeceasing Simon Bernstein.
4. The successor trustee, as set forth in the BERNSTEIN TRUST agreement is Ted Bernstein.
5. The beneficiaries of the BERNSTEIN TRUST as named in the BERNSTEIN TRUST Agreement are the children of Simon Bernstein.

6. Simon Bernstein passed away on September 13, 2012, and is survived by five adult children whose names are Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein. By this amendment, Ted Bernstein, Pamela Simon, Jill Iantoni and Lisa Friedstein are being added as co-Plaintiffs in their individual capacities.

7. Four out five of the adult children of Simon Bernstein, whom hold eighty percent of the beneficial interest of the BERNSTEIN TRUST have consented to having Ted Bernstein, as Trustee of the BERNSTEIN TRUST, prosecute the claims of the BERNSTEIN TRUST as to the Policy proceeds at issue.

8. Eliot Bernstein, the sole non-consenting adult child of Simon Bernstein, holds the remaining twenty percent of the beneficial interest in the BERNSTEIN TRUST, and is representing his own interests and has chosen to pursue his own purported claims, pro se, in this matter.

9. The Policy was originally purchased by the S.B. Lexington, Inc. 501(c)(9) VEBA Trust (the "VEBA") from Capitol Bankers Life Insurance Company ("CBLIC") and was delivered to the original owner in Chicago, Illinois on or about December 27, 1982.

10. At the time of the purchase of the Policy, S.B. Lexington, Inc., was an Illinois corporation owned, in whole or part, and controlled by Simon Bernstein.

11. At the time of purchase of the Policy, S.B. Lexington, Inc. was an insurance brokerage licensed in the state of Illinois, and Simon Bernstein was both a principal and an employee of S.B. Lexington, Inc.

12. At the time of issuance and delivery of the Policy, CBLIC was an insurance company licensed and doing business in the State of Illinois.

13. HERITAGE subsequently assumed the Policy from CBLIC and thus became the successor to CBLIC as "Insurer" under the Policy and remained the insurer including at the time of Simon Bernstein's death.

14. In 1995, the VEBA, by and through LaSalle National Trust, N.A., as Trustee of the VEBA, executed a beneficiary change form naming LaSalle National Trust, N.A., as Trustee, as primary beneficiary of the Policy, and the BERNSTEIN TRUST as the contingent beneficiary.

15. On or about August 26, 1995, Simon Bernstein, in his capacity as member or auxiliary member of the VEBA, signed a VEBA Plan and Trust Beneficiary Designation form designating the BERNSTEIN TRUST as the "person(s) to receive at my death the Death Benefit stipulated in the S.B. Lexington, Inc. Employee Death Benefit and Trust and the Adoption Form adopted by the Employer".

16. The August 26, 1995 VEBA Plan and Trust Beneficiary Designation form signed by Simon Bernstein evidenced Simon Bernstein's intent that the beneficiary of the Policy proceeds was to be the BERNSTEIN TRUST.

17. S.B. Lexington, Inc. and the VEBA were voluntarily dissolved on or about April 3, 1998.

18. On or about the time of the dissolution of the VEBA in 1998, the Policy ownership was assigned and transferred from the VEBA to Simon Bernstein, individually.

19. From the time of Simon Bernstein's designation of the BERNSTEIN TRUST as the intended beneficiary of the Policy proceeds on August 26, 1995, no document was submitted by Simon Bernstein (or any other Policy owner) to the Insurer which evidenced any change in his intent that the BERNSTEIN TRUST was to receive the Policy proceeds upon his death.

20. At the time of his death, Simon Bernstein was the owner of the Policy, and the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

21. The insured under the Policy, Simon Bernstein, passed away on September 13, 2012, and on that date the Policy remained in force.

22. Following Simon Bernstein's death, the BERNSTEIN TRUST, by and through its counsel in Palm Beach County, FL, submitted a death claim to HERITAGE under the Policy including the insured's death certificate and other documentation.

COUNT I

BREACH OF CONTRACT

23. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶22 as if fully set forth as ¶23 of Count I.

24. The Policy, by its terms, obligates HERITAGE to pay the death benefits to the beneficiary of the Policy upon HERITAGE'S receipt of due proof of the insured's death.

25. HERITAGE breached its obligations under the Policy by refusing and failing to pay the Policy proceeds to the BERNSTEIN TRUST as beneficiary of the Policy despite HERITAGE'S receipt of due proof of the insured's death.

26. Despite the BERNSTEIN TRUST'S repeated demands and its initiation of a breach of contract claim, HERITAGE did not pay out the death benefits on the Policy to the BERNSTEIN TRUST instead it filed an action in interpleader and deposited the Policy proceeds with the Registry of the Court.

27. As a direct result of HERITAGE's refusal and failure to pay the Policy proceeds to the BERNSTEIN TRUST pursuant to the Policy, Plaintiff has been damaged in an amount equal to the death benefits of the Policy plus interest, an amount which exceeds \$1,000,000.00.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for a judgment to be entered in its favor and against Defendant, HERITAGE, for the amount of the Policy proceeds on deposit with the Registry of the Court (an amount in excess of \$1,000,000.00) plus costs and reasonable attorneys' fees together with such further relief as this court may deem just and proper.

COUNT II

DECLARATORY JUDGMENT

28. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶27 above as ¶28 of Count II and pleads in the alternative for a Declaratory Judgment.

29. On or about June 21, 1995, David Simon, an attorney and Simon Bernstein's son-in-law, met with Simon Bernstein before Simon Bernstein went to the law offices of Hopkins and Sutter in Chicago, Illinois to finalize and execute the BERNSTEIN TRUST Agreement.

30. After the meeting at Hopkins and Sutter, David B. Simon reviewed the final version of the BERNSTEIN TRUST Agreement and personally saw the final version of the BERNSTEIN TRUST Agreement containing Simon Bernstein's signature.

31. The final version of the BERNSTEIN TRUST Agreement named the children of Simon Bernstein as beneficiaries of the BERNSTEIN TRUST, and unsigned drafts of the BERNSTEIN TRUST Agreement confirm the same.

32. The final version of the BERNSTEIN TRUST Agreement named Shirley Bernstein, as Trustee, and named Ted Bernstein as, successor Trustee.

33. As set forth above, at the time of death of Simon Bernstein, the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

34. Following the death of Simon Bernstein, neither an executed original of the BERNSTEIN TRUST Agreement nor an executed copy could be located by Simon Bernstein's family members.

35. Neither an executed original nor an executed copy of the BERNSTEIN TRUST Agreement has been located after diligent searches conducted as follows:

- i) Ted Bernstein and other Bernstein family members of Simon Bernstein's home and business office;
- ii) the law offices of Tescher and Spallina, Simon Bernstein's counsel in Palm Beach County, Florida,
- iii) the offices of Foley and Lardner (successor to Hopkins and Sutter) in Chicago, IL; and
- iv) the offices of The Simon Law Firm.

36. As set forth above, Plaintiffs have provided HERITAGE with due proof of the death of Simon Bernstein which occurred on September 13, 2012.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for an Order entering a declaratory judgment as follows:

- a) declaring that the original BERNSTEIN TRUST was lost and after a diligent search cannot be located;
- b) declaring that the BERNSTEIN TRUST Agreement was executed and established by Simon Bernstein on or about June 21, 1995;
- c) declaring that the beneficiaries of the BERNSTEIN TRUST are the five children of Simon Bernstein;

- d) declaring that Ted Bernstein, is authorized to act as Trustee of the BERNSTEIN TRUST because the initial trustee, Shirley Bernstein, predeceased Simon Bernstein;
- e) declaring that the BERNSTEIN TRUST is the sole surviving beneficiary of the Policy;
- f) declaring that the BERNSTEIN TRUST is entitled to the proceeds placed on deposit by HERITAGE with the Registry of the Court;
- g) ordering the Registry of the Court to release all of the proceeds on deposit to the BERNSTEIN TRUST; and
- h) for such other relief as this court may deem just and proper.

COUNT III

RESULTING TRUST

37. Plaintiffs restate and reallege the allegations contained in ¶1-¶36 of Count II as ¶37 of Count III and plead, in the alternative, for imposition of a Resulting Trust.

38. Pleading in the alternative, the executed original of the BERNSTEIN TRUST Agreement has been lost and after a diligent search as detailed above by the executors, trustee and attorneys of Simon Bernstein's estate and by Ted Bernstein, and others, its whereabouts remain unknown.

39. Plaintiffs have presented HERITAGE with due proof of Simon Bernstein's death, and Plaintiff has provided unexecuted drafts of the BERNSTEIN TRUST Agreement to HERITAGE.

40. Plaintiffs have also provided HERITAGE with other evidence of the BERNSTEIN TRUST'S existence including a document signed by Simon Bernstein that designated the BERNSTEIN TRUST as the ultimate beneficiary of the Policy proceeds upon his death.

41. At all relevant times and beginning on or about June 21, 1995, Simon Bernstein expressed his intent that (i) the BERNSTEIN TRUST was to be the ultimate beneficiary of the life insurance proceeds; and (ii) the beneficiaries of the BERNSTEIN TRUST were to be the children of Simon Bernstein.

42. Upon the death of Simon Bernstein, the right to the Policy proceeds immediately vested in the beneficiary of the Policy.

43. At the time of Simon Bernstein's death, the beneficiary of the Policy was the BERNSTEIN TRUST.

44. If an express trust cannot be established, then this court must enforce Simon Bernstein's intent that the BERNSTEIN TRUST be the beneficiary of the Policy; and therefore upon the death of Simon Bernstein the rights to the Policy proceeds immediately vested in a resulting trust in favor of the five children of Simon Bernstein.

45. Upon information and belief, Bank of America, N.A., as successor Trustee of the VEBA to LaSalle National Trust, N.A., has disclaimed any interest in the Policy.

46. In any case, the VEBA terminated in 1998 simultaneously with the dissolution of S.B. Lexington, Inc.

47. The primary beneficiary of the Policy named at the time of Simon Bernstein's death was LaSalle National Trust, N.A. as "Trustee" of the VEBA.

48. LaSalle National Trust, N.A., was the last acting Trustee of the VEBA and was named beneficiary of the Policy in its capacity as Trustee of the VEBA.

49. As set forth above, the VEBA no longer exists, and the ex-Trustee of the dissolved trust, and upon information and belief, Bank Of America, N.A., as successor to LaSalle National Trust, N.A. has disclaimed any interest in the Policy.

50. As set forth herein, Plaintiff has established that it is immediately entitled to the life insurance proceeds HERITAGE deposited with the Registry of the Court.

51. Alternatively, by virtue of the facts alleged herein, HERITAGE held the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein and since HERITAGE deposited the Policy proceeds the Registry, the Registry now holds the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein.

WHEREFORE, PLAINTIFFS pray for an Order as follows:

- a) finding that the Registry of the Court holds the Policy Proceeds in a Resulting Trust for the benefit of the five children of Simon Bernstein, Ted Bernstein, Pamela Simon, Eliot Ivan Bernstein, Jill Iantoni and Lisa Friedstein; and
- b) ordering the Registry of the Court to release all the proceeds on deposit to the Bernstein Trust or alternatively as follows: 1) twenty percent to Ted Bernstein; 2) twenty percent to Pam Simon; 3) twenty percent to Eliot Ivan Bernstein; 4) twenty percent to Jill Iantoni; 5) twenty percent to Lisa Friedstein
- c) and for such other relief as this court may deem just and proper.

By: s/Adam M. Simon
Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
Phone: 313-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com
Attorneys for Plaintiffs and Third-Party
Defendants
*Simon L. Bernstein Irrevocable Insurance Trust
Dtd 6/21/95; Ted Bernstein as Trustee, and
individually, Pamela Simon, Lisa Friedstein
and Jill Iantoni*

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

**ORDER ON MOTION FOR APPOINTMENT
OF CURATOR OR ADMINISTRATOR AD LITEM**

THIS MATTER came before this Court on Tuesday, February 18, 2014, upon the Motion for Appointment of Curator or Administrator Ad Litem, filed by Ted S. Bernstein, and the Court, having heard argument of counsel, and considered the evidence, it is

ORDERED AND ADJUDGED that:

DENIED, for the reasons
stated on the record.

DONE and ORDERED in Delray Beach, Palm Beach County, Florida, this 19 day of
February, 2014.



CIRCUIT COURT JUDGE

Copies to:

Alan Rose, Esq., PAGE, MRACHEK 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401;
John J. Pankauski, Esq., PANKAUSKI LAW FIRM, 120 South Olive Avenue, Suite 701, West Palm Beach, FL 33401;
Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 Boynton Beach Blvd., Boynton Beach, Florida 33436.



BATES NO. EIB 003741
02/27/2017

7/25/2012

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com



LAW OFFICES
TESCHER & SPALLINA, P.A.

SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is dated this 26 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "Trust Agreement," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. **Payments During My Life.** If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

LAW OFFICES
TESCHER & SPALLINA, P.A.



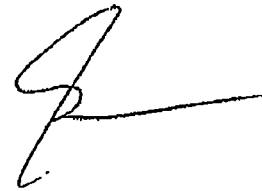
C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "*beneficiary*" with the separate Trusts to be administered as provided in Subparagraph 11.C.

C. Trusts for Beneficiaries. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:



1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

D. Termination of Small Trust. If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

E. Contingent Gift. If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

F. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

G. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

ARTICLE III. GENERAL

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

-3-

LAW OFFICES
TESCHER & SPALLINA, P.A.



A. **Disability.** Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. **Timing of Income Distributions.** The Trustee shall make required payments of income at least quarterly.

C. **Substance Abuse.**

1. **In General.** If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. **Testing.** The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. **Treatment.** If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an



in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*," "*grandchild*," "*grandchildren*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is



raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

- 6 -

LAW OFFICES
TESCHER & SPALLINA, P.A.



such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such



Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Release of Medical Information.

1. Disability of Beneficiary. Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested



beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph 1A hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "estate"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

-9-

LAW OFFICES
TESCHER & SPALLINA, P.A.

BATES NO. EIB 003751
02/27/2017

decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla. Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.



4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole

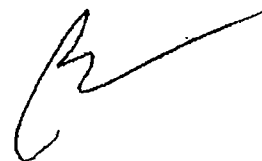
proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the Trustee with the following powers and authority in regard to Business Entities:

- a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;
- b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;
- c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;
- d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;
- e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;
- f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;
- g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;
- h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and
- i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

-12-

LAW OFFICES
TESCHER & SPALLINA, P.A.
MEMBER OF THE BERKMAN & COMPANY GROUP



11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

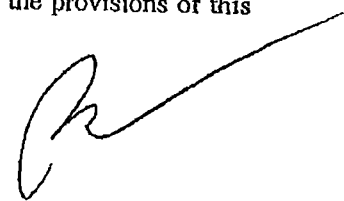
15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.



18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.
19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.
20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.
21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.
22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.
23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.
24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this



paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust



hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

- a. The remaining Trustees, if any; otherwise,
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or

entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual

and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

-18-

LAW OFFICES
TESCHER & SPALLINA, P.A.



Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts. I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

-19-

LAW OFFICES
TESCHER & SPALLINA, P.A.



BATES NO. EIB 003761
02/27/2017

designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

-20-

LAW OFFICES
TESCHER & SPALLINA, P.A.



1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

-21-

LAW OFFICES
TESCHER & SPALLINA, P.A.
TELEPHONE: 610-328-1111



2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

SIMON I. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

-22-

LAW OFFICES
TESCHER & SPALLINA, P.A.

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. Residence as Homestead. I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

[remainder of page intentionally left blank]



IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

[Handwritten signature of Simon L. Bernstein]

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 21 day of July, 2012:

[Handwritten signature of Robert L. Spallina]
Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

[Handwritten signature of Kimberly Moran]
Print Name: Kimberly Moran
Address: 6362 Las Flores Drive
Boca Raton, FL 33433

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.

[Handwritten signature of Lindsay Baxley]
Signature - Notary Public - State of Florida
Lindsay Baxley
Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]

NOTARY PUBLIC - STATE OF FLORIDA
Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

4

EXHIBIT A

611 So.2d 43
District Court of Appeal of Florida,
Fourth District.

Dareyl FUNCHESS, as personal representative
of the estate of Samantha McHellon Funchess,
deceased, on behalf of the estate and on behalf of the
survivors of the decedent, to wit: Dareyl Funchess,
surviving spouse; Lajuan Jamar Funchess, a minor;
Samuel McHellon, a minor, Helen White and
Donial McHellon, natural parents, Appellant,
v.
GULF STREAM APARTMENTS OF BROWARD
COUNTY, INC., John V. Tinglof, Robert
R. Tinglof and Iver A. Tinglof, Appellees.

No. 91-1716.

Dec. 23, 1992.

Rehearing and Rehearing En
Banc Denied Jan. 25, 1993.

Wrongful death action was brought in name of personal
representative of deceased. Administrator ad litem was
substituted as plaintiff. Defendants moved to dismiss. The
Circuit Court, Broward County, Patricia W. Cocalis, J.,
dismissed. Administrator appealed. The District Court of
Appeal, Dell, J., held that administrator ad litem could
maintain wrongful death action.

Reversed and remanded.

West Headnotes (2)

[1] **Executors and Administrators**

⇒ Authority and Duty in General

Administrator ad litem could maintain
wrongful death action originally brought in
name of personal representative; wrongful
death statute provided for liberal construction
and did not prohibit continuation of suit
in name of administrator ad litem and
defendants had not shown either prejudice or
any meaningful distinction between authority

of administrator ad litem and personal
representative to act as nominal plaintiff
in wrongful death action. West's F.S.A. §§
731.201(25), 733.308, 768.16, 768.20.

8 Cases that cite this headnote

[2] **Executors and Administrators**

⇒ Authority and Duty in General

Administrator ad litem must represent
beneficiaries of estate with same degree
of neutrality and fidelity as personal
representative and administrator ad litem is
also subject to supervision of appointing
court.

2 Cases that cite this headnote

Attorneys and Law Firms

*44 Edward A. Perse of Perse, P.A. & Ginsberg, P.A.,
and Ratiner & Glinn, P.A., Miami, for appellant.

Richard T. Woulfe and Peter R. Goldman of Bunnell,
Woulfe & Keller, P.A., Fort Lauderdale, for appellees.

Opinion

DELL, Judge.

Appellant contends the trial court erred when it dismissed
this action for the wrongful death of Samantha Funchess
and entered judgment for appellees.¹ We agree and
reverse and remand this cause for further proceedings.

The trial court's order neither contains findings nor states
reasons for its dismissal of appellant's action. Appellant
contends the trial court erred if it dismissed this action
based upon the inability of an administrator ad litem to
maintain a wrongful death action originally brought in
the name of a personal representative. In the alternative,
appellant contends the trial court abused its discretion if it
dismissed this suit based upon appellant's failure to timely
obtain the appointment of a personal representative.

[1] Appellant initially filed this wrongful death action in
the name of a personal representative properly appointed
by the probate division. The probate division thereafter

removed the personal representative at the request of the decedent's mother and appointed John Spellacy as administrator ad litem of the estate. Appellees did not move to dismiss when the court appointed Spellacy as administrator ad litem. Only after Spellacy resigned and appellant failed to have a successor administrator ad litem appointed did appellees move to dismiss for lack of a personal representative.

Appellant argues an administrator ad litem may properly maintain a wrongful death action because the term "personal representative" encompasses the term "administrator ad litem". The wrongful death statute, *45 section 768.18, Florida Statutes (1989), does not define the term "personal representative". However, section 731.201(25) provides:

"Personal representative" means the fiduciary appointed by the court to administer the estate and refers to what has been known as an administrator, administrator cum testamento annexo, administrator de bonis non, ancillary administrator, ancillary executor, or executor.

Section 733.308 provides the circumstances where a court must appoint an administrator ad litem:

When it is necessary that an estate be represented and there is no personal representative of the estate, the court shall appoint an administrator ad litem without bond for that particular proceeding.

Rule 5.120(a), Florida Rules of Probate and Guardianship, permits the appointment of an administrator ad litem in the following circumstances:

When it is necessary that the estate of a decedent ... be represented in any probate ... proceeding and there is no personal representative of the estate ..., or the personal representative ... is or may be interested adversely to the estate ..., or is enforcing his own debt or claim against the estate ..., or the necessity arises otherwise, the court may appoint an administrator ad

litem ... without bond or notice for that particular proceeding.

(emphasis added).

Appellant points out section 768.17, Florida Statutes (1989), provides the wrongful death statute "shall be liberally construed." Section 768.20 states in part:

The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages, as specified in this act, caused by the injury resulting in death.

The statute, therefore, requires a single action brought by a personal representative to recover damages for all beneficiaries under the act. By requiring the personal representative to bring a single action, the statute eliminates the potential for competing beneficiaries to race to judgment, preferential treatment of one or more beneficiaries in the disposition of their claims and, most significantly, multiple claims and lawsuits against the wrongdoer.

[2] An administrator ad litem must represent the beneficiaries of the estate with the same degree of neutrality and fidelity as a personal representative and an administrator ad litem is always subject to the supervision of the appointing court. The proceeds of any judgment recovered in the wrongful death action by an administrator ad litem would be protected and distributed as provided by the Probate Code. See *In re Estate of Cordiner*, 458 So.2d 418 (Fla. 2d DCA 1984); *Woolf v. Reed*, 389 So.2d 1026 (Fla. 3d DCA 1980). Furthermore, the substitution of an administrator ad litem would not affect appellees' exposure to multiple claims.

Appellees have not shown how they would suffer prejudice by the continuation of the action by the administrator ad litem nor have they shown any meaningful distinction between the authority of an administrator ad litem and a personal representative to act as a nominal plaintiff in a wrongful death action. Since the wrongful death statute provides for a liberal construction and does not prohibit the continuation of the suit in the name of an administrator ad litem, we hold the trial court erred

when it dismissed the action for lack of a "personal representative".

We also reject appellee's argument that the trial court's order of dismissal should be affirmed because appellant failed to timely have a personal representative appointed and substituted as plaintiff. On January 9, 1991, the trial court required appellant to have a personal representative appointed by January 14. The probate division appointed Randolph Potter as successor administrator ad litem on January 10 and appellant filed a motion to substitute Potter for Funchess as plaintiff on January 14.

We have held an administrator ad litem can maintain this action to final judgment. Therefore, if the trial court dismissed this cause for lack of a personal representative, it erred. On the other hand, if it dismissed *46 this cause

as a sanction, the trial court relied upon an erroneous premise for its dismissal.

Accordingly, we reverse and remand this cause to the trial court with directions to vacate its judgment in favor of appellees and for further proceedings consistent with this opinion.

REVERSED and REMANDED.

HERSEY and STONE, JJ., concur.

All Citations

611 So.2d 43, 18 Fla. L. Weekly D92

Footnotes

1

The following summarizes the procedural history leading to the dismissal of appellant's action:

On January 26, 1989, Dareyl Funchess, nominal appellant, as personal representative of the estate of Samantha Funchess, his deceased wife, filed a wrongful death action against appellees, pursuant to section 768.16, Florida Statutes (1989). The decedent's mother petitioned for the removal of Dareyl Funchess as personal representative, and on June 19, 1989, the probate division entered an order which removed Dareyl Funchess as personal representative of the estate and appointed John Spellacy as administrator ad litem of the estate. On September 7, 1990, at Spellacy's request, the probate division entered an order discharging him as administrator ad litem.

On December 5, 1990, appellees moved to dismiss appellant's wrongful death action based upon the ground that the decedent's estate was no longer represented by Funchess or any other personal representative. On December 10, appellant moved to substitute Spellacy for Funchess as plaintiff. On January 9, 1991, the trial court entered an order on appellees' motion to dismiss which directed a personal representative shall be appointed by January 14, or the motion is granted and the action is dismissed. The next day, the probate division entered an order which noted its previous discharge of Spellacy as administrator ad litem and appointed Randolph Potter as successor administrator ad litem. On January 14, appellant filed a motion to substitute Potter for Funchess as plaintiff, and on January 29, the trial court entered an order substituting Potter as plaintiff.

On February 6, 1991, appellees moved to vacate the January 29 order claiming appellant obtained the order ex parte. On April 23, 1991, the trial court entered an order which vacated its January 29 order, granted appellees' motion to dismiss and dismissed appellant's action.

EXHIBIT B

879 So.2d 675
District Court of Appeal of Florida,
Fourth District.

Mark P. ARZUMAN, a/k/a Mark
P. Arzoumanian, Appellant,
v.
The ESTATE OF Prince Bander
BIN Saud Bin, etc., Appellee.

No. 4D03-2406.

|
Aug. 11, 2004.

Synopsis

Background: Personal representative of estate filed petition for discharge and approval of final accounting. The Fifteenth Judicial Circuit Court, Palm Beach County, Gary L. Vonhof, J., issued final order granting petition. Claimant against estate appealed.

[Holding:] The District Court of Appeal, Klein, J., held that appeal was not timely.

Affirmed.

West Headnotes (2)

[1] Executors and Administrators

↳ Persons Entitled to Object

Claimant against estate was an "interested person" in proceedings to approve final accounting and discharge personal representative. West's F.S.A. § 731.201(21).

1 Cases that cite this headnote

[2] Executors and Administrators

↳ Perfection of Appeal and Effect Thereof

Time for claimant against estate to appeal order approving settlement of separate wrongful death action against estate began to run when trial court approved settlement,

rather than when trial court granted personal representative's motion to disburse funds, approve final accounting, and discharge personal representative; order approving settlement finally determined right of claimant in that it resulted in estate having no assets with which to pay his claim. West's F.S.A. R.App.P.Rule 9.110(a)(2).

1 Cases that cite this headnote

Attorneys and Law Firms

*675 Mark P. Arzuman, a/k/a Mark P. Arzoumanian, Boca Raton, pro se.

Lawrence Bunin of Lawrence Bunin, P.A., Plantation, for appellee.

Opinion

KLEIN, J.

Appellant, a claimant against the appellee estate, appeals a final order granting the personal representative's motion to disburse funds, approve final accounting, and discharge personal representative. He argues that the trial court erred in approving the settlement of a wrongful death claim in which the estate was a plaintiff, but we conclude that this appeal is not timely as to the order approving the settlement, which was a final order.

*676 The decedent died in an airplane accident, and the estate filed a negligence suit which was settled for a total of \$750,000. The settlement, which apportioned \$700,000 to decedent's mother and \$50,000 to the estate, was approved by the court. The low amount to the estate resulted from the fact that the decedent reported no income. The aviation lawyer who obtained the recovery testified that the estate had no recoverable damages. Claimant, who had a pending lawsuit against the estate, filed an appeal from the March 2002 order approving the settlement, but subsequently dismissed it.

In April 2003, the personal representative filed a petition for discharge and approval of final accounting, noting that claimant's lawsuit was still pending, but asserting that the estate would have no assets to pay any judgment claimant might obtain in the future. Following a hearing

the court granted the petition, finding that if claimant obtained a judgment, it would be a class 8 claim under section 733.707, Florida Statutes, and that, after paying expenses having a higher priority, the estate would have no funds remaining. It is this order, which was entered in May 2003, which claimant has appealed, but his primary argument is that the court erred in approving the wrongful death settlement a year earlier.

[1] The estate argues that claimant is not an "interested person" under section 731.201(21), Florida Statutes (2002), which defines interested person as:

any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved.... The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

The closest case is *Montgomery v. Cribb*, 484 So.2d 73 (Fla. 2d DCA 1986), in which a claimant's claim against an estate had been stricken, and the order striking the claim was on appeal. The second district held that the claimant was an interested party. We agree with that decision and conclude that claimant was an interested person.

[2] The estate next argues that claimant was required to appeal the order approving the settlement when it was entered. Final orders in probate proceedings are defined under rule 9.110(a)(2), as orders which "finally determine a right or obligation of an interested person as defined in the Florida Probate Code."

We conclude that the order approving the settlement of the tort claim did "finally determine a right" of

this claimant. Section 733.708, Florida Statutes (2002), which addresses the compromise of lawsuits filed by estates, provides that the probate court may authorize the settlement "if satisfied that the compromise will be for the best interest of the interested persons," and that an order authorizing settlement "shall relieve the personal representative of liability or responsibility for the compromise."

In this case once the order approving the settlement became final, the personal representative was, by statute, absolved of further responsibility. The order approving the settlement accordingly did finally determine a right of the claimant in that it resulted in the estate having no assets with which to pay his claim.

We are of course aware that, when we decide that an appellant should have appealed an earlier order, it can result in *677 grave consequences.¹ In probate cases, however, where the order of final discharge may not be entered for years after the opening of an estate, interim appeals of orders which finally determine rights or obligations are necessary for the orderly administration of the estate. If we were to review the order approving settlement at this late date, it is doubtful that any remedy would be available which would benefit claimant.

We have considered the issues which appellant has raised regarding the final order of discharge and find them to be without merit. Affirmed.

SHAHOOD, J., and EMAS, KEVIN M., Associate Judge, concur.

All Citations

879 So.2d 675, 29 Fla. L. Weekly D1844

Footnotes

1

Even if we had reviewed the order approving the settlement, we would have affirmed, because as we noted earlier, the estate had no damage recoverable in the wrongful death claim.

EXHIBIT C

KeyCite Yellow Flag - Negative Treatment
Distinguished by J.B. v. Florida Dept. of Children and Family
Services, Fla., September 28, 2000

484 So.2d 73

District Court of Appeal of Florida,
Second District.

William T. MONTGOMERY, as Personal
Representative of the Estate of Kenneth
W. Montgomery, deceased, Appellant,
v.

Barbara CRIBB and Joseph A. Perez, as
Co-Personal Representatives of the Estate
of Vivian S. Perez, deceased, Appellees.

No. 85-1288.

March 5, 1986.

Personal representatives moved to strike claim against decedent's estate based on a summary judgment that had been entered in favor of estate in separate action. The Circuit Court, Highlands County, Dennis P. Maloney, J., did not rule on motion for continuance brought by claimant and entered an order granting personal representatives' motion to strike. The District Court of Appeal held that the court should not have ruled on motion to strike because claimant did not receive reasonable notice of hearing.

Reversed and remanded for consistent proceedings.

West Headnotes (4)

[1] **Executors and Administrators**

⇒ Findings and Decision

Trial court improperly ruled on personal representatives' motion to strike claim against the estate, where claimant received notice of hearing on motion to strike two days before the hearing was to be held and the trial court did not rule on claimant's motion for continuance which was based on his lack of reasonable notice of the hearing.

4 Cases that cite this headnote

[2] **Motions**

⇒ Service and Filing

Unless the court orders otherwise, every petition or motion for an order determining rights of an interested person shall be served on interested persons where "interested persons" are those who reasonably may be expected to be affected by the outcome of the particular proceeding. West's F.S.A. § 731.201(21).

Cases that cite this headnote

[3] **Executors and Administrators**

⇒ Proceedings

For a hearing on a motion to strike claim against estate based on summary judgment that had been entered, two day notice to claimant against whom the summary judgment was directed was not a reasonable length of time under West's F.S.A. R.P. & G.P Rule 5.042(c).

2 Cases that cite this headnote

[4] **Executors and Administrators**

⇒ Persons Who May Contest Claims

Executors and Administrators

⇒ Proceedings

Decedent's personal representatives were not privileged to proceed ex parte in a motion to strike claim against the estate based on summary judgment that had been entered in a separate action, and claimant was entitled to reasonable notice of the hearing as claimant remained an interested person in the proceeding because an appeal was pending on an issue pertaining to his claim against the estate.

1 Cases that cite this headnote

Attorneys and Law Firms

*74 Carl J. Robie, III, Sarasota, for appellant.

Jon H. Anderson, Lakeland, for appellees.

Opinion

PER CURIAM.

Appellant, William Montgomery, seeks review of an order granting a motion to strike filed by appellees, Barbara Cribb and Joseph A. Perez, personal representatives of the estate of Vivian S. Perez. We reverse.

Vivian Perez died on December 15, 1982. Her will was admitted to probate and the court appointed Barbara Cribb and Joseph Perez as personal representatives of the estate. On September 26, 1983, Kenneth Montgomery, a minor, drowned in a swimming pool located on the Perez estate. His father, the appellant, filed a statement of claim against the estate for damages arising out of the allegedly wrongful death of his son. The appellees timely objected to appellant's statement of claim and the appellant filed a separate civil action. The appellees filed an answer and affirmative defenses alleging, among other things, that appellant had accepted an offer of settlement but had refused to arrange for the execution of an appropriate release. The appellees then filed a motion to enforce settlement and a motion for summary judgment.

In addition to the reasons set forth in the motion to enforce settlement, the motion for summary judgment sought relief on the basis that the sole cause of the son's death had been inadequate parental supervision, that appellant's son had not been an invitee, and that the attractive nuisance doctrine did not, as a matter of law, apply. The trial court found there existed no substantial issue as to any material fact and, on September 21, 1984, granted summary judgment in favor of the appellees. The appellant voluntarily dismissed an appeal of that order, apparently in consideration of \$5000 tendered by the appellees. He later obtained new counsel who, without success, attempted to set aside dismissal of the appeal.

On November 15, 1984, appellees filed a motion for supplemental relief stating they were ready to perform the settlement agreement by tendering \$5000 into the registry of the court. On March 5, 1985, the court granted the motion, thereby releasing appellees from further liability.

The appellant filed, on April 11, 1985, a notice of appeal of that order. Eleven days later, the appellees filed a motion to require appellant to return their tender of \$5000. Appellees alleged that in exchange for their tender of \$5000, appellant had dismissed his appeal of the final summary judgment, that appellant had subsequently engaged new counsel to appeal the order granting the motion for supplemental relief, that the appellant had disavowed the settlement agreement entered into by his former attorney, and that appellant therefore had no basis for retaining the \$5000. The appellant then filed a stipulation agreeing to return appellees' tender. On appeal, this court temporarily relinquished jurisdiction to the trial court for the parties to secure a final order as to the effect of appellant's release of tender. That appeal is still pending.

Meanwhile, appellees had filed, on April 22, 1985, a motion to strike appellant's claim against the estate based upon the summary judgment that had been entered. On April 23, 1985, appellant received notice that a hearing on the motion to strike would be held on April 25, 1985. Prior to the hearing, appellant filed a motion for continuance on the basis that he had not been given reasonable notice of the hearing. The trial court did not rule on appellant's motion for continuance, and following the hearing, entered an order granting appellees' motion to strike. Appellant has timely appealed that order.

[1] [2] Appellant contends that the court erred in ruling on the motion to strike because appellant did not receive reasonable *75 notice of the hearing. We agree. Florida Rule of Probate and Guardianship 5.041(a), provides that unless the court orders otherwise, every petition or motion for an order determining rights of an interested person shall be served on interested persons. "Interested persons" are those who reasonably may be expected to be affected by the outcome of the particular proceeding. § 731.201(21), Fla.Stat. (1985).

[3] Florida Rule of Probate and Guardianship 5.042(c), provides that unless a motion is to be heard ex parte, a copy of the notice of the hearing on the motion must be served a reasonable length of time prior to the hearing. We find that two-day notice is not a reasonable length of time. See *Reynolds v. Reynolds*, 187 So.2d 372 (Fla. 2d DCA 1966); see also, *Hernandez v. Ward*, 437 So.2d 781 (Fla. 2d DCA 1983).

[4] Appellees argue they were privileged to proceed ex parte in this matter because, following this court's denial of appellant's motion to set aside the voluntary dismissal of the summary judgment appeal, appellant was no longer an "interested person." We disagree. Appellant remains an "interested person" in these proceedings because an appeal is pending on an issue pertaining to his claim against the estate. Appellant, therefore, was entitled to reasonable notice, and we, accordingly, reverse the trial court's order granting the motion to strike. Upon remand, after the appellant is given reasonable notice, the court may again rule upon the motion to strike.

Reversed and remanded for proceedings consistent herewith.

GRIMES, A.C.J., and DANAHY and SCHOONOVER, JJ., concur.

All Citations

484 So.2d 73, 11 Fla. L. Weekly 569

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT D

573 So.2d 57

District Court of Appeal of Florida,
First District.

In re the ESTATE OF Katherine V. BELL,
also known as Virginia Bell, Deceased.
William HUNTER, Daniel Hunter and
Marywil Hunter Croson, Appellants,

v.

Oleta JOHNSON, Personal Representative
of the Estate of Katherine V. Bell,
also known as Virginia Bell, Appellee.

No. 90-1318.

|

Dec. 26, 1990.

Will beneficiaries moved to compel production of estate assets or to remove another beneficiary as personal representative. The Circuit Court, Hamilton County, David E. Bembry, J., denied motion, and beneficiaries appealed. The District Court of Appeal, Nimmons, J., held that certificates of deposit were estate assets, even though beneficiary who was also personal representative was listed as trust beneficiary on one and co-owner of other, absent language in the power of attorney expressly authorizing gift of testatrix' assets to beneficiary.

Reversed in part; affirmed in part; and remanded.

West Headnotes (3)

[1] **Executors and Administrators**

☞ Trust Estates and Other Equitable Estates and Interests

Executors and Administrators

☞ Ownership of Property at Time of Death

Principal and Agent

☞ Purpose and Terms of and Consideration for Sale or Conveyance

Certificates of deposit purchased under power of attorney by beneficiary with testatrix' funds were assets of testatrix' estate, even though beneficiary was listed as trust beneficiary on one certificate and co-owner of other, where

power of attorney did not expressly authorize gift of testatrix' assets to beneficiary, and where testatrix did not document wish to make gift although she had ample opportunity to do so.

3 Cases that cite this headnote

[2] **Witnesses**

☞ Agency

Dead man's statute barred testimony of will beneficiary as to statements evidencing testatrix' intent to authorize gift to beneficiary under power of attorney. West's F.S.A. § 90.602.

4 Cases that cite this headnote

[3] **Executors and Administrators**

☞ Hostility or Adverse Interest

Personal representative who held conflicting and adverse interests against estate was required to be removed, where personal representative had purchased certificates of deposit under power of attorney for her own benefit with testatrix' funds, and where court found certificates were estate assets.

2 Cases that cite this headnote

Attorneys and Law Firms

*57 Thomas W. Brown and Donna Houghton Thames of Brannon, Brown, Haley, Robinson & Cole, P.A., Lake City, for appellants.

*58 David D. Eastman of Parker, Skelding, Labasky & Conry, Tallahassee, for appellee.

Opinion

NIMMONS, Judge.

Appellants, beneficiaries of decedent Katherine V. Bell's will, appeal a final order denying their motion to compel production of estate assets or remove the personal representative, and finding two certificates of deposit are not estate assets. We reverse in part and affirm in part.