

On January 7, 1985, Katherine V. Bell, also known as Virginia Bell, executed her last will and testament. In the will she bequeathed all funds remaining in her estate, after debts had been paid, to Oleta Johnson (a first cousin), Marywil Hunter Croson (a niece), William Miles Hunter, Jr. (a nephew), and Daniel Thomas Hunter (a nephew), to be divided equally among them. Bell also bequeathed her home, the land upon which it was situated, and all household furniture and fixtures to Oleta Johnson, and named Johnson personal representative. At the same time the will was drawn, Bell executed a power of attorney naming Oleta Johnson as attorney-in-fact. Both of these documents were executed approximately three weeks after Bell entered a nursing home where she remained until her death on February 21, 1989. There was no dispute that Ms. Bell was alert and mentally competent until a few weeks before she passed away.

On April 12, 1985, Johnson, using the power of attorney, purchased with \$37,000 of Bell's funds a certificate of deposit in that sum at the First Federal Savings and Loan Association of Live Oak. That CD was set up with Bell's name as "trustee" and Oleta Johnson as "beneficiary." On July 12, 1985, in a similar fashion, Johnson purchased with \$40,000 of Bell's funds another Certificate of Deposit at the Hamilton County Bank, n/k/a Barnett Bank. That CD was set up in the names of "Katherine V. Bell or Oleta Johnson."

Following Bell's death, Johnson filed a petition for administration and was appointed as personal representative. In an inventory filed by Johnson, the two CD's were referred to with the statement that, notwithstanding the names of the owners of the CD's as reflected on the certificates themselves, Johnson intended "that all of the principal and accrued interest of [the certificates] shall be a part of the estate assets."

The appellants objected to the appellee's accounting of funds and monies received or disbursed from the estate, so the trial court required a full and complete accounting of all the estate funds from the time Johnson became cosigner on any of the decedent's accounts or from January 1, 1985, whichever was first.

A special report prepared by a certified public accountant was submitted, but the appellants remained unsatisfied and filed another motion to compel the personal

representative to make a full and complete accounting of the decedent's funds, including receipts from interest on the certificates of deposit, income tax refunds, and rental income. At the hearing on the motion, Johnson testified that she and Bell, her cousin, enjoyed a close relationship for over twenty years and when Bell was ill, Johnson willingly took care of her and visited her in the nursing home at least three times a week. Johnson testified Bell gave her the interest checks on the certificates of deposit after reviewing them and Johnson, with her power of attorney, would sign Bell's name to them. Johnson also testified the tenants renting Bell's home simply made the rental checks out to Johnson per Bell's wishes. Johnson indicated none of the other beneficiaries were close to Bell and had visited only a few times in the previous forty years.

The trial judge denied the appellants' motion to compel and the appellants filed another motion to compel production of the assets or, in the alternative, to remove the personal representative. Johnson filed a motion to withdraw the certificates of deposit from the estate's assets. In the trial court's order, the appellants' motion was denied and the certificates of deposit, the decedent's house, and all rental income associated with it were found to be the personal property of Johnson.

*59 The appellants raise three issues on appeal: (1) whether the trial court erred in finding the two certificates of deposit were not estate assets; (2) whether the trial court erred in denying the appellants' motion to compel a full and complete accounting; and (3) whether the trial court erred in not removing the personal representative based on a conflict of interest.

According to *Johnson v. Fraccacreta*, 348 So.2d 570 (Fla. 4th DCA 1977), a general power of attorney does not give the agent authority to make a gift of the principal's property. A conveyance that exceeds the scope of the power of attorney is void. In *Fraccacreta*, the decedent owned real property and, several months before her death, executed a power of attorney appointing her daughter as attorney-in-fact. The daughter used her power of attorney to execute a warranty deed conveying the decedent's property to the decedent and her husband as tenants by the entireties. The administrator ad litem brought the action contending the power of attorney did not authorize the attorney-in-fact/agent to make a gift. The court agreed and held that in construing an instrument creating a power of attorney, the court must look to the language of the

instrument and that an agent has no power to make a gift of the principal's property unless that power is expressly conferred by the instrument or unless such power arises as a necessary implication from the powers which are expressly conferred.

[1] [2] The power of attorney executed by Ms. Bell in the case at bar is devoid of any language purporting to authorize Johnson to use Ms. Bell's funds to purchase certificates of deposit in such a way as to create an individual pecuniary interest in Johnson. Furthermore, there were no witnesses to any oral agreement that may have existed between Bell and Johnson. Johnson is precluded, pursuant to the Dead Man's Statute,¹ from testifying as to any statements Bell may have made evidencing her intent to authorize Johnson to appropriate Bell's property for Johnson's own use and benefit.

Under *Hodges v. Surratt*, 366 So.2d 768 (Fla. 2d DCA 1978), the court held the attorney-in-fact for the decedent violated her fiduciary duty by transferring the principal's property to her husband and appropriating funds in the checking account for her own use absent clear language in the power of attorney authorizing such actions.

Hodges was cited with approval in *Krevatas v. Wright*, 518 So.2d 435 (Fla. 1st DCA 1988). Krevatas was a close friend and neighbor of Mrs. Fambrough, a childless widow with no local relatives. Mrs. Fambrough executed a power of attorney designating Krevatas attorney-in-fact and delivered it to him three years later. Approximately three weeks before she died, Fambrough changed her checking account, the balance of which never exceeded \$6,000, to a survivorship account, adding Krevatas' name. She also, via her will, left \$20,000 and her car to Krevatas, and during her last few weeks, signed documents making gifts to Krevatas and others. Krevatas used the power of attorney to transfer \$100,000 into the survivorship account from her other accounts and altered existing CD's totalling \$25,000 so that he and one of Mrs. Fambrough's nieces would have survivorship rights.

The court noted an absence of evidence indicating Mrs. Fambrough participated in the transfer of money into her checking account or the creation of survivorship interests in her certificates of deposit. Additionally, the court found Mrs. Fambrough did not intend to give Krevatas more money than was in the checking account at the time she changed it to a survivorship account. This apparent lack

of intent was based on the fact that Mrs. Fambrough documented a gift to Krevatas in the last few weeks of her life while she was still alert when she easily could have documented her desire for him to have the money. The court found that neither the power of attorney itself nor the circumstances surrounding the execution of the document demonstrated an express or implied authority for Krevatas to use the power for his personal benefit.

*60 In the case at bar, the facts indicate that the will and the power of attorney were executed approximately three weeks after Ms. Bell entered a nursing home where she remained alert for several years prior to her death in 1989. She had ample opportunity to document in writing her wishes regarding the disposition of her estate assets. However, the language of the power of attorney does not expressly authorize Johnson to make a gift of Bell's assets for her own personal benefit, nor does the will evidence Bell's intent for Johnson to have the funds. Further, there is no evidence of implied authorization from the circumstances surrounding the execution of the documents. Therefore, we reverse the trial court's finding that the two certificates of deposit were not estate assets.²

[3] In reversing the first issue, we must also reverse the third issue. According to Section 733.504(9), Florida Statutes, a personal representative may be removed for holding or acquiring conflicting or adverse interests against the estate which will adversely interfere with the administration of the estate as a whole. In holding that the certificates of deposit are to be considered estate assets, a conflict between the personal representative and the estate is created, requiring Johnson's removal as personal representative.

We affirm as to the second issue, since the trial court did not err in failing to compel a full and complete accounting. It is obvious from the record that the appellee testified as to the whereabouts of the funds the appellants claim are unaccounted for. The trial court did not err in refusing to order another accounting.

Accordingly, we reverse in part and affirm in part and remand for further proceedings consistent with this opinion.

SMITH and ZEHMER, JJ., concur.

All Citations

573 So.2d 57, 16 Fla. L. Weekly 37

Footnotes

1

Section 90.602, Florida Statutes.

2

The trial court's order relied in part upon Section 658.56, Florida Statutes. However, that section has no application to the case at bar because Bell had nothing to do with the purchase of the two CD's.

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EXHIBIT E

West's Florida Statutes Annotated
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)
Chapter 731. Probate Code: General Provisions (Refs & Annos)
Part II. Definitions

West's F.S.A. § 731.201

731.201. General definitions

Effective: October 1, 2013

Currentness

Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

(1) "Authenticated," when referring to copies of documents or judicial proceedings required to be filed with the court under this code, means a certified copy or a copy authenticated according to the Federal Rules of Civil Procedure.

(2) "Beneficiary" means heir at law in an intestate estate and devisee in a testate estate. The term "beneficiary" does not apply to an heir at law or a devisee after that person's interest in the estate has been satisfied. In the case of a devise to an existing trust or trustee, or to a trust or trustee described by will, the trustee is a beneficiary of the estate. Except as otherwise provided in this subsection, the beneficiary of the trust is not a beneficiary of the estate of which that trust or the trustee of that trust is a beneficiary. However, if each trustee is also a personal representative of the estate, each qualified beneficiary of the trust as defined in s. 736.0103 shall be regarded as a beneficiary of the estate.

(3) "Child" includes a person entitled to take as a child under this code by intestate succession from the parent whose relationship is involved, and excludes any person who is only a stepchild, a foster child, a grandchild, or a more remote descendant.

(4) "Claim" means a liability of the decedent, whether arising in contract, tort, or otherwise, and funeral expense. The term does not include an expense of administration or estate, inheritance, succession, or other death taxes.

(5) "Clerk" means the clerk or deputy clerk of the court.

(6) "Collateral heir" means an heir who is related to the decedent through a common ancestor but who is not an ancestor or descendant of the decedent.

(7) "Court" means the circuit court.

(8) "Curator" means a person appointed by the court to take charge of the estate of a decedent until letters are issued.

731.201. General definitions, FL ST § 731.201

(9) "Descendant" means a person in any generational level down the applicable individual's descending line and includes children, grandchildren, and more remote descendants. The term "descendant" is synonymous with the terms "lineal descendant" and "issue" but excludes collateral heirs.

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will or trust. The term includes "gift," "give," "bequeath," "bequest," and "legacy." A devise is subject to charges for debts, expenses, and taxes as provided in this code, the will, or the trust.

(11) "Devisee" means a person designated in a will or trust to receive a devise. Except as otherwise provided in this subsection, in the case of a devise to an existing trust or trustee, or to a trust or trustee of a trust described by will, the trust or trustee, rather than the beneficiaries of the trust, is the devisee. However, if each trustee is also a personal representative of the estate, each qualified beneficiary of the trust as defined in s. 736.0103 shall be regarded as a devisee.

(12) "Distributee" means a person who has received estate property from a personal representative or other fiduciary other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increments to them remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(13) "Domicile" means a person's usual place of dwelling and shall be synonymous with residence.

(14) "Estate" means the property of a decedent that is the subject of administration.

(15) "Exempt property" means the property of a decedent's estate which is described in s. 732.402.

(16) "File" means to file with the court or clerk.

(17) "Foreign personal representative" means a personal representative of another state or a foreign country.

(18) "Formal notice" means a form of notice that is described in and served by a method of service provided under rule 5.040(a) of the Florida Probate Rules.

(19) "Grantor" means one who creates or adds to a trust and includes "settlor" or "trustor" and a testator who creates or adds to a trust.

(20) "Heirs" or "heirs at law" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

731.201. General definitions, FL ST § 731.201

(21) "Incapacitated" means a judicial determination that a person lacks the capacity to manage at least some of the person's property or to meet at least some of the person's essential health and safety requirements. A minor shall be treated as being incapacitated.

(22) "Informal notice" or "notice" means a method of service for pleadings or papers as provided under rule 5.040(b) of the Florida Probate Rules.

(23) "Interested person" means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent's estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor's estate. The term does not include a beneficiary who has received complete distribution. 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.

(24) "Letters" means authority granted by the court to the personal representative to act on behalf of the estate of the decedent and refers to what has been known as letters testamentary and letters of administration. All letters shall be designated "letters of administration."

(25) "Minor" means a person under 18 years of age whose disabilities have not been removed by marriage or otherwise.

(26) "Other state" means any state of the United States other than Florida and includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(27) "Parent" excludes any person who is only a stepparent, foster parent, or grandparent.

(28) "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.

(29) "Petition" means a written request to the court for an order.

(30) "Power of appointment" means an authority, other than as an incident of the beneficial ownership of property, to designate recipients of beneficial interests in property.

(31) "Probate of will" means all steps necessary to establish the validity of a will and to admit a will to probate.

(32) "Property" means both real and personal property or any interest in it and anything that may be the subject of ownership.

731.201. General definitions, FL ST § 731.201

(33) "Protected homestead" means the property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner's surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned in tenancy by the entireties or in joint tenancy with rights of survivorship is not protected homestead.

(34) "Residence" means a person's place of dwelling.

(35) "Residuary devise" means a devise of the assets of the estate which remain after the provision for any devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount. If the will contains no devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount, "residuary devise" or "residue" means a devise of all assets remaining after satisfying the obligations of the estate.

(36) "Security" means a security as defined in s. 517.021.

(37) "Security interest" means a security interest as defined in s. 671.201.

(38) "Trust" means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts; conservatorships; custodial arrangements pursuant to the Florida Uniform Transfers to Minors Act;¹ business trusts providing for certificates to be issued to beneficiaries; common trust funds; land trusts under s. 689.071, except to the extent provided in s. 689.071(7); trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(39) "Trustee" includes an original, additional, surviving, or successor trustee, whether or not appointed or confirmed by court.

(40) "Will" means an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person's property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will.

Credits

Laws 1974, c. 74-106, § 1; Laws 1975, c. 75-220, § 4; Laws 1977, c. 77-174, § 1; Laws 1985, c. 85-79, § 2; Laws 1987, c. 87-226, § 66; Laws 1988, c. 88-340, § 1; Laws 1993, c. 93-257, § 7. Amended by Laws 1995, c. 95-401, § 6, eff. July 1, 1995; Laws 1997, c. 97-102, § 949, eff. July 1, 1997; Laws 1998, c. 98-421, § 52, eff. July 1, 1998; Laws 2001, c. 2001-226, § 11, eff. Jan. 1, 2002; Laws 2002, c. 2002-1, § 106, eff. May 21, 2002; Laws 2003, c. 2003-154, § 2, eff. June 12, 2003; Laws 2005, c. 2005-108, § 2, eff. July 1, 2005; Laws 2006, c. 2006-217, § 29, eff. July 1, 2007; Laws 2007, c. 2007-74, § 3, eff. July 1, 2007; Laws 2007, c. 2007-153, § 8, eff. July 1, 2007; Laws 2009, c. 2009-115, § 1, eff. July 1, 2009; Laws 2010, c. 2010-132, § 4, eff. Oct. 1, 2010; Laws 2012, c. 2012-109, § 1, eff. July 1, 2012; Laws 2013, c. 2013-172, § 16, eff. Oct. 1, 2013.

Editors' Notes

APPLICABILITY

<The introductory language to § 1 of Laws 2012, c. 2012-109, provides:>

<“Effective July 1, 2012, and applicable to proceedings pending before or commenced on or after July 1, 2012, subsection (33) of section 731.201, Florida Statutes, is amended to read:”>

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Footnotes

1

See § 710.101 et seq.

West's F. S. A. § 731.201, FL ST § 731.201

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EXHIBIT F

West's Florida Statutes Annotated

Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)

Chapter 733. Probate Code: Administration of Estates (Refs & Annos)

Part VI. Duties and Powers of Personal Representative

West's F.S.A. § 733.602

733.602. General duties

Effective: July 1, 2009

Currentness

(1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of the decedent's will and this code as expeditiously and efficiently as is consistent with the best interests of the estate. A personal representative shall use the authority conferred by this code, the authority in the will, if any, and the authority of any order of the court, for the best interests of interested persons, including creditors.

(2) A personal representative shall not be liable for any act of administration or distribution if the act was authorized at the time. Subject to other obligations of administration, a probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a proceeding challenging intestacy or a proceeding questioning the appointment or fitness to continue. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of interested persons.

Credits

Laws 1974, c. 74-106, § 1; Laws 1975, c. 75-220, § 74; Laws 1977, c. 77-87, § 27; Laws 1977, c. 77-174, § 1; Laws 1979, c. 79-400, § 270; Laws 1989, c. 89-340, § 3. Amended by Laws 1997, c. 97-102, § 1001, eff. July 1, 1997; Laws 2001, c. 2001-226, § 125, eff. Jan. 1, 2002; Laws 2006, c. 2006-217, § 37, eff. July 1, 2007; Laws 2009, c. 2009-115, § 11, eff. July 1, 2009.

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West's F. S. A. § 733.602, FL ST § 733.602

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EXHIBIT G

West's Florida Statutes Annotated
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)
Title 42-Appendix I Probate Rules (Refs & Annos)
Part II. Probate

Fla.Prob.R. Rule 5.440

Rule 5.440. Proceedings for Removal of Personal Representative

Currentness

(a) Commencement of Proceeding. The court on its own motion may remove, or any interested person by petition may commence a proceeding to remove, a personal representative. A petition for removal shall state the facts constituting the grounds upon which removal is sought, and shall be filed in the court having jurisdiction over the administration of the estate.

(b) Accounting. A removed personal representative shall file an accounting within 30 days after removal.

(c) Delivery of Records and Property. A removed personal representative shall, immediately after removal or within such time prescribed by court order, deliver to the remaining personal representative or to the successor fiduciary all of the records of the estate and all of the property of the estate.

(d) Failure to File Accounting or Deliver Records and Property. If a removed personal representative fails to file an accounting or fails to deliver all property of the estate and all estate records under the control of the removed personal representative to the remaining personal representative or to the successor fiduciary within the time prescribed by this rule or by court order, the removed personal representative shall be subject to contempt proceedings.

Credits

Amended Sept. 4, 1980, effective Jan. 1, 1981 (387 So.2d 949); Sept. 13, 1984, effective Jan. 1, 1985 (458 So.2d 1079); Sept. 29, 1988, effective Jan. 1, 1989 (537 So.2d 500); Sept. 24, 1992, effective Jan. 1, 1993 (607 So.2d 1306); May 2, 2002 (824 So.2d 849); July 12, 2007 (964 So.2d 140); Dec. 9, 2010 (51 So.3d 1146).

Editors' Notes

COMMITTEE NOTES

The revision of subdivision (a) of this rule by the addition of its final phrase represents a rule implementation of the procedure found in section 733.505, Florida Statutes. It is not intended to change the effect of the statute from which it was derived but has been reformatted to conform with the structure of these rules. It is not intended to create a new procedure or modify an existing procedure.

Rule History

1980 Revision: Subdivision (a) amended to require formal notice to interested persons and to delete requirement that court give directions as to mode of notice. Surety authorized to petition for removal.

Rule 5.440. Proceedings for Removal of Personal..., FL ST PROB Rule 5.440

1984 Revision: Editorial changes. Provisions in prior rule for contempt have been deleted since the court has the inherent power to punish for contempt. Committee notes revised.

1988 Revision: Last phrase of (a) added to implement the procedure found in section 733.505, Florida Statutes. Subdivision (b) amended to parallel interim accounting rules. Deletes ability to extend time to file and adds reference to court power to punish for contempt. Committee notes expanded. Editorial changes. Citation form changes in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

2002 Revision: Entire rule amended. Contents of accountings by removed fiduciaries are now governed by rule 5.346. Editorial changes in (a), (c), and (d). Committee notes revised.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2010 Revision: Editorial change in title to clarify scope of rule.

2012 Revision: Committee notes revised.

Statutory References

§ 731.201(23), Fla. Stat. General definitions.

§ 733.504, Fla. Stat. Removal of personal representative; causes of removal.

§ 733.505, Fla. Stat. Jurisdiction in removal proceedings.

§ 733.506, Fla. Stat. Proceedings for removal.

§ 733.5061, Fla. Stat. Appointment of successor upon removal.

§ 733.508, Fla. Stat. Accounting and discharge of removed personal representatives upon removal.

§ 733.509, Fla. Stat. Surrender of assets upon removal.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and documents.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.150 Order requiring accounting.

Fla. Prob. R. 5.310 Disqualification of personal representative; notification.

Fla. Prob. R. 5.345 Accountings other than personal representatives' final accountings.

Fla. Prob. R. 5.346 Fiduciary accounting.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

RESEARCH REFERENCES

Forms

Florida Pleading and Practice Forms § 53:64, Petition--To Remove Personal Representative [§§ 733.504 to 733.506, Fla. Stat.; Fla. Prob. R. **5.440**].

Florida Pleading and Practice Forms § 53:66, Petition--By Interested Party--Maladministration [§ 733.504(5), Fla. Stat.; Fla. Prob. R. **5.440**].

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West's F.S.A. Title 42, App. 1, Prob. Rule **5.440**, FL ST PROB Rule **5.440**

Florida Supreme Court Rules of Civil Procedure, Judicial Administration, Criminal Procedure, Civil Procedure for Involuntary Commitment of Sexually Violent Predators, Worker's Compensation, Probate, Traffic Court, Small Claims, Juvenile Procedure, Appellate Procedure, Certified and Court-Appointed Mediators, Court Appointed Arbitrators, Family Law, Certification and Regulation of Court Reporters, Certification of Spoken Language Interpreters, and Qualified and Court-Appointing Parenting Coordinators are current with amendments received through 06/01/16. All other State Court Rules are current with amendments received through 06/01/16.

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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,
Plaintiff,

PROBATE DIVISION
CASE NO.: 502014CP003698XXXXNB
DIVISION: IH

v.

ALEXANDRA BERNSTEIN; ERIC
BERNSTEIN; MICHAEL BERNSTEIN;
MOLLY BERNSTEIN; 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.

**MOTION FOR PROTECTIVE ORDER AS TO DEPOSITION OF
WILLIAM STANSBURY AND APPEARANCE AT EVIDENTIARY HEARING/TRIAL**

COMES NOW William Stansbury, by and through his undersigned counsel, and moves this Court for the entry of a Protective Order with regard to two subpoenas served upon him on March 10, 2016 demanding him to appear for the taking of his deposition and to appear at a hearing scheduled for April 8, 2016, and states as follows:

1. On March 10, 2016, non-party William Stansbury was served (through counsel) with two subpoenas:

- a. Subpoena Duces Tecum to William Stansbury for appearance at deposition (a copy of which is attached hereto as **Exhibit "A"**); and
- b. Subpoena Duces Tecum to appear at evidentiary hearing/trial (a copy of which is attached hereto as **Exhibit "B"**).

--- **Statement of the Case** ---

2. This is an action brought by TED BERNSTEIN as Successor Trustee of the Shirley Bernstein Trust against all of the beneficiaries of the Shirley Bernstein Trust, plus Eliot Bernstein.

3. This action is a two-count complaint. (A copy of the Complaint is attached hereto as **Exhibit "C."**) The Motion filed by the Trustee on January 28, 2016, which is now set to be heard before the Court on April 8, 2016 at 9:45 a.m., involves the sale of the former homestead of Shirley and Simon Bernstein (Lion's Head property) and requests relief as to Eliot Bernstein concerning holding the proceeds of the sale of the homestead and further injunctive relief against Eliot Bernstein. A copy of the Motion is attached hereto as **Exhibit "D."**

4. William Stansbury is not a party to this action. The trial of this action as to Count II took place on December 15, 2015, and Stansbury was not involved other than as an observer. Stansbury has had no involvement in the administration of the Shirley Bernstein Trust. The Shirley Bernstein Trust is not a defendant in the case pending by William Stansbury against the Simon Bernstein Estate.

--- **Retaliatory Subpoenas** ---

5. This matter has devolved into retaliatory litigation tactics by Ted Bernstein as he seeks to involve William Stansbury in this action solely in an effort to cause William Stansbury

to incur fees and otherwise become involved in this case because William Stansbury has taken action in collateral matters adverse to that of Ted Bernstein.

6. Ted Bernstein is retaliating against William Stansbury as a result of Mr. Stansbury's issues which are adverse to Ted Bernstein on the following matters:

- a. Ted Bernstein is an individual Plaintiff in an action pending in the United States District Court for the Northern District of Illinois (the "Chicago litigation") in which he is claiming that he and the other adult children of Simon Bernstein are beneficiaries of a life insurance policy on the life of Simon Bernstein in the approximate amount of \$1,700,000.00. Mr. Stansbury believes that these insurance proceeds actually belong to the Estate of Simon Bernstein against which is pending his approximate \$2.5 million dollar claim for unpaid compensation. He therefore attempted to intervene in that action, which was vigorously opposed by Ted Bernstein. The Court denied the intervention but thereafter, after the original Personal Representatives of the Estate of Simon Bernstein (Teschler and Spallina) resigned as Personal Representatives, the Curator, Ben Brown, Esq. and subsequently the Successor Personal Representative, Brian O'Connell, Esq. became convinced that the Estate did have a valid interest in and to the insurance proceeds at issue in the Chicago litigation, and the Estate has now intervened in that case. Mr. Stansbury is funding the fees incurred by the Estate in that action. The intervention of the Estate now threatens Ted Bernstein because the life insurance proceeds of approximately \$1.7 million could, now that the Estate has intervened, not go to Ted Bernstein and the adult children, but rather to

the Simon Bernstein Trust, which is the sole monetary beneficiary of the Simon Bernstein Estate. The Estate's attorneys in Chicago feel so strongly about the merits of the Estate's position that they are willing to take this case on a contingency fee basis.

- b. Because the Simon Bernstein Trust could be the recipient of the life insurance proceeds coming from Illinois, it clearly puts Ted Bernstein in a conflict of interest position as, on the one hand, he is the Plaintiff in the Chicago litigation where he is trying to keep the funds away from the Simon Bernstein Trust while, on the other hand, he is holding the position of Successor Trustee of the Simon Bernstein Trust, which is the sole beneficiary of the Simon Bernstein Estate where the life insurance proceeds would be paid should he not prevail as Plaintiff. Therefore, he has a clear and direct conflict of interest. Mr. Stansbury filed a Petition to Remove Ted Bernstein as the Successor Trustee of the Simon Bernstein Trust based upon this conflict, as well as the fact that Ted Bernstein is facially not qualified to hold the position of Successor Trustee according to the plain language of the Trust. Simon Bernstein specifically disinherited Ted Bernstein in his Trust, writing that, for all purposes of the Trust, Ted Bernstein was considered to have pre-deceased him.
- c. Ted Bernstein has additional reasons to want to harass William Stansbury. Mr. Stansbury has also filed his Amended Petition to account for missing property (furniture and fixtures) from the oceanfront condominium owned by the Shirley Bernstein Trust, but which personal property inside was the property

of the Simon Bernstein Estate, and also to account for missing jewelry of the Simon Bernstein Estate. By Mr. Stansbury's Petition, Ted Bernstein is placed squarely in a position to account for the missing property. This also would give Ted Bernstein incentive to harass Mr. Stansbury.

- d. Ted Bernstein's attorney admitted to this Court at the status conference held on March 7, 2016 that the furniture and fixtures contained within the oceanfront condominium in Boca Raton belonged to the Simon Bernstein Estate but was sold along with the condo. He admitted that the Shirley Bernstein Trust, over which Ted Bernstein is the Successor Trustee, needed to reimburse the Estate of Simon Bernstein for the value of that furniture which he had no authority to sell. The sale of that oceanfront condominium took place two years ago and yet no reimbursement has been forthcoming. Mr. Stansbury, among others, brought this to the attention of the Court, further buttressing his position that the Subpoenas issues in this matter are only for harassment purposes.
- e. The proceeds of the sale of the oceanfront condominium, which took place two years ago, based on information and belief, were distributed to 7 of the 10 grandchildren of Simon and Shirley Bernstein. However, by the terms of the Shirley Bernstein Trust, Ted Bernstein's children were excluded as beneficiaries but received a share of the proceeds nonetheless. Mr. Stansbury has made the interested parties to this litigation aware of that as well.

--- Stansbury's Conduct is Not Relevant to the Issues Before the Court to be Heard on
April 8, 2016 ---

7. Ted Bernstein has seized on one e-mail written by Kevin Hall that mentioned the name of William Stansbury to justify the issuance of the Subpoenas. Mr. Stansbury is clearly not involved as a witness in the matters before the Court on April 8, 2016. He is not a party and there is no justifiable reason to involve Mr. Stansbury other than the desire of Ted Bernstein to harass Mr. Stansbury.

8. The only connection Mr. Stansbury has to this litigation is as set forth in the e-mail from Kevin Hall to Alan Rose, wherein Mr. Stansbury's name is mentioned. A copy of the e-mail is attached hereto as **Exhibit "E."** There is no evidence that Mr. Stansbury has been or is involved in any way with the sale of the Lion's Head property which is the subject of the Motion for which he was subpoenaed, or any involvement after the sale concerning the Lion's Head property.

9. Further, the deposition date of March 29, 2016 was not cleared with counsel for Mr. Stansbury. Counsel for Mr. Stansbury is not available on that day. Finally, the location of the deposition is set for the office of counsel for Ted Bernstein in West Palm Beach. Mr. Stansbury resides in Boynton Beach and his deposition could easily be accomplished at the office of his attorney also located in Boynton Beach.

WHEREFORE, for all the foregoing reasons, William Stansbury requests this Honorable Court to enter a Protective Order protecting him from attending the deposition on March 29, 2016, and quashing the Subpoena on him for the hearing set for April 8, 2016, which does not involve him in any way.



Peter M. Feaman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served in the Florida Courts E-Filing Portal to all parties on the service list below on this 15th day of March, 2016:

Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja.B. and Jo.B., Minors
2753 Northwest 34th Street
Boca Raton, Florida 33434
Email: iviewit@iviewit.tv

Alan Rose, Esquire
Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
Email: arose@mrachek-law.com

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, Florida 33401
Email: john@jmorrisseylaw.com
Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein


Pamela Beth Simon
303 East Wacker Drive, Suite 2725
Chicago, Illinois 60601
Email: psimon@stpcorp.com

Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein
Email: lisa.friedstein@gmail.com

Brian M. O'Connell, Esquire
Joielle A. Foglietta, Esq.
Ciklin, Lubitz, Martens & O'Connell
515 North Flagler Drive, 20th Floor
West Palm Beach, Florida 33401
Email: boconnell@ciklinlubitz.com
jfoglietta@ciklinlubitz.com
service@ciklinlubitz.com
slobdell@ciklinlubitz.com

Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor
Email: jilliantoni@gmail.com

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

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.,

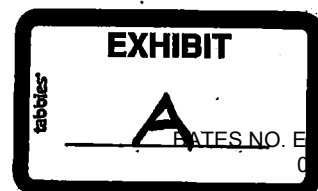
Defendants.

**SUBPOENA DUCES TECUM TO WILLIAM STANSBURY FOR
APPEARANCE AT DEPOSITION**

THE STATE OF FLORIDA

TO: William Stansbury
C/O Peter Feaman, Esq.
PETER M. FEAMAN, P.A.
3695 West Boynton Beach Boulevard, Suite 9
Boynton Beach, FL 33436

YOU ARE COMMANDED to appear before a person authorized by law to take depositions
at the law firm of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A., 505 S. Flagler



Drive, Suite 600, West Palm Beach, FL 33401 (Telephone: (561) 655-2250) on March 29, 2016 at 10:00 a.m. for the taking of your deposition in this action, and to have with you at that time and place the documents identified on the attached Exhibit "A."

If you fail to appear, you may be in contempt of court.

You are subpoenaed to appear by the following attorneys, and unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

Dated on March 9, 2016.


ALAN B. ROSE, ESQ.
For the Court

MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 S. Flagler Drive, Suite 600
West Palm Beach, FL 33401
Phone: 561-655-2250
Fax: 561-655-5537
Attorneys for Plaintiff, Ted Bernstein
Alan B. Rose
Florida Bar Number: 961825

EXHIBIT A

YOU ARE REQUESTED to bring the following documents:

Definitions

"Documents" shall mean and include all writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, specifically including all letters, emails, text messages, phone messages, notes, deed, title reports, or written communication of any kind—stored in any medium whether in paper or electronic format.

"Property" shall mean 7020 Lions Head Lane, Boca Raton, Florida 33496.

"Eliot" shall mean Eliot Ivan Bernstein, including any agents, employees or others acting on his behalf.

"Stansbury" shall mean William Elwood "Bill" Stansbury, together with his wife Eileen B. Stansbury and any and all agents, employees or others acting on his behalf, including his attorney, Peter M. Feaman, Esquire, or anyone employed by or affiliated with the Law Offices of Peter M. Feaman. (This request does not seek any documents sent solely between William Stansbury and his counsel, and includes only documents which were sent to or received from a third-party outside of the attorney-client relationship.)

"Hall" shall mean Kevin R. Hall.

"Cox" shall mean Crystal Cox.

Documents Requested

1. All documents sent by Stansbury to Eliot concerning the Property.
2. All documents sent by Eliot to Stansbury concerning the Property.
3. All documents sent by Stansbury to Hall concerning the Property.
4. All documents sent by Hall to Stansbury concerning the Property.
5. All documents sent by Stansbury to Cox concerning the Property.

6. All documents sent by Cox to Stansbury concerning the Property.
7. All documents sent by Stansbury relating to the Property to anyone else other than Eliot, Hall or Cox.
8. All documents sent by Stansbury to Cox, or Cox to Stansbury, on any matter.
9. All documents sent to Cox or Hall by anyone for which copies (bcc: or cc:) were provided to Stansbury.
10. All documents, including checks, canceled checks, credit card receipts or other documents showing any payments made by Stansbury to or on behalf of Eliot or his family, from and after May 6, 2015 to the present.
11. All documents evidencing any oral or written agreements between Stansbury and Eliot concerning (i) the Property; (ii) the Trusts or Estates of Simon Bernstein and/or Shirley Bernstein, (iii) the Illinois litigation; or (iv) any other subject matter.
12. All documents relating to the Property, including any internet research, title reports, deeds, notes, pictures, or otherwise in the possession of Stansbury relating to the Property.
13. All documents concerning Lions Head Land Trust, Lions Head Land Trust, Inc., Mitchell and Deborah Huhem, Leilani Ochoada, Larry Pino, and anyone else involved in any way as an owner, participant, professional, lawyer, title examiner, etc. in the real estate transaction under which title of the Property transferred from the Shirley Bernstein Trust to the Lions Head Land Trust.

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.

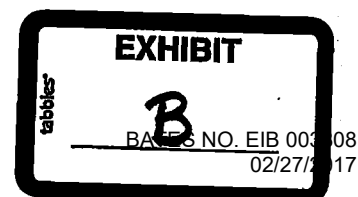
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**SUBPOENA DUCES TECUM TO WILLIAM STANSBURY FOR
APPEARANCE AT EVIDENTIARY HEARING/TRIAL**

THE STATE OF FLORIDA

TO: William Stansbury
C/O Peter Feaman, Esq.
PETER M. FEAMAN, P.A.
3695 West Boynton Beach Boulevard, Suite 9
Boynton Beach, FL 33436

YOU ARE COMMANDED to appear before the Honorable John L. Phillips, Judge of the
Circuit Court, at the North Branch of the Palm Beach County Courthouse, 3188 PGA Boulevard,

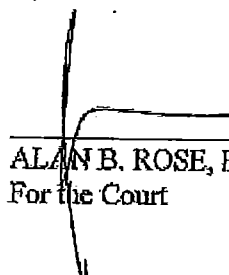


Palm Beach Gardens, FL 33410 *Courtroom 3* on April 8, 2016 at 9:45 A.M. to testify in this action and to have with you at that time, the documents outlined in Exhibit A attached to this Subpoena.

If you fail to appear, you may be in contempt of court.

You are subpoenaed to appear by the following attorneys and unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

DATED this 9th day of March, 2016.


ALAN B. ROSE, ESQ.
For the Court

MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 S. Flagler Drive, Suite 600
West Palm Beach, FL 33401
Phone: 561-655-2250
Fax: 561-655-5537
Attorneys for Plaintiff, Tod Bernstein
Alan B. Rose
Florida Bar Number: 961825

EXHIBIT A

YOU ARE REQUESTED to bring the following documents:

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8. All documents sent by Stansbury to Cox, or Cox to Stansbury, on any matter.
9. All documents sent to Cox or Hall by anyone for which copies (bcc: or cc:) were provided to Stansbury.
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11. All documents evidencing any oral or written agreements between Stansbury and Eliot concerning (i) the Property; (ii) the Trusts or Estates of Simon Bernstein and/or Shirley Bernstein, (iii) the Illinois litigation; or (iv) any other subject matter.
12. All documents relating to the Property, including any internet research, title reports, deeds, notes, pictures, or otherwise in the possession of Stansbury relating to the Property.
13. All documents concerning Lions Head Land Trust, Lions Head Land Trust, Inc., Mitchell and Deborah Huhem, Leilani Ochoada, Larry Pino, and anyone else involved in any way as an owner, participant, professional, lawyer, title examiner, etc. in the real estate transaction under which title of the Property transferred from the Shirley Bernstein Trust to the Lions Head Land Trust.

**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,

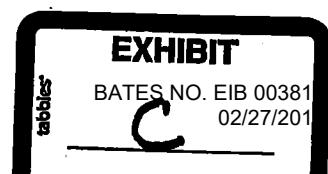
v.

ALEXANDRA BERNSTEIN; 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.

AMENDED COMPLAINT

Plaintiff, TED BERNSTEIN, as trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended (the "Trust"), pursuant to leave granted by and instructions from this Court to file an Amended Complaint, hereby files this Amended Complaint against and provides notice to those interested in the Trust and in the testamentary documents of Simon L. Bernstein and Shirley Bernstein, namely 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. (collectively, "Defendants").

Plaintiff hereby sues Defendants, and states:

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.")
2. Shirley Bernstein died on December 8, 2010, and at the time of her passing was a resident of Palm Beach County, Florida.
3. Prior to her death, Shirley Bernstein created a trust known as the Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley's Trust").
4. Shirley Bernstein was a resident of Palm Beach County, Florida when she created Shirley's Trust.
5. An authentic copy of Shirley's Trust is attached as Exhibit "A".
6. Shirley's Trust, Exhibit A, is clear and unambiguous.
7. Shirley Bernstein was survived by her husband, Simon L. Bernstein.
8. The marriage between Shirley and Simon L. Bernstein was the first and only marriage for each of them.

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.
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.
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.
12. Simon L. Bernstein died on September 13, 2012.
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.
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.
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, which the Trustee first learned of in mid-January 2014, is not a valid amendment to Shirley's Trust, and has no bearing on this issue in this case.
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".

17. Pursuant to Shirley's Trust, upon Shirley's death, a "Family Trust" is created pursuant to Article II, ¶ C.1.

18. Pursuant to Shirley's Trust, no "Marital Trust" is created, as that term is used in Article II of Shirley's Trust.

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."

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.

21. After Shirley's death, the beneficiary of the Shirley Trust was Simon L. Bernstein during the remainder of his life.

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 of more of my [Shirley's] lineal descendants and their spouses."

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*."

24. Simon exercised his Special Power in Article II in the Will of Simon L. Bernstein dated July 25, 2012 ("Simon's Will").

25. An authentic copy of Simon's Will is attached as Exhibit "C".

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.

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.

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".

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*."

30. The class of permissible appointees for Simon's power (Shirley's "lineal descendants and their spouses") is different than the class of alternate/default beneficiaries (Shirley's "lineal descendants *then living*, *per stirpes*").

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, it appears that neither Ted, Pam, Eliot, Lisa or Jill are to receive any portion of the assets in the Shirley Trust.

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.

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.

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.

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.

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.

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."

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]".

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.

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.

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.

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.

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.

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.

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.

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.

47. This proceeding seeks the intervention of this Court in the administration Shirley's Trust by an interested person, the Trustee, and declaratory relief.

48. This Court has subject matter jurisdiction pursuant to Sections 736.0203 and 736.0201, Florida Statutes.

49. Pursuant to Article III.I, Shirley's Trust is governed by the laws of the State of Florida.

50. This is a judicial proceeding concerning Shirley's Trust pursuant to Section 736.0201, Florida Statutes.

51. Venue is proper in this Court pursuant to Section 736.0204, Florida Statutes.

52. Venue is appropriate in the Probate Division of this Court pursuant to Administrative Order 6.102-9/08.

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.

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.

Defendants and Potential Beneficiaries

55. Defendants Alexandra Bernstein, Eric Bernstein, and Michael Bernstein are lineal descendants of Ted S. Bernstein.¹ Each is over the age of 18 and claims a beneficial interest in the Shirley Trust.

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.

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.

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 devise, bequest, inheritance or beneficial interest in any portion of the Shirley Trust or her estate.

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.

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.

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

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.

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

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.

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.

65. Each of the Defendants is subject to personal jurisdiction pursuant to Section 736.0202, Florida Statutes.

COUNT I -DECLARATORY AND OTHER RELIEF

66. Trustee restates the allegations contained in Paragraphs 1 to 65.

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.

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.

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.

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.

71. The Trustee, and the Trust, will suffer irreparable harm if relief is not granted.

72. There is no other adequate remedy at law.

73. The relief sought constitutes and deals with a bona fide question between the Trustee and the Defendants.

74. The declaration sought deals with a present state of facts or presents a controversy as to a state of facts.

75. The Trustee has a justiciable question and has a bona fide, actual, and present practical need for a declaration from this Court.

76. The Trustee's rights, duties, and obligations are dependent upon the facts or law applicable to the facts.

77. The seeds of litigation are ripening such that a declaration from this Court will benefit the Trust.

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.

WHEREFORE, Plaintiff prays that this Court: (i) make a declaration and otherwise intervene in the administration of the Trust, as aforesaid; (ii) instruct the trustee to whom to distribute the assets of Shirley's Trust; (iii) declare whether the power of appointment was validly exercised by Simon in accordance with his stated wishes; (iv) determine who are the proper recipients of distributions of the assets of the Shirley Trust pursuant to the power of

appointment, and if appropriate, direct the return of any funds distributed; (v) grant the Plaintiff Trustee his attorneys' fees and costs and other relief as may be just and proper.

**COUNT II – DECLARATORY JUDGMENT AS TO VALIDITY
OF TESTAMENTARY DOCUMENTS**

79. Trustee restates the allegations contained in paragraphs 1-65 and 70-78.

80. This is an action, filed at the direction of the Court, 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 as Exhibit “A”);
- b. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 (“Shirley First Amendment”, Exhibit “B”);
- c. Will of Simon L. Bernstein dated July 25, 2012 (“Simon Will”, Exhibit “C”);
- d. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 (“Simon Trust”, Exhibit “D”);
- e. Will of Shirley Bernstein dated May 20, 2008 (“Shirley Will”, Exhibit “E”).

(collectively, the “Testamentary Documents”).

81. Certain of the potential beneficiaries named herein have raised questions concerning the validity, authenticity and enforceability of the Testamentary Documents, including issues relating to the authenticity and genuineness of the signatures; the formalities of execution; and other issues.

82. The Trustee asserts that the Testamentary Documents are valid, genuine and enforceable, and requests that the Court enter a Final Judgment determining that the documents are valid, genuine and enforceable.

83. Specifically, Exhibits "A" and "E" were properly signed and executed by Shirley Bernstein on May 20, 2008, in the presence of two subscribing witnesses and a notary.

84. The Shirley Will has been admitted to probate.

85. Exhibit "B" was properly signed and executed by Shirley Bernstein on November 18, 2008, in the presence of two subscribing witnesses and a notary.

86. Exhibits "C" and "D" were properly signed and executed by Simon L. Bernstein on July 25, 2012, in the presence of two subscribing witnesses and a notary.

87. The Simon Will has been admitted to probate.

88. At the time of signing their respective Testamentary Documents, Shirley Bernstein and Simon L. Bernstein were competent and legally able to execute testamentary documents, and were not acting under any such undue influence or other disability as could cause the documents to be unenforceable under Florida law.

WHEREFORE, Plaintiff prays that this Court: (i) make a declaration and otherwise intervene in the administration of the Will and Trust as aforesaid; (ii) enter a judgment under the claim set forth in Count II for declaratory judgment that the Testamentary Documents are genuine, valid and fully enforceable according to their terms; (iii) determine who are the proper recipients of distributions and if appropriate, direct the return of any funds distributed; (iv) grant the Plaintiff Trustee his attorneys' fees and costs and other relief as may be just and proper.

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; Email Electronic Transmission; FedEx; Hand Delivery this 3rd day of October, 2014.

ATTORNEYS FOR PLAINTIFF

**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
Primary e-mail: arose@mrachek-law.com
Secondary e-mail: mchandler@mrachek-law.com

By: /s/ Alan B. Rose
Alan B. Rose
Fla. Bar No. 961825

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 (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

William H. Glasko, Esq.
Golden & Cowan, P.A.
17345 S. Dixie Highway
Palmetto Bay, FL 33157
(305) 856-5440 - Telephone
(305) 856-9388 - Facsimile
Email: eservice@palmettobaylaw.com;
bill@palmettobaylaw.com;
tmealy@gcprobatelaw.com
Counsel for Lisa Sue Friedstein, individually and
as trustee for her children, and as natural guardian
for M.F. and C.F., Minors; Jill Marla Iantoni,
individually and as trustee for her children, and as
natural guardian for J.I. a minor

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

COURTESY COPY ONLY:

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

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.

**MOTION TO MODIFY FINAL ORDER APPROVING SALE
DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee, moves for entry of an Order modifying in part the *Final Order Granting Successor Trustee's Motion to Approve Sale of Trust Property* dated May 6, 2015 (the "Sale Order"), and for further injunctive relief, and states:

1. On May 6, 2015, this Court approved the Trustee's Motion to sell the Trust's property located within the St. Andrews Country Club community in Boca Raton. The sale was initially scheduled to close on or before March 31, 2015, in an all cash transaction, with the buyer accepting



the property "as is." The urgency was created because the St. Andrews Country Club was raising the required equity membership fee from \$95,000 to \$125,000, an increase of \$30,000. Upon learning of the possible sale, Eliot Bernstein objected to it and threatened to file a lis pendens.

2. This Court held a hearing on the Trustee's motion to approve sale on March 25, at uniform motion calendar. Based upon Eliot Bernstein's objections, the Court deferred ruling and scheduled an evidentiary hearing for the next day. At the evidentiary hearing, the Trustee and the Trustee's licensed realtor testified as to: the lengthy marketing process that had been undertaken in an effort to sell this property; the listing was more than 1,000 days old; the offer received was by far the highest and best received to date and likely in the near future; the offer was consistent with an appraisal, which was admitted into evidence; there were extensive carry costs associated with the property; and the announced \$30,000 increase in the club equity membership contribution was a significant factor in this deal. After hearing this testimony, and again based upon Eliot Bernstein's objections and request for time to obtain counter-evidence, the trial court denied the Motion to Approve the Sale on an emergency basis, and deferred the ruling pending a second evidentiary hearing.

3. At an evidentiary hearing held on May 6, 2015, the Court afforded Eliot Bernstein the opportunity to present evidence, through documents or testimony. Despite already having delayed the sale for more than five weeks, Eliot Bernstein presented no witnesses at the evidentiary hearing. Nor did he testify himself. Further, Eliot Bernstein produced no documentary evidence to refute the testimony of the Trustee's licensed real estate agent or the appraisal that was in evidence. Eliot did present a single piece of paper printed off the internet, purporting to be from the Zillow website. The trial court sustained the Trustee's objection to this document. At the conclusion of the

hearing on May 6, the trial court entered the Sale Order, a final order approving the sale of the property and authorizing the Trustee to take all reasonable steps to conclude the transaction. Eliot has never appealed the Sale Order, but he did file a Petition for All Writs with the Florida Supreme Court prior to the closing, which prevented the title company from issuing clear title until that appeal was resolved.

4. As part of the Sale Order, Judge Colin required the Trustee to provide all beneficiaries with a copy of the closing statement and bank records confirming the receipt of funds, and ordered the Trustee's counsel to hold the funds in a separate escrow account. By this Motion, the Trustee seeks to modify the Sale Order with regard to these requirements.

5. First, it is impractical, and of no benefit to the trust to require counsel to open a separate escrow account to hold these sale proceeds. Having conferred with the undersigned's bank, the interest to be earned on the monies if placed in a separate account outside of the law firm's IOTA account is 0.15%. Over the course of a year, assuming all of the net sales proceeds sat in that account for a full year, the interest to be earned would be \$500. It is anticipated the funds will not sit in the account for anywhere near a year, meaning there will be virtually no benefit to the estate from imposing this requirement on the Trustee's counsel, and there will be expense incurred by the Trustee's counsel in setting up and maintaining a separate escrow account. Thus, the Trustee requests that the Court modify the Order to allow the proceeds to remain in the law firm's IOTA account until such time as the Court orders their release and disbursement to the Trustee, to be held with the other assets of the Trust.

6. Second, the Sale Order requires the funds be held pending further order of the Court. Now that the sale is concluded, and once the Trustee has provided the beneficiaries documents

relating to the transaction, there is no reason for the funds to be segregated away from the general trust assets.

7. Third, to conclude this sale the Trust was forced to incur substantial attorneys' fees, solely as a result of the obstructionist and delay tactics of Eliot Bernstein. The Trustee and the Trustee's counsel request permission to have those legal fees paid from the sale proceeds. In total, the Trustee incurred more than \$50,000 in attorneys' fees alone to conclude the transaction, including four hearing and appellate work; working with the title company; dealings and interactions with the buyer caused by Eliot's filings which continually delayed potential closing; and advising and representing the Trustee. The Trustee has reviewed the invoices submitted by counsel and believes the time and expense are reasonable, valuable and provided a substantial benefit to the Trust. The Trustee requests permission to pay the sum of \$40,000 immediately from the sale proceeds, which the law firm has agreed to accept if the matter is resolved without the need for an extensive evidentiary hearing or retention of experts. These fees should be approved. If there is an objection of Eliot Bernstein, which might necessitate an evidentiary hearing, the Trust and its counsel will incur additional attorneys' fees, negating the opportunity for a discount.

8. Fourth, while the Trustee has no opposition to providing a copy of the HUD-1 and proof of receipt of funds to all beneficiaries, these documents are personal, private and confidential, and should not be shared with anyone in the world. In particular, these documents should not be posted on the internet. The buyer is a private citizen which entered into an arms length contract to purchase property the Trust was anxiously trying to sell for more than three years. The buyer now owns Fee Simple Title, which is both marketable and insurable, as evidenced by the title insurance policy purchased by seller as part of the closing of the transaction. Further, as a condition of buyer

closing, seller was required to escrow \$25,000 as a limited indemnity fund, in the event that buyer is subjected to any litigation or harassment by Eliot Bernstein, as defined in the sale contract. Notwithstanding his disappointment over being disinherited by his parents and his apparent disappointment with the sale amount, there is no legitimate reason why Eliot Bernstein should have any further involvement with this property, contact with the buyer, or interference with the buyer's quiet and peaceful enjoyment of the property. In the Sale Order, Judge Colin provided the following:

All beneficiaries and persons subject to the jurisdiction of this Court, including Eliot Bernstein, are ordered to take no action to interfere with or otherwise hinder or delay the sale of the House.

9. The buyer has witnessed firsthand the devastating attacks by Eliot Bernstein through the internet on his brother (the Trustee) and others. As part of the final closing negotiations, once Eliot had exhausted all of his extraordinary writ and appellate maneuvers, buyer and its counsel insisted on a limited indemnity¹ to protect the buyer from litigation, interference or harassment by Eliot Bernstein. To assuage concerns of the buyer and induce it to close, the Sale Contract was amended to include the following:

INJUNCTIVE PROTECTION AND/OR LIMITED INDEMNITY FOR ATTORNEYS' FEES. Seller agrees to file a motion, and participate in any hearing set by the Court, at Seller's sole expense, seeking a permanent injunction after the closing to bar and prevent Eliot Bernstein and those acting in concert with him from having any contact of any kind with the Buyers, including no contact by mail, email or telephone; to forbid Eliot from attempting to learn their identities; to forbid Eliot from publishing or publicizing their identities anywhere in the world, including online or anywhere on any internet website, webpage, blog or otherwise; and to enjoin Eliot from filing any action against Buyers anywhere in the world (the "Injunction"). If successful, thereafter upon request of Buyer, Seller will take necessary and reasonable action to enforce the Injunction.

¹ The indemnity is limited to \$25,000 to pay legal expenses incurred by buyer dealing with any Eliot issue. This money is held in escrow, but is able to be released immediately to the Trustee upon entry of an injunctive relief order.

The Trustee requests the Court enter an Order enjoining all beneficiaries and Eliot Bernstein, over whom this Court has jurisdiction, together with all persons acting in concert with them, from doing any of the above described actions or taking any action against the buyer. The Trustee believes that paragraph 3 of the Sale Order covers this, but so there is clarity and lack of any possible confusion, the Trustee requests that the Court enter the additional injunctive relief sought herein.²

10. Finally, to the extent that the Trustee provides an accounting, copies of the HUD-1 and bank records, the Trustee requests that those documents be ordered to remain confidential and to not be shared with anyone, and be subject to the same injunctive relief entered above. Eliot's delay tactics in this particular instance were financially devastating to the Trust. In addition to the extra \$30,000 club membership that Trust was required to pay when the closing was delayed past March 31, the Trust incurred substantial additional expenses and fees between March 31 and the final closing date of January 15, 2016. In particular, the Trust received reduced proceeds and incurred additional expenses totaling more than \$230,000 as shown in Appendix A.

11. Because Eliot is not individually a beneficiary, it is unclear whether these amounts could be surcharged against Eliot (who is indigent according to all of his court filings) or surcharged

² In between the evidentiary hearings from March 25 to May 6, and beyond, Eliot published a number of inflammatory articles on the internet which list the address of the property with the heading "buyer beware." These tactics were designed to prevent the sale or discourage any potential buyers from having interest in the property. This information serves no public purpose, and only could cause harm or embarrassment to the Trustee or to the buyer. In addition, now that the buyer has paid its money, there is no reason to allow materials to be on the internet which could impair the buyer's ability to sell the property to someone else, at present or in the future. The Court has afforded Eliot due process, and should enforce its orders and prevent further tactics designed to thwart those valid, final and non-appealable orders. Thus, the Trustee requests that the Court order Eliot Bernstein to remove all materials from the internet that reference the address of this property or otherwise mention it in any way, shape or form.

against the interest of Eliot's minor children, for whom he purported to serve as guardian. Because the Trustee does not believe Eliot is a suitable or competent guardian to represent the interest of his children, which is the subject of an evidentiary hearing to be held on February 25, 2016, the Trustee believes it will be appropriate to defer making any decision on a surcharge action until after the Court decides whether or not to appoint a guardian ad litem for Eliot's children.

12. Moving forward, however, there is no reason to allow Eliot Bernstein to burn additional Trust assets by harassing the buyers or trying to educate the world on the "alleged fraud" that has occurred within this Court system. No one, and certainly not the buyer, has any interest in this matter becoming public, as it was the subject of multiple evidentiary hearings in the trial court and full appellate review to the extent such was sought. In other words, Eliot Bernstein has received all the process he is due with regard to the Sale Order, which is now final and non-appealable, and that should be the end of it for all time. To the extent Eliot does action calculated and virtually guaranteed to cost the Trust \$25,000, the Court should hold him accountable and the Trustee certainly reserves the right to seek surcharge against the inheritance of the minors for whom he purports to serve as guardian.

WHEREFORE, the Trustee requests that the trial court modify the Sale Order and enter additional injunctive relief as requested in this Motion.

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; Email Electronic Transmission; FedEx; Hand Delivery this 28th day of January, 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.: 502014CP003698XXXXNBIJ

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: [Eliot I. Bernstein \(iviewit@iviewit.tv\)](mailto:Eliot.I.Bernstein@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
[\(john@jmorrisseylaw.com\)](mailto:john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her
children, and as natural guardian for M.F. and
C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

Appendix A

Description	Amount
Increased Club equity contribution	\$30,000.00
Additional interest on Trust's secured line of credit	\$28,332.45
Additional property taxes	\$16,062.76
Additional insurance	\$19,162.40
Mandatory club dues and expenses	\$26,151.14
Mandatory HOA Fees	\$10,005.55
Utilities and maintenance	\$5,317.98
Repair costs ³	\$31,902.50
Legal fees: Buyer	\$15,000.00
Legal fees: Seller	\$50,000.00
TOTAL	\$231,934.78

³ Although the original contract was scheduled to close "as is, where is," the buyers had the right to inspect the property before closing. In the extended gap between the original closing date and late summer, serious additional issues were discovered with the house. These issues, again, are of no concern to anyone other than the buyer, and the issues should remain confidential subject to injunctive relief to prevent Eliot Bernstein from publicizing them on the internet.

Attn: Alan Rose from Kevin Hall 3.7.16 Re: Lions Head Land Trust

Kevin Hall

Mon 3/7/2016 3:55 PM

To: arose@mrachek-law.com <arose@mrachek-law.com>; wesgator@msn.com <wesgator@msn.com>; pfeaman@feamanlaw.com <pfeaman@feamanlaw.com>; leilaniochoada@gmail.com <leilaniochoada@gmail.com>; leilani@cmrei.com <leilani@cmrei.com>; schwagerlawfirm@live.com <schwagerlawfirm@live.com>; iviewit@gmail.com <iviewit@gmail.com>; iviewit@iviewit.tv <iviewit@iviewit.tv>; tourcandy@gmail.com <tourcandy@gmail.com>; caroline@cprogers.com <caroline@cprogers.com>; marc.garber@flastergreenberg.com <marc.garber@flastergreenberg.com>; marcrgarber@gmail.com <marcrgarber@gmail.com>; mmulrooney@venable.com <mmulrooney@venable.com>;

Cc: Kevin Hall <kh.itconsultingsalesoffices@gmail.com>;

📎 1 attachment (20 MB)

KRHResearchLEILANIOCHOADALIONSHEADBOCA2016_02_18 12-33-12 kh.itconsultingsales Outgoing to +14076085448 .mp3;

Mr. Rose,

Leilani Ochoada was not contacted on "behalf" of Eliot I. Bernstein.

As you may recall, I came in to Eliot Bernstein's life as a "related" case person in New York after being introduced to other "related case" persons from someone from Washington, D.C., that I had first come into contact with on or around Sept. 2007 who was part of a group that was investigating complaints from persons who had contact with the U.S. Attorneys and FBI in New York.

Prior to my first call with this person from Washington, DC, I had already had direct personal experience and done work and events with Executive Detail of the NYS Police, a Governor (Mario Cuomo), US Secret Service Agents and persons protected by the US Secret Service, members of the US Senate including the US Senate Intelligence and Judiciary Committee person Diane Feinstein, other members of the US Judiciary Committee, US Armed Services Committee, US House Intelligence Committee, other former Governors and more. I also maintain a variety of relatives in State law enforcement positions and contacts in both law enforcement and the military as well.

During this first call this person from Washington, DC indicated he had done work for the US Justice Department, specifically the IRS and the US Postal Inspector's Office, asked me if I was aware of DOJ Agents with greater powers and authority over regular FBI Agents, and this person was directly involved in corruption between the NYS Discipline and Bar Committees and Appellate Division Departments specifically focusing on Manhattan and Wall Street attorneys and, to the best of my recollection, inquired during this first call if I had knowledge of the "Iviewit" case which at that time in 2007 I had never heard of before. This person from Washington, DC was later determined to have also been involved in cases out of Chicago and Boston and other cases in Florida including Estate cases in Palm Beach county. I have maintained communications with this person from Wash, DC. as needed since 2007 and was on the phone with him and others in relation to activities of the US Attorney for the Southern District of New York as recently as late January 2016 and was on the phone with him in relation to Estate corruption cases with Florida and NY ties just a week or so ago with several parties having been involved with NY's Moreland Commission.

I am sure by now you have reviewed my LinkedIn profile and determined I maintain rights in "Iviewit" interests and perhaps have reviewed the Complaint to the SEC of 2009 and Petition to the White House and White House Counsel's Office and the US Attorney General's Office and Federal agencies I have been involved with in furtherance of my interests in "Iviewit"

I was just on the phone today, Monday, March 7, 2016 at or around 2 pm EST with the FBI and specifically provided Leilani Ochoada's name and phone number as someone I had spoken to on or about Feb. 18th, 2016 and that several days after this the body of Mitch Huhem was allegedly found deceased at the St. Andrews Boca Raton, FL property and where issues of Witnesses who may be in danger etc were raised as Eliot Bernstein previously had his mini-van Car-bombed and apparently or allegedly your client Ted Bernstein raised a suggestion in Sept. of 2012 that Simon Bernstein may have been poisoned or murdered on the night of his passing and sought an autopsy on 2/27/2016

EXHIBIT

investigation and allegedly reported this to the Palm Beach County Sheriff's Dept.

For the record, Eliot I. Bernstein never asked, instructed, authorized or directed me to have any contact with Leilani Ochoada or had any knowledge I was doing so at the time. I did this on my own initiative after getting information from William Stansbury about the Deed Transfer on file that you apparently signed as a Notary and Witness regarding the St. Andrews Boca Raton, Florida property and then from information I personally looked up at www.sunbiz.org where I quickly found:

1) www.sunbiz.org showed the name of the Registered Agent for Lions Head Land Trust Inc. as a dissolved company since 1997; I then had a subsequent call to the Florida Secretary of State where a person confirmed this Filing of Lions Head Land Trust Inc. should "not have been overlooked" by Internal Florida Secretary of State examiners and was initiating a request to the Examiner and an investigation with her Director as she worked in the Director's Office;

2) My own initiated google searches showed the Tallahassee, FL address listed with the Secretary of State for Lions Head Land Trust Inc came up to a business with a DIFFERENT name and a phone call to that Business initiated again by myself at my own direction on Feb. 18th had the person working there claiming Any use of their Tallahassee, FL address was not proper by Lions Head Land Trust, Inc. and that their company was not ISL, Inc. as indicated in the Lions Head Land Trust Inc filings;

3) whereupon a further google search that I, KRH, personally did and made of my own free will and volition and upon my own direction having Interests in "Iviewit", I then reached a business named CMREI in Orlando, FL whereupon I spoke with a person who went by the name of Leilani Ochoada who claimed to know Nothing about the Lions Head Land Trust filing, thought it may be Identity theft, had not Authorized this at all, had never lived in Boca Raton, FL, never bought any property and was not aware of it etc etc.

4) I informed Eliot Bernstein that Leilani Ochoada said she would come forward with a Sworn Statement and even do a Recorded call giving proper consent to the call later that day as she claimed she was Not a Buyer of this property and had no knowledge of it and provided no consent to anyone to do so in her name.

Thus, later that same day at my Suggestion Leilani Ochoada agreed to get on a Recorded Call whereupon I INITIATED a Call to Eliot Bernstein after Leilani Ochoada was on the call and Eliot Bernstein already had reason to believe this person was NOT a Buyer or Involved with Lions Head Land Trust Inc. and instead was a Victim of some type of Fraud.

Leilani Ochoada agreed to have a draft of her statement typed up of the call she was having with myself and Eliot Bernstein who I initiated on to the call and the draft of her Statement was as follows:

Leilani Statement which she confirmed was correct by email:

Leilani has:

- * no knowledge of Lions Head Land Trust, Inc. at all
- * never authorized anyone to use her name as an Incorporator
- * until Feb. 18th 2016 had no knowledge any entity was incorporated by filings at the Fla Secretary of State under her name and had no involvement with any land transaction involving 7020 Lions Head Lane, Boca Raton, FL
- * initially believed it was some form of identity theft
- * never lived at any Boca Raton, FL address in general and never at 7020 Lions Head Land Trust Inc.
- * never knew about any land deal with Mitch Huhem Laurence Pino or anything related to this property
- * no absolutely nothing about the Articles of Incorporation and the addresses and companies named there
- * consider it unauthorized fraudulent use of her name
- * attorney Laurence Pino never had Leilani's permission to incorporate any entity using her name as an incorporator or signed document or Electroncially

* Pino has not been able to produce any written document that you allegedly signed with his office

* Pino's Exec Assistant Cathy can not find Any document signed by Leilani after reviewing the files

So, Mr. Rose, I have been told you have been suggesting in legal papers that Leilani Ochoada is a "Buyer" at the St. Andrew's property? Is this True? She certainly never claimed to me that she was a "Buyer" in any sense and as shown by her statement drafted above quite to the contrary. Thus, are you claiming Leilani is the "Buyer" in this situation? To facilitate review, I have attached the MP3 Recording of the Call that both Leilani Ochoada and Eliot Bernstein agreed and consented to have Recorded.

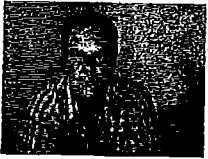
Please note that I have copied this communication to William Stansbury and his attorney Peter Feaman and Leilani herself and Eliot and the attorney from Texas Candice Schwager and other attorney contacts of Eliot and others in order to quickly clarify matters and put the issues to rest.

I am curious, however, if you found any of the "Iviewit Stock" that Simon Bernstein had when you were at the 7020 Lions Head Lane Boca Raton, Fl home or if you know where all those Files and Records went?

Thank you in advance for your cooperation.

Glad I could be of assistance.

Regards,



Kevin R. Hall
IT Consulting Sales Offices
P.O. Box 756
Kinderhook, NY 12106
518-755-8128 Cell
518-635-0668 office
Skype ID = kh.itconsultingsales
kh.itconsultingsalesoffices@gmail.com

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On Mon, Mar 7, 2016 at 12:55 PM, Alan Rose <ARose@mrachek-law.com> wrote:

Kevin R. Hall

IT Consulting Sales Offices

P.O. Box 756

Kinderhook, NY 12106

Dear Mr. Hall:

You may recall that I represent Ted S. Bernstein, Trustee.

I am writing to confirm that you were you involved in contacting Leilani Ochoada on behalf of Eliot Bernstein to obtain information on the trust which purchased the Bernstein residence at 7020 Lions Head Lane?

Can you share you confirm that? And, are you authorized to advise what you learned from that call or would we need to depose Mr. Eliot Bernstein?.

Also, can you confirm that Eliot Bernstein was on the telephone with you and spoke directly to Ms. Ochoada?

Thanks in advance for responding.

Alan Rose

Counsel for Successor Trustee of Shirley Bernstein Trust Agreement

Eliot Ivan Bernstein

From: William Stansbury <WESgator@msn.com>
Sent: Thursday, March 3, 2016 4:08 PM
To: Eliot Ivan Bernstein
Subject: Re: Amended Eliot and Candice Bernstein GAL issue 3.2.2016
Attachments: Amended Eliot and Candice Bernstein GAL issue 3.2.2016 signed page 5.pdf

See attached - Sorry for the oversight

From: Eliot Ivan Bernstein <iviewit@iviewit.tv>
Sent: Thursday, March 3, 2016 3:59 PM
To: 'William "Bill" Stansbury'
Subject: FW: Amended Eliot and Candice Bernstein GAL issue 3.2.2016

From: William Stansbury [<mailto:WESgator@msn.com>]
Sent: Wednesday, March 2, 2016 4:52 PM
To: Eliot Ivan Bernstein
Subject: Amended Eliot and Candice Bernstein GAL issue 3.2.2016

Eliot,

As you are aware, i was extremely busy over the weekend and as such prepared my statement on 2/29/2016 in a bit of a rush.

I have reviewed my original statement and made some minor changes. Please see my amended statement attached.

My name is William E. Stansbury and I am a competent adult residing in Palm Beach County, Florida. I am voluntarily writing this in the hope that any consideration to appoint a Guardian ad Litem (GAL) for the children of Eliot and Candice Bernstein will be dismissed without merit. For clarification purposes, this is an amendment to the statement that I have previously made on 2/29/2016.

Based on the information provided on the Florida GAL website, the Florida GAL Program is a partnership of community advocates and professional staff providing a powerful voice on behalf of Florida's abused and neglected children. GAL is central to fulfilling society's most fundamental obligation by making sure a qualified, compassionate adult **will fight for and protect a child's basic human right to be safe**, to be treated with dignity and respect, and to learn and grow in the safe embrace of a loving family.

As a father of 3 children and 5 grandchildren, I wholeheartedly support the mission and purpose of the GAL program when **a child's basic human right to be safe**, to be treated with dignity and respect, and to learn and grow in the safe embrace of a loving family is challenged.

The Florida GAL program is not intended to be used as a weapon to threaten, harass or extort parents. Sadly, however, I believe that may be what is occurring with Eliot and Candice Bernstein. I express this belief after having sat through numerous court hearings since 2012 and following the corresponding Palm Beach County, Florida cases that have involved the Estates of Simon and Shirley Bernstein and their respective testamentary instruments, including Case Nos. 50-2012-CP-004391-XXXX-SB (In re: Estate of Simon Bernstein), 50-2011-CP-000653-XXXX-SB (In re: Estate of Shirley Bernstein), 50-2015-CP-002717-XXXX-NB, 50-2015-CP-001162-XXXX-NB, 50-2014-CP-002815-XXXX-NB, and 50-2014-CP-003698-XXXX-NB.

I have personal knowledge of the following matters that have transpired in connection with certain of the above-referenced cases when Judge Colin was presiding:

- 1) Florida licensed attorneys Donald Tescher and Robert Spallina (T&S) drafted certain testamentary instruments for Simon and Shirley Bernstein. Through Eliot's investigative efforts, Mr. Spallina admits to the court and the police that, after Shirley's death, Mr. Spallina changed certain terms in her testamentary instruments and sent same through the U.S. mail to Florida licensed attorney Christine Yates. Ms. Yates was retained by Eliot to represent his family after his father's passing in 2012. In addition to drafting testamentary instruments for Simon and Shirley Bernstein and changing certain terms in Shirley's documents, T&S were also appointed and served as the initial personal representatives of Simon's estate and successor trustees of Simon's revocable trust. I believe that Eliot's investigative efforts were the primary reason that T&S's acts were discovered, and that same began Eliot's quest for the truth.

- 2) T&S paralegal, Kimberly Moran, pled guilty to improperly notarizing documents and admitted to the PBSO to forging six documents, including one of Simon's, and depositing them with the court. I believe that Eliot's efforts helped expose Ms. Moran's unethical conduct.
- 3) Attorney Spallina filed certain estate closing documents with the court in the Estate of Shirley Bernstein that were signed by Simon Bernstein, as the purported personal representative of Shirley's estate, notwithstanding that Simon passed away several weeks before such documents were filed on his behalf. I believe that Eliot's efforts were the primary reason that Mr. Spallina's conduct in connection with these court filings was exposed.
- 4) As evidenced by a court transcript from a hearing in Shirley's estate case to re-open on 9/13/2013, Judge Colin stated twice that he had heard enough EVIDENCE to read several officers of the court and fiduciaries their Miranda rights. However, Judge Colin did nothing to address the corresponding issues and allowed these very same officers the opportunity to continue to practice in his courtroom. To no avail, Eliot brought such circumstances to the attention of Judge Colin.
- 5) Attorney Spallina submitted a claim as trustee of a trust he claims to have never seen to Heritage Union Life Insurance Company through the U.S. mail for payment of an approximately \$1.7M death benefit on a missing policy owned by Simon Bernstein personally. The records from the insurance company list the Simon Bernstein Trust N.A. (THE ILIT) as the contingent beneficiary (the primary beneficiary was LaSalle National Trust NA). Mr. Spallina represented himself on the claim form submitted to the insurance company as the trustee of the ILIT. Subsequently, Mr. Spallina admitted that he had never seen the ILIT and had no idea what its terms were. To make matters worse, Mr. Spallina and four out of five of Simon Bernstein's adult children (Eliot's brother (Ted), and Eliot's three sisters (Pam, Jill and Lisa)) were involved in a scheme that would get the money to those four children. Eliot did not agree to go along with this scheme. Mr. Spallina engaged in such conduct notwithstanding his duty to advocate as personal representative of Simon's estate and successor trustee of his revocable trust for the proceeds to be paid to the estate and ultimately the revocable trust. Simon's revocable trust is the sole residuary beneficiary of his estate; Simon's grandchildren are the beneficiaries of Simon's revocable trust. Without a copy of the trust showing Mr. Spallina as trustee and Simon's children as beneficiaries, Heritage Union refused to pay the claim. I believe that Eliot's efforts helped to expose Mr. Spallina's actions.
- 6) Eliot's brother, Ted Bernstein, filed a breach of contract lawsuit in Illinois against Heritage Union, with Ted now signing as successor trustee of the ILIT, for not paying the above-referenced insurance claim (the "Illinois Litigation"). Ted filed the Illinois Litigation as the purported trustee of the ILIT – the very same trust under which Mr. Spallina had previously claimed to be the trustee. Ted Bernstein was aware of the actions of Mr. Spallina, yet went along with them until the scheme fell apart, and, to the best of my knowledge, never reported the actions of Mr. Spallina to any authority. Ted suddenly remembered that he (Ted) was the trustee of the ILIT that he claims he has never seen and had no copy to produce. If Ted Bernstein prevails in the Illinois

Litigation, he and his sisters will benefit from the \$1.7M unpaid insurance death benefit. Eliot has opposed this scheme that benefits his siblings (and possibly himself) to the exclusion of Simon's estate and his grandchildren, including Eliot's children and the other grandchildren of Simon. Attorney Peter Feaman has brought to the attention of Brian O'Connell (successor PR of Simon's estate) and Alan Rose (Ted Bernstein's attorney) that there appears to be a conflict of interest where Ted is serving as successor trustee of Simon's revocable trust that would benefit from the insurance proceeds (trust beneficiaries are the grandchildren) vs. Ted representing himself as trustee of the never seen nor found ILIT that benefits Ted and his siblings. I find it extremely ironic and disingenuous that Ted Bernstein has requested the appointment of a GAL for Eliot's children while he simultaneously is trying to divert funds from Eliot's children and Simon's other grandchildren through his initiation and pursuit of the Illinois Litigation.

- 7) Ted Bernstein is the alleged successor trustee and successor personal representative of the revocable trust and estate of Shirley Bernstein. He represented to the court that the personal property of Shirley Bernstein in her condo was inventoried and moved to the residence of Simon Bernstein for safekeeping. The personal property in the condo is an asset of the estate of Simon Bernstein. Inventories of personal property from the condo show significant discrepancies when compared to the new inventories done at Simon's home. Eliot has insisted for a complete accounting of all personal property, as he is listed as a beneficiary of Simon's personal property (which would have included Shirley's personal property as her will left all of her personal property to Simon when she passed away, that was not listed in any codicil, survived by Simon).

- 8) In 2014, T&S resigned as successor trustees of Simon's revocable trust. T&S appoint their friend, Ted Bernstein, as successor trustee of Simon's revocable trust. Ted was not listed as a trustee by his father in Simon's revocable trust.

Florida licensed attorney Brian O'Connell was appointed by Judge Colin as the successor PR for the estate of Simon Bernstein in 2014. He assumed this fiduciary responsibility from attorney Benjamin Brown who was appointed by Judge Colin as curator for the estate when T&S resigned. Mr. O'Connell read the 2012 restated revocable trust of Simon and brought to the attention of Judge Colin that it does not appear that Ted is qualified to be appointed as trustee based on the trust language. Since the fall of 2014, Eliot has been requesting Mr. O'Connell to call up a hearing to have the court determine if Ted is properly serving. As of the date of this instrument, I am not aware that Mr. O'Connell has taken any action.

I have knowledge of the following matters that have transpired in connection with certain of the above-referenced cases when Judge Phillips was presiding:

- 1) A status conference was scheduled for Simon Bernstein estate by Brian O'Connell, but Alan Rose chose to discuss the Shirley Bernstein estate and trust. Mr. Rose represented to the court that the Shirley trust was also scheduled for the conference but, based on the notice of hearing, it was not. Attorney Peter Feaman and Eliot Bernstein objected, but to no avail. The Court had hearings in Shirley's estate and trust and not Simon's estate.
- 2) Attorney Peter Feaman advises the Court that Judge Colin may not have followed proper procedure in steering the Bernstein cases to the North Branch post recusal. The Court tells Mr. Feaman that's what the 4th DCA is for, even though the Court knew or should have known that the recusal/transfer orders were on appeal at the Florida Supreme Court.
- 3) On December 15, 2015, I attended a hearing to determine the validity of the Simon and Shirley wills and revocable trusts. Eliot Bernstein advised the Court that he had an attorney for his children waiting to be admitted. This attorney requested from Attorney Alan Rose copies of all documents, to include his children's' trust documents to review prior to the trial. Apparently, Attorney Rose refused to send her anything. The hearing was not stayed until the children had counsel, and the judge ordered the trial to proceed with the children not having counsel present.
- 4) At the hearing on December 15, 2015, Alan Rose called two witnesses to verify that the documents were authentic. The first was Robert Spallina – the same Robert Spallina who admitted to changing testamentary document language and mailing it to Eliot's family attorney, using a dead man (Simon) to close the estate of Shirley, and submitting a claim form to Heritage Union for Simon's life insurance when he knew he was not the trustee of the ILIT trust. As of this writing, I am not aware that anything has been done by the court, or other authorities, to address the admissions of wrongdoing by Mr. Spallina. The second witness called to validate the documents was Ted Bernstein. He admitted that he had not seen an original of the documents. None of the witnesses to the documents, nor the notary were called to testify. Additionally, no original documents were provided at the trial, nor was any forensic handwriting expert called to testify, nor was any forensic expert retained by Ted to validate documents after Mr. Spallina admitted to changing the language in at least one testamentary document.
- 5) I attended a hearing on February 25, 2016 in Judge Phillips' courtroom. The purpose of the hearing was to determine if a Guardian ad Litem should be appointed for Eliot's minor children. Eliot called Alan Rose as a witness and when Eliot asked him about not providing information to the attorney he is trying to retain for his children, Alan Rose indicated that he wasn't giving her anything. Attorney Alan Rose indicted that while he was in the home of Simon Bernstein to check on a chandelier, he discovered some testamentary documents and took them with him. Eliot requested additional time to call witnesses, but his request was denied by the Court, which seemed unusual to me in light of the seriousness of the hearing.

Here is what I have observed in the home of Eliot and Candice Bernstein:

- 1) Happy, bright, respectful children who aren't embarrassed to tell their parents they love them in front of other people.
- 2) Children who understand that when a guest enters their home that they get up and acknowledge them.
- 3) Children who are always grateful for the smallest courtesy extended to them.
- 4) Parents who tell their children how much they love them.
- 5) Parents who teach their children that virtues like honesty and integrity are more important than money.

Eliot and Candice have created a loving nurturing home for their children. They are outstanding role models as parents. For anyone to suggest that they have a conflict of interest with their children is absurd. They are a family unit and none of them view something that is good for one as bad for another.

Based on my observations, Eliot and Candice Bernstein are not the "bad guys" in these estate matters.

I believe they are being portrayed this way because they have exposed inappropriate actions by officers of the court – the very officers who have an affirmative duty to assure justice is done.

They are being portrayed this way because they refused to go along with Eliot's siblings in their scheme to capture Simon's life insurance proceeds.

They are being portrayed this way because they believe that Ted Bernstein has hijacked Shirley Bernstein's trust and made distributions that are very questionable.

They are being portrayed this way because they believe that, by having Ted Bernstein serving as trustee of Simon's trust, that the directives of Simon Bernstein in that document are not being honored.

They are being portrayed this way because those that are asking for them to lay down and quit searching for the truth know they never will.

It appears to me that the Florida GAL is being used as tool to try to punish Eliot and Candice for not keeping their mouth shut when they saw what was occurring.

My observation has led me to the conclusion that many people in these estate matters should have someone watching over them, but I am confident that it is not the children of Eliot and Candice Bernstein.

William Hansberg
3/2/2016 5

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 - 6) Eliot's brother, Ted Bernstein, filed a breach of contract lawsuit in Illinois against Heritage Union for not paying the above-referenced insurance claim (the "Illinois Litigation"). Ted filed the Illinois Litigation as the purported trustee of the 1995 ILIT – the very same trust under which Spallina had previously claimed to be the trustee. Ted Bernstein was aware of the actions of Spallina, yet went along with them until the scheme fell apart, and then Ted suddenly remembered that he (Ted) was the trustee of the 1995 ILIT. If Ted Bernstein prevails in the Illinois Litigation, he and his sisters will benefit from the \$1.7M unpaid insurance death benefit. Eliot has opposed this scheme that benefits his siblings (and possibly himself) to the exclusion of Simon's estate and his grandchildren, including Eliot's children and the other grandchildren of Simon. Florida licensed attorney Peter Feaman has brought to the attention of Brian O'Connell (successor PR of Simon's estate) and Alan Rose (Ted Bernstein's attorney) that there appears to be a conflict of interest where Ted is serving as successor trustee of Simon's revocable trust that would benefit from the insurance proceeds (trust beneficiaries are the grandchildren) vs. Ted representing himself as trustee of the never seen nor found 1995 ILIT that benefits Ted and his siblings. I find it extremely ironic and disingenuous that Ted Bernstein has requested the appointment of a GAL for Eliot's children while he simultaneously is trying to wrongfully divert funds from Eliot's children and Simon's

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- 8) In 2014, T&S resigned as successor trustees of Simon's revocable trust. T&S appoint their friend, Ted Bernstein, as successor trustee of Simon's revocable trust. Ted was not listed as a trustee by his father in Simon's revocable trust. Florida licensed attorney Brian O'Connell was appointed by Judge Colin as the successor PR for the estate of Simon Bernstein in 2014. He assumed this fiduciary responsibility from Florida licensed attorney Benjamin Brown who was appointed by Judge Colin as curator for the estate when T&S resigned. Mr. O'Connell read the 2012 restated revocable trust of Simon and brought to the attention of Judge Colin that it does not appear that Ted is qualified to be appointed as trustee based on the trust language. Since the fall of 2014, Eliot has been requesting O'Connell to call up a hearing to have the court determine if Ted is properly serving. As of the date of this instrument, I am not aware that O'Connell has taken any action.

I have personal knowledge of the following matters that have transpired in connection with certain of the above-referenced cases when Judge Phillips was presiding:

- 1) A status conference was scheduled for Simon Bernstein estate by Brian O'Connell, but Alan Rose chose to discuss the Shirley Bernstein estate and trust. Rose represented to the court that the Shirley trust was also scheduled for the conference. Peter Feaman and Eliot objected on the record, but to no avail. The Court ruled to have hearings in Shirley's estate and trust and not Simon's estate.
- 2) Attorney Peter Feaman advises the Court that Judge Colin did not follow proper procedure in steering the Bernstein cases to the North Branch post recusal. The Court tells Mr. Feaman that's what the 4th DCA is for, even though the Court knew or should have known that the recusal/transfer orders were on appeal at the Florida Supreme Court.
- 3) On December 15, 2015 I attended a hearing to determine the validity of the Simon and Shirley wills and revocable trusts. Eliot Bernstein advised the Court that he had an attorney for his children but this attorney requested from Alan Rose copies of all documents, to include his children's' trust documents to review prior to the trial. Apparently, Attorney Rose did not send her anything. The hearing was not stayed until the children had counsel, and the judge ordered the trial to proceed with the children not having counsel present.
- 4) At the hearing on December 15, 2015, Alan Rose called two witnesses to verify that the

documents were authentic. The first was Robert Spallina – the same Spallina who admitted to changing testamentary document language and mailing it to Eliot’s family attorney, using a dead man (Simon) to close the estate of Shirley, and submitting a claim form to Heritage Union for Simon’s life insurance when he knew he was not the trustee of the 1995 trust. As of this writing, I am not aware that anything has been done by the court to address the admissions of wrongdoing by Mr. Spallina. The second witness called to validate the documents was Ted Bernstein. He admitted that he had not seen an original of the documents. None of the witnesses to the documents, nor the notary were called to testify. Additionally, no original documents were provided at the trial, nor was any forensic handwriting expert called to testify, nor was any forensic expert retained by Ted to validate documents after Spallina admitted to changing the language in at least one testamentary document.

- 5) I attended a hearing on February 25, 2016 in Judge Phillips’ courtroom. The purpose of the hearing was to determine if a Guardian ad Litem should be appointed for Eliot’s minor children. Eliot called Alan Rose as a witness and when Eliot asked him about not providing information to the attorney he is trying to retain for his children, Alan Rose indicated that he wasn’t giving her anything. Eliot requested additional time to call witnesses, but his request was denied by the Court, which seemed unusual to me in light of the seriousness of the hearing.

Here is what I have observed in the home of Eliot and Candice Bernstein:

- 1) Happy, bright, respectful children who aren’t embarrassed to tell their parents they love them in front of other people.
- 2) Children who understand that when a guest enters their home that they get up and acknowledge them.
- 3) Children who are always grateful for the smallest courtesy extended to them.
- 4) Parents who tell their children how much they love them.
- 5) Parents who teach their children that virtues like honesty and integrity are more important than money.

Eliot and Candice have created a loving nurturing home for their children. They are outstanding role models as parents. For anyone to suggest that they have a conflict of interest with their children is absurd. They are a family unit and none of them view something that is good for one as bad for another.

Based on my observations, Eliot and Candice Bernstein are not the “bad guys” in these estate matters.

I believe they are being portrayed this way because they have exposed inappropriate actions by officers of the court – the very officers who have an affirmative duty to assure justice is done.

They are being portrayed this way because they refused to go along with Eliot's siblings in their scheme to capture Simon's life insurance proceeds.


They are being portrayed this way because they believe that Ted Bernstein has hijacked Shirley Bernstein's trust and made distributions that are very questionable.

They are being portrayed this way because they believe that, by having Ted Bernstein serving as trustee of Simon's trust, that the directives of Simon Bernstein in that document are not being honored.

They are being portrayed this way because those that are asking for them to lay down and quit searching for the truth know they never will.

It appears to me that the Florida GAL is being used as tool to try to punish Eliot and Candice for not keeping their mouth shut when they saw what was occurring.

My observation has led me to the conclusion that many people in these estate matters should have someone watching over them, but I am confident that it is not the children of Eliot and Candice Bernstein.


2/29/2016

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

February 17, 2016

VIA U.S. MAIL

Chief Judge Jeffrey Colbath
Palm Beach County Circuit Court
205 N. Dixie Highway, Room 5.2500
West Palm Beach, Fl 33401

Re: Estate of Simon Bernstein
Case No.: 502012CP004391XXXXNB (IH)

Dear Judge Colbath:

I had occasion today to read your Administrative Order of February 9, 2016, No. 11-101-2/16, in re: Assignment of Judges. In reading the last page of the Order, I was struck by the following language, "Should a reassignment be required due to disqualification or recusal, the Clerk of Court shall, when possible, randomly reassign the case to a judge within the Division at the same courthouse. For those Divisions where there is only one judge or where all judges are unable to preside over the case, reassignment shall be as follows: ...

2. Probate/Guardianship/Mental Health Division:
 - a. Branch Courthouse Divisions to Main Courthouse Division"

The reason this language struck me is because in the above-referenced case, where I am counsel of record for one of the Parties, the case was originally assigned to Judge Colin's Division in the South Branch. There came a point in time when he recused himself. However, the Order of Recusal appears to clearly violate the language set forth above from your Administrative Order.

A copy of Judge Colin's Order of Recusal is attached for your reference. Therein, he, as the recusing judge, specifically reassigns the case to the North Branch. I am now made aware by reading your Order of February 9, 2016, that Judge Colin's Order seems to violate your Administrative Orders on recusal, which directs first, that the Clerk of the Court randomly reassign the case or, in the situation where all judges are unable to preside over the case, reassignment should be from the Branch Courthouse (in this case South County) to the Main Courthouse Division. However, as you can see from the attached Order, Judge Colin assigned this to the North Branch.

Honorable Jeffrey Colbath

February 17, 2016

Page 2

My client has read recent news reports concerning judicial conflicts of interest. He is very concerned about this. He has requested me to request you to order that the above-referenced case be reassigned in accordance with your Standing Order for random reassignment to the Main Courthouse Division, rather than as directed by Judge Colin.

Thank you for your attention to this matter.

Respectfully,

PETER M. FEAMAN, P.A.

By: 

Peter M. Feaman

PMF/mk
Enclosure

cc: Alan Rose, Esq.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401

Brian O'Connell, Esq.
515 North Flagler Drive, 20th Floor
West Palm Beach, FL 33401

Eliot Bernstein
2753 Northwest 34th Street
Boca Raton, FL 33434

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401

Pamela Beth Simon
950 North Michigan Avenue, #2603
Chicago, IL 60611

Jeffrey and Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035

Gary Shendell, Esq.
2700 North Military Trail, Suite 150
Boca Raton, FL 33431

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


CASE NO: 502012CP004391XXXXSB
PROBATE DIVISION: IY

**THE ESTATE OF
SIMON L. BERNSTEIN,**
Deceased.

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.



MARTIN H. COLIN
Circuit Judge

Copies furnished:
Eliot Bernstein
2753 NW 34th Street
Boca Raton, Fl. 33434

John P. Morrissey, Esquire
330 Clematis Street, Suite 213
West Palm Beach, Fl. 33401

Alan Rose, Esquire
505 South Flagler Drive, Suite 600
West Palm Beach, Fl. 33401

Pamela Beth Simon
950 North Michigan Avenue, #2603
Chicago, IL 60611

Brian M. O'Connell, Esquire
515 North Flagler Drive, 20th Floor
West Palm Beach, FL 33401

Lisa Friedstein and Carley
Friedstein, Minors
c/o Jeffrey and Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035

Joshua, Jacob and Daniel
Bernstein, Minors
c/o Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Irwin J. Block, Esquire
700 S. Federal Highway, Suite 200
Boca Raton, FL 33432

Gary Shendell, Esquire
2700 N. Military Trail, Suite 150
Boca Raton, FL 33431

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

PROBATE DIVISION
CASE NO.: 502014CP003698XXXXNB
DIVISION: IH

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,
Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC
BERNSTEIN; MICHAEL BERNSTEIN;
MOLLY BERNSTEIN; 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.

PETITION OF CLAIMANT AND CREDITOR
WILLIAM E. STANSBURY TO INTERVENE

COMES NOW, William E. Stansbury (“Stansbury”), claimant and creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, et al., by and through his undersigned counsel, and pursuant to Fla. Rule Civ. Proc. 1.230, hereby files this Petition for Leave to Intervene, and in support thereof states as follows:

1. Stansbury, under most circumstances, would not have standing to intervene in this action between the Shirley Bernstein Trust Agreement of 2008 and the trust’s putative

beneficiaries. However, Count II of the Amended Complaint added the Simon Bernstein Last Will and Testament and the Simon Bernstein Amended and Restated Trust and recently (November 20, 2015), Plaintiff's Witness List was filed in advance of the December 15, 2015 trial date that identifies as an expert witness Bruce Stone, Esq. of Goldman, Felcoski & Stone, P.A. Upon information and belief, Mr. Stone is anticipated to offer his opinion that Ted Bernstein ("TED") is qualified to serve as Successor Trustee of the Simon Bernstein Trust Agreement of 2102 (the "Revocable Trust or Trust"). The issue of TED's fitness to serve as Trustee of the Revocable Trust is at issue in the Estate of Simon Bernstein and a Motion to Remove TED as Trustee is pending in the Estate of Simon Bernstein.

2. The attempt to have this court receive evidence on and possibly resolve the issue of TED's fitness to serve as Successor Trustee in the present unrelated action compels Stansbury to intervene to protect his interests in the Revocable Trust.

3. As background, 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") and TED and several corporate defendants in August of 2012 to collect compensation, corporate distributions and other damages due Stansbury, arising out of a business in which Stansbury, SIMON and TED were principals.

4. Stansbury asserted claims against SIMON and TED both as agents of the corporate defendants and in their individual capacities (the claims against TED have settled). The damages Stansbury claims are in excess of \$2.5 million.

5. Shortly after the lawsuit was filed, SIMON BERNSTEIN passed away in September of 2012. The Estate of Simon Bernstein was substituted as a party defendant.

6. There are allegations of misconduct on the part of TED in his capacity as Personal Representative of the Estate of Shirley Bernstein, as Trustee of the Shirley Bernstein Trust Agreement of 2008, and as Trustee of the Simon Bernstein Revocable Trust.

7. The most recent inventory of the Estate of Simon Bernstein shows assets valued in the approximate amount of \$1.2 million. If Stansbury prevails on his claim, a deficiency is assured.

8. Florida law provides that, in the event the assets of the estate are insufficient to pay its expenses, an existing revocable trust must pay them to the extent that there are assets to do so. Section 733.707(3), Fla. Stat. (2015), states:

(3) Any portion of a trust with respect to which a decedent who is the grantor has at the decedent's death a right of revocation...**is liable for the expenses of the administration and obligations of the decedent's estate to the extent the decedent's estate is insufficient to pay them...**" (emphasis added)

9. As a result of the foregoing, Stansbury, as a claimant and creditor whose claim exceeds the value of the assets of the Simon Bernstein Estate, has a beneficial interest in the Trust because, to the extent that the assets of Simon's Estate are insufficient to pay his claim, he has a contingent interest in the Revocable Trust.

10. This result establishes Stansbury's standing to intervene in this action. Fla. R. Civ. Proc. 1.230 states, in pertinent part: "Anyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention ..."

11. The Supreme Court of Florida in Union Central Life Insurance Company v. Carlisle, 593 So.2d 505 (Fla. 1992), in discussing the test to determine whether intervention is appropriate, quoted from Morgareidge v. Howey, 78 So.14, 15 (Fla. 1981), as follows:

The interest which will entitle a person to intervene. . . must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the

judgment. In other words, the interest must be that created by a claim to the demand in suit or some part thereof. . . .

12. Stansbury asserts that, as a person with a beneficial interest in the Simon Bernstein Trust due to the anticipated inability of the Estate of Simon Bernstein to pay his total damages, Stansbury would have standing to challenge TED's conduct as Trustee and to seek his removal. This is established by the provisions of §736.0706(1), §736.0103, and §733.707(3), Fla. Stat., (2014) which establish the persons who have 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)*

13. A "beneficial interest" is defined as: "A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing." Black's Law Dictionary 149 (7th ed. 1999). Therefore, because Stansbury has a claim that exceeds the value of the assets of the Simon Bernstein Estate, he has a contingent interest in the assets of the Revocable Trust. The assets of the Trust may and will be called upon to pay his claim under §733.707(3).

14. The fact that Stansbury is not a named beneficiary does not defeat this analysis as he is a legal "beneficiary" by virtue of his contingent beneficial interest under the statutory definition. Therefore, Stansbury has standing to seek removal of the Trustee.

15. Florida case law recognizes that a person not specifically named in a will or trust document as a beneficiary may nonetheless be deemed to have a sufficient beneficial interest in a

will or trust to be considered a beneficiary thereunder. See, In Re Estate of Nelson, 232 So.2d 222 (Fla. 1st DCA 1970).

16. While not entirely analogous to this case, the holding in Nelson makes clear that courts may look beyond the written documents to ascertain a claimant's status as beneficiary. Additionally, an articulable claim of economic interest, even though contingent, is a sufficient beneficial interest to determine that a claimant such as Stansbury is a trust beneficiary under the statute.

17. As a result of the foregoing, Stansbury seeks to intervene to protect his interests to the extent that the fitness of TED Bernstein to serve as Successor Trustee of the Simon Bernstein Revocable Trust becomes an issue in this case.

WHEREFORE, Petitioner, William E. Stansbury, respectfully requests that he be permitted to intervene in this case to protect his interests as stated herein, and or such other relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served in the Florida Courts E-Filing Portal to all parties on the service list below this 15th day of December, 2015:

Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja.B. and Jo.B., Minors
2753 Northwest 34th Street
Boca Raton, Florida 33434
Email: iviewit@iviewit.tv

Alan Rose, Esquire
Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
Email: arose@mrachek-law.com

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, Florida 33401
Email: john@jmorrisseylaw.com
Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein

Pamela Beth Simon
303 East Wacker Drive, Suite 2725
Chicago, Illinois 60601
Email: psimon@stpcorp.com

**Lisa Friedstein, individually and as trustee
for her children, and as natural guardian
for M.F. and C.F., Minors; and Max
Friedstein**

Email: lisa.friedstein@gmail.com

Brian M. O'Connell, Esquire

Joielle A. Foglietta, Esq.

Ciklin, Lubitz, Martens & O'Connell
515 North Flagler Drive, 20th Floor
West Palm Beach, Florida 33401

Email: boconnell@ciklinlubitz.com

jfoglietta@ciklinlubitz.com

service@ciklinlubitz.com

slobdell@ciklinlubitz.com

**Jill Iantoni, individually and as trustee for
her children, and as natural guardian for
J.I. a minor**

Email: jilliantoni@gmail.com

PETER M. FEAMAN, P.A.

3695 West Boynton Beach Blvd., #9

Boynton Beach, FL 33436

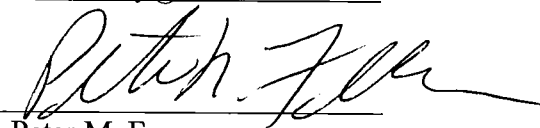
Telephone: (561) 734-5552

Facsimile: (561) 734-5554

Service: service@feamanlaw.com

mkoskey@feamanlaw.com

By: _____



Peter M. Feaman

Florida Bar No. 0260347

Eliot Ivan Bernstein

Subject: FW: Bernstein Estate

Subject: Bernstein Estate
Date: Tue, 16 Dec 2014 15:57:54 -0500
From: pfeaman@feamanlaw.com
To: boconnell@ciklinlubitz.com
CC: jroyer@feamanlaw.com

Brian,

When you and I spoke last week you indicated that you were in favor of the settlement that Mr. Stansbury had signed and sent to you for signature.

You indicated that you had to work out funding with the trust.

Meanwhile, the Life insurance litigation in Chicago is moving forward.

Our attorneys are taking a deposition in Chicago the week after New Years of "Scooter" Bernstein, I think.

They also want to depose Ted Bernstein and Robert Spallina in early January as well.

I offered my office as a locale for those depositions.

Deposing Ted Bernstein in the Chicago action poses some serious conflict of interest issues for Ted Bernstein and ethical issues for Mr. Rose as the Florida attorney for Mr. Ted Bernstein.

He is being deposed as a party Plaintiff in the Chicago action, the purpose of which is to direct \$1.7 million in life insurance to the 5 adult children of Simon Bernstein away from the Bernstein estate.

Yet Mr. Rose represents Ted Bernstein as Successor Trustee to the Simon Bernstein Trust, the beneficiaries of which are the GRANDCHILDREN OF Simon Bernstein, and the Trust is the beneficiary of the Simon Estate which is directly opposed to the position of Ted Bernstein as Plaintiff in the Chicago Life Insurance litigation.

Just as Ted Bernstein cannot wear both hats, it seems that Alan Rose cannot represent a client so conflicted.

Further, it would seem to me that the estate (you as Personal Representative) has an absolute duty to demand Ted's resignation as Successor Trustee, as his continued role as such imperils the interests of the grandchildren, to whom you owe a fiduciary duty as the Personal Representative.

The bottom line is that the more this drags on, the worse it is going to get for all concerned.

At some point, respectfully, I think you are going to have to take the bull by the horns and 1.) demand that Ted Bernstein resign as Successor Trustee and 2.) Take an active role in directing the attorneys in Chicago to push the case in order to bring it to a successful resolution on behalf of the estate, either by settlement or trial. This means taking over the responsibility for the litigation from Mr. Stansbury in light of the favorable position that the Estate is now in as a result of Mr. Stansbury 's efforts.

I welcome your thoughts on this.

Peter M. Feaman

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

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of
PETER M. FEAMAN, P.A.
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Peter M. Feaman, Esq.
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Jeffrey T. Royer, Esq.



www.FeamanLaw.com

3695 W. Boynton Beach Blvd.
Suite 9
Boynton Beach, FL 33436
Telephone: 561-734-5552
Facsimile: 561-734-5554

August 29, 2014

PERSONAL and CONFIDENTIAL
boconnell@ciklinlubitz.com

Brian M. O'Connell, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Drive, 20th Floor
West Palm Beach, FL 33401

Re: Estate of Simon Bernstein

Dear Brian:

Earlier this week the Order came in denying my client, William Stansbury's Motion to Remove Theodore Bernstein as Successor Trustee of the Simon Bernstein Trust based on lack of standing. The purpose of this letter is to urge you, in no uncertain terms, to pick up the baton in Mr. Stansbury's stead and file to remove Mr. Theodore Bernstein as Successor Trustee.

The grounds for his removal are set forth in some detail in his Motion, a copy of which I attach for your review. Mr. Stansbury is of the firm conviction that assets of the Trust have been and will continue to be wasted under the trusteeship of Ted Bernstein.

The grounds for removal are numerous and removal is urgently needed to preserve the Trust assets, some or all of which may be called upon to satisfy Mr. Stansbury's claim if and when it turns out that the assets of the Simon Bernstein probate estate are insufficient to satisfy his claim. No accounting has been provided since the passing of Shirley Bernstein with regard to the Shirley Bernstein Trust, and no accounting has been provided since the passing of Simon Bernstein in the Simon Bernstein Trust. We believe that assets of the Simon Bernstein Trust in addition to not having been accounted for are being wasted. In the absence of an accounting, one cannot know for sure. For example, the personal property at the residence of Simon Bernstein has never been accounted for.

There are probably tens of thousands of dollars of assets which, upon information and belief, have been converted or unaccounted for by the Successor Trustee. An insurance schedule prior to Mr. Bernstein's death scheduled certain personal property to be insured. Yet this property has never been accounted for, either by the Trust or in the inventory filed on behalf of the Estate.

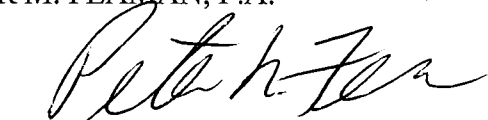
Brian O'Connell, Esq.
August 29, 2014
Page 2

Further, as set forth in Mr. Stansbury's motion, Mr. Theodore Bernstein is facially unqualified by the very terms of the Trust to be the Successor Trustee. As a result of the foregoing, Mr. Stansbury requests that the Estate file its own petition to remove Ted Bernstein as Successor Trustee to the Simon Bernstein Trust.

Very truly yours,

PETER M. FEAMAN, P.A.

By:



Peter M. Feaman

PMF/mk
Enclosure

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Strategic Counselors. Proven Advocates.™

Peter M. Feaman, Esq.
Nancy E. Guffey, Esq.
Jeffrey T. Royer, Esq.



www.FeamanLaw.com

3695 W. Boynton Beach Blvd.
Suite 9
Boynton Beach, FL 33436
Telephone: 561-734-5552
Facsimile: 561-734-5554

August 29, 2014

PERSONAL and CONFIDENTIAL
bocconnell@ciklinlubitz.com

Brian M. O'Connell, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Drive, 20th Floor
West Palm Beach, FL 33401

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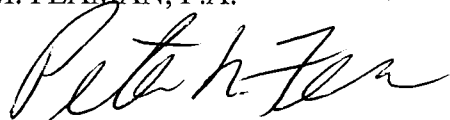
Brian O'Connell, Esq.
August 29, 2014
Page 2

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Very truly yours,

PETER M. FEAMAN, P.A.

By:


Peter M. Feaman

PMF/mk
Enclosure

Eliot Ivan Bernstein

From: [Peter M. Feaman](mailto:pfeaman@feamanlaw.com) <pfeaman@feamanlaw.com>
Sent: Tuesday, August 5, 2014 10:42 AM
To: [Alan Rose](#)
Cc: William Stansbury
Subject: RE: Eliot's Demand

By the way, what about the Shirley Bernstein Trust?
We know The Aragon Condominium Unit was sold which netted over \$1,000,000.

Where is that money?

This is an expense that the trusts clearly should pay.

My client tells me there are [numerous witnesses who know that it was Simon's intent to provide for the St. Andrews schooling for Eliot's children.](#)

Heck, the house he bought for Eliot is within walking distance of the school!

Whatever differences there are between Ted and Eliot, [the grandkids should not be used as pawns.](#) There is money to pay for the grandchildren's education. Stop playing games and get this done.

At the end of the day, an adjustment can be made if necessary, but [stop putting the kids in the middle.](#)

Peter M. Feaman

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

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From: Alan Rose [mailto:ARose@mrachek-law.com]
Sent: Tuesday, August 5, 2014 10:05 AM
To: Peter M. Feaman
Subject: Re: Eliot's Demand

My question is much simpler than that. Would Mr. Stansberry ever consent to Elliot receiving an interim distribution without there being sufficient assets to pay Mr. Stansberry's claim in full. In other words, would he agreed to a preferential distribution to Elliot that could potentially diminish or defeat his ability to collect on a claim, if he is successful

Alan B. Rose

On Aug 5, 2014, at 9:53, "Peter M. Feaman" <pfeaman@feamanlaw.com> wrote:

Until Mr. Stansbury sees an accounting of trust assets, he is not in a position to make a decision on the request.

Can you send me a trust accounting?

Peter M. Feaman

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

NOTE THAT NO ONE HAS EVER BEEN GIVEN A TRUST ACCOUNTING TWO YEARS AFTER SIMON HAS DIED AND EVEN AFTER THE TRUSTEES WERE TERMINATED AND TED ALLEGES HE BECAME SUCCESSOR IN JAN. 2014 IN VIOLATION OF PROBATE RULES AND STATUTES.

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From: Alan Rose [<mailto:ARose@mrachek-law.com>]

Sent: Tuesday, August 5, 2014 9:02 AM

To: Peter M. Feaman

Subject: Eliot's Demand

Eliot has demanded an interim payment from the Simon Bernstein Trust or Estate.

Based upon the facts as I understand them, there is not more that enough money in the Estate or Trust than the amount of the claim by Mr. Stansbury, and indeed, it appears that there is substantially less than needed to do so should Mr. Stansbury prevail.

Absent Mr. Stansbury's consent to an interim distribution to Eliot, there is no point in anyone (including the new successor PR) considering the request as from the assets of Simon's Trust or Estate.

Please advise asap if Mr. Stansbury would consent to a payment of +/- \$125,000 to St. Andrews School for Eliot's children's three private school tuitions.

Thanks

Alan B. Rose, Esq.

arose@Mrachek-Law.com

561.355.6991

<image001.jpg>

505 South Flagler Drive

Suite 600

West Palm Beach, Florida 33401

561.655.2250 Phone
561.655.5537 Fax

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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

**PETITION TO REMOVE TED BERNSTEIN AS
SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN REVOCABLE TRUST**

COMES NOW, William E. Stansbury (“Stansbury”), claimant and creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, et al., by and through his undersigned counsel, and pursuant to §736.0706, Fla. Stat. (2013), files this Petition to Remove Ted Bernstein as Successor Trustee of the Simon Bernstein Revocable Trust Agreement dated July 25, 2012 (the “Revocable Trust” or “Trust”), and in support states as follows:

I. Stansbury has standing to seek removal.

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, corporate distributions and other damages due Stansbury, arising out of a life insurance business in which Stansbury, SIMON and TED were principals. Stansbury asserts claims against SIMON and TED both as agents of the corporate defendants and in their individual capacities (the claims against TED have settled). The damages Stansbury claims are in excess of \$2.5 million. Shortly 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.

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)

A “beneficial interest” is defined as: “A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing.” Black’s Law Dictionary 149 (7th ed. 1999). The issue then is, with regard to whether Stansbury has standing, does Stansbury have at least a contingent future beneficial interest in the Trust? The answer is a resounding “yes.”

§733.707(3), Fla. Stat. (2014), states:

*(3) Any portion of a trust with respect to which a decedent who is the grantor has at the decedent’s death a right of revocation...**is liable for the expenses of the administration and obligations of the decedent’s estate to the extent the decedent’s estate is insufficient to pay them...*** (emphasis added)

Stansbury, as a claimant and creditor of the Estate, which claim exceeds the value of the assets of the Simon Bernstein Estate, has a beneficial interest in the Trust because, to the extent that the assets of Simon’s Estate are insufficient to pay his claim, he has a contingent interest in the Revocable Trust. The assets of the Trust may be called upon to pay his claim under §733.707(3).

Stansbury has a claim against the Estate in excess of \$2.5 million. The most recent inventory of the Estate shows assets valued in the approximate amount of \$1.2 million. If Stansbury prevails on his claim, a deficiency is assured.

Stansbury therefore has a contingent future beneficial interest in the assets of the Revocable Trust to the extent the assets of the Estate are insufficient to satisfy his claim when and if proven. This makes Stansbury, although not a named beneficiary of the Revocable Trust, a “beneficiary” nonetheless by virtue of his beneficial interest under the statutory definition. Therefore, Stansbury has standing to seek removal of the Trustee.

Florida case law recognizes that a person not specifically named in a will or trust document as a beneficiary may nonetheless be deemed to have a sufficient beneficial interest in a will or trust to be considered a beneficiary thereunder. See, In Re Estate of Nelson, 232 So.2d 222 (Fla. 1st DCA 1970). There, a decedent bequeathed the major portion of his estate to the attorneys that prepared his probate documents, in trust, with unlimited discretion to distribute the income or corpus for such religious, educational, scientific, charitable, or literary purposes as they saw fit. The attorneys were not named beneficiaries of the will or trust other than in their capacity as executors and trustees. Family members contested the documents and claimed the attorneys had, by virtue of their anticipated future compensation for services as executors and trustees, a sufficient beneficial interest in the will so as to make them de facto beneficiaries.

The Florida First District Court agreed. Relying on Ziegler v. Coffin, 219 Ala. 586, 123 So.2d 22 (1929), a Supreme Court of Alabama case, the Florida court held that, as a matter of law, the compensation which the attorney would receive for their services rendered as executors and trustees, together with the almost unlimited discretion and control they had in the

management of the trust estate, constituted them as beneficiaries under the will even though they were not named as legatees or devisees therein.

While not entirely analogous to this case, the holding makes clear that courts may look beyond the written documents to ascertain a claimant’s status as beneficiary, based on the interests involved and the circumstances of the matter before the court. Additionally, an articulable claim of economic interest, even though contingent, is a sufficient beneficial interest to determine that a claimant such as Stansbury has the status of trust beneficiary under the statute, thereby giving him standing to pursue removal of the trustee.

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

Under Florida law, this Court has broad authority to affect trust administration. 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.

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 in s. 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).

IV. Ted Bernstein Should Be Removed as Trustee of the Revocable Trust by the Terms of the Trust and his Conflict of Interest.

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

1. Ted Bernstein is a “related party” and therefore not eligible to serve.

The previous co-trustees of the Revocable Trust were Donald Tescher and Robert Spallina by virtue of the Successor Trustee provision set forth in Article IV, Section C of the Revocable Trust. A copy of the Trust is attached hereto as Exhibit “A.” By letter dated January 14, 2014 addressed to the five children of Simon Bernstein, Donald Tescher for himself and on behalf of Robert Spallina, resigned as co-trustees of the Revocable Trust (and the Shirley Bernstein Trust) and 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.” A copy of the 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).

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 a beneficiary, TED’s son, SIMON’s grandson. Therefore, TED is ineligible as a Related or Subordinate Party and is therefore unfit to serve as a successor trustee under §736.0706(2)(c).

2. 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(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 AIANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me ...” (emphasis added)

Therefore, by the very language of the Trust, Ted Bernstein is disqualified by this provision to serve as Successor Trustee.

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 (the “Insurance Trust) as beneficiary.

Shortly after SIMON’S death in 2012, Robert Spallina, one of the resigning Co-Personal Representatives of the Estate of Simon Bernstein and a resigning Co-Trustee of the Revocable Trust, submitted a claim form to Heritage on behalf of the Insurance Trust for the benefit of the

grown children of Simon Bernstein. Spallina submitted this 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 Irrevocable Insurance Trust existed at the time of SIMON’s death, the insurance proceeds would be payable to the personal representative of the Estate. As such, such insurance proceeds would be available to pay creditors of the Estate such as Stansbury. See §733.808(4), Fla. Stat. (2014)

Because no insurance trust instrument could be produced, Heritage refused to pay the life insurance proceeds to anyone without a court order. The lost Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois (the “Life Insurance Litigation”). The case has since been removed to the United States District Court for the Northern District of Illinois in Chicago.

The Estate of Simon Bernstein recently filed a Motion to Intervene in the Life Insurance Litigation to assert the Estate’s interest in the life insurance proceeds. The Plaintiffs 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 FREIDSTEIN, 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 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 the grandchildren of SIMON, 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 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 the grandchildren of Simon Bernstein. This means TED must support, or at the least not obstruct, the efforts of the Estate to attempt to recover an additional \$1.7 million in life insurance benefits. If so recovered, this would dramatically reduce the exposure of the Revocable Trust's liability for any potential Estate shortfall to creditors. By opposing intervention by the Estate TED's actions will potentially expose the trust assets to liability should STANSBURY's claim exceed the assets in the Estate, a liability that can be avoided if the Estate is successful in the Life Insurance Litigation. More importantly, TED'S efforts in the Life Insurance Litigation are designed to keep the \$1.7 million out of the estate and trust and to redirect the money to him and his siblings, people who are not beneficiaries of either the Estate or the Trust.

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 turn exposes the Trust to increased liability, and warrants his removal under §736.0706(2)(a). 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*, 11

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

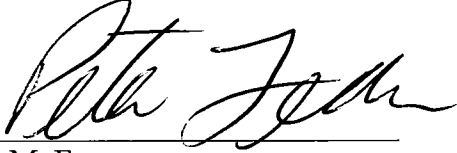
There are serious allegations of fraud and forgery in the Shirley Bernstein Estate where Ted Bernstein is the Personal Representative. Documents were submitted to the Court bearing notarized signatures of Simon Bernstein on a date after he had passed away.

This Court was apprised of these allegations in a hearing conducted September 13, 2013 wherein the Court questioned whether the potential parties involved should be read their Miranda Rights. (*See* Transcript of Proceedings, pages 15 and 16, attached as Exhibit “E.”)

Further, the attorney for TED BERNSTEIN as Personal Representative of the Estate of Shirley Bernstein has admitted to altering provisions of the Shirley Bernstein Trust which had the effect of benefitting TED BERNSTEIN.

Ted Bernstein’s involvement in such activity involving the Estate of Shirley Bernstein should disqualify him from serving as Successor Trustee of the Revocable Trust.

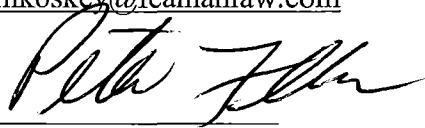
WHEREFORE, William E. Stansbury requests that TED BERNSTEIN, the apparent successor trustee of the Simon Bernstein Trust, be removed, that the court appoint a Successor Trustee with no apparent conflicts of interest, and that the Court require the filing of a Trust Accounting.


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 to: Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, courtfilings@pankauskilawfirm.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; and William H. Glasko, Esq., Golden Cowan, P.A., PALMETTO BAY LAW CENTER, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.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; Irwin J. Block, Esq., 700 S. Federal Hwy., Suite 200, Boca Raton, FL 33432, ijb@ijblegal.com, on this 29 day of July, 2014.

PETER M. FEAMAN, P.A.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
Service: service@feamanlaw.com
mkoskey@feamanlaw.com

By: 
Peter M. Feaman
Florida Bar No. 0260347

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.

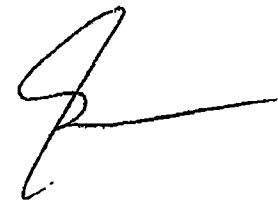
C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust 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 003887
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;

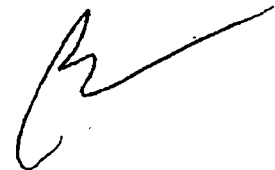
e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or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

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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
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

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

EXHIBIT B

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.

BOCA VILLAGE CORPORATE CENTER I
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FLORIDA 33431

TEL: 561-997-7008
FAX: 561-997-7308
TOLL FREE: 888-997-7008
WWW.TESCHERSPALLINA.COM

SUPPORT STAFF
DIANE DUSTIN
KIMBERLY MORAN
SUANN TESCHER

ATTORNEYS
DONALD R. TESCHER
ROBERT L. SPALLINA
LAUREN A. GALVANI

December 6, 2012

VIA FACSIMILE: 803-333-4936

Attn: Bree
Claims Department
Heritage Union Life Insurance Company
1275 Sandusky Road
Jacksonville, IL 62651

Re: **Insured: Simon L. Bernstein**
Contract No.: 1009208

Dear Bree:

As per our earlier telephone conversation:

- We are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.
- Mrs. Shirley Bernstein was the initial beneficiary of the 1995 trust, but predeceased Mr. Bernstein.
- The Bernstein children are the secondary beneficiaries of the 1995 trust.
- We are submitting the Letters of Administration for the Estate of Simon Bernstein showing that we are the named Personal Representatives of the Estate.
- We would like to have the proceeds from the Heritage policy released to our firm's trust account so that we can make distributions amongst the five Bernstein children.
- If necessary, we will prepare for Heritage an Agreement and Mutual Release amongst all the children.
- We are enclosing the SS4 signed by Mr. Bernstein in 1995 to obtain the EIN number for the 1995 trust.

If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,


ROBERT L. SPALLINA

RLS/km

Enclosures

EXHIBIT C

BATES NO. EIB 003911
02/27/2017

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,)

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 Tstee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)
Third-Party Defendants.)

Case No. 13 cv 3643
Honorable Amy J. St. Eve
Magistrate Mary M. Rowland

PLAINTIFFS MEMORANDUM OF LAW
IN OPPOSITION TO ESTATE OF SIMON
BERNSTEIN'S MOTION TO
INTERVENE

EXHIBIT D

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.

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:

INTRODUCTION

On January 14, 2014, this court entered an Order denying the motion to intervene of William Stansbury -- a potential creditor of the Estate of Simon Bernstein. In so doing, the court found that allowing Stansbury to intervene would (i) “not serve the interests of judicial economy and would unduly prejudice the present parties to this lawsuit”, and (ii) “unduly delay the determination of the beneficiaries of the life insurance policy at issue in this lawsuit.”¹

Now, six months later, Stansbury seeks a second bite at the apple. Stansbury petitioned the Florida Probate Court to have an administrator ad litem appointed on behalf of the “Estate” to further Stansbury’s own agenda against the express wishes of decedent, Simon Bernstein. In fact, had Stansbury’s motion been granted in its entirety by the Florida court, Stansbury himself would have been appointed administrator ad litem. Instead, the Florida Court appointed the Curator (Mr. Brown) as administrator ad litem, but that appointment was expressly made subject to the conditions placed on the record in the Probate Court which will be discussed later.

What will become apparent is that this motion is a motion of the Estate in name only. This court should apply the law of the case established by its January 14th Order to deny Stansbury’s second effort to intervene in this lawsuit.

¹ Order entered January 14, 2014 [Dkt. #110].

FACTUAL BACKGROUND

1. After this court denied Stansbury's first motion to intervene, Stansbury filed a petition in the Florida Probate Court to have himself appointed as administrator ad litem.²

2. Benjamin Brown had been appointed curator of the Estate of Simon Bernstein following the resignation of the Estate's personal representative.

3. During the hearing counsel for the various interested parties in the probate matter, either objected to the appointment of any administrator ad litem so as to preserve estate assets, and/or objected to the appointment of William Stansbury. At the conclusion of the hearing, the Florida Court ultimately appointed Benjamin Brown to act as administrator ad litem.

4. As stated in the Probate Court's Order appointing Benjamin Brown, such appointment was made subject to the conditions that were made part of the record during the hearing.³

5. During the hearing on the motions, the discourse between counsel for the various interested parties and the judge made it clear that the instant motion to intervene would only occur with the legal fees and costs being funded not by the Estate, but by William Stansbury.⁴

6. One condition demanded by William Stansbury since he was funding this excursion was that he be kept advised by the Curator and his counsel and have input with how this litigation is prosecuted.⁵

² See Transcript of Hearing on petition to appoint administrator ad litem in the matter of the Estate of Simon Bernstein at pg. 5-6. A true and accurate copy of the transcript is attached hereto as **Exh. A**. See

³ See Probate Court Order attached to the Estate's motion to intervene as **Exhibit B** (Dkt. #).

⁴ See Transcript of Hearing on petition to appoint administrator ad litem in the matter of the Estate of Simon Bernstein. **Exh. A**, pg. 13-14, 34-35, 39.

⁵ See Transcript, **Exh. A** at pg. 28-29.

7. The sole factual basis asserted by the Estate for its motion to intervene is set forth in its Complaint for Intervenor as follows: “Intervenor Benjamin Brown seeks a judgment from this Court declaring that *no* valid beneficiary is named under the Policy and the proceeds of the Policy must therefore be paid to the Estate.”

8. It has been over six months since the court entered its Order denying Stansbury’s motion. Stansbury chose not to pursue any motion for reconsideration or appellate review of the Order. Instead, Stansbury initiated and funded the Estate’s motion to intervene.

9. The Insurer, in response to a Notice for a Rule 30(b)(6) deposition provided the Affidavit of its witness, Don Sanders.⁶ A true and correct copy of the Aff. of Don Sanders is attached hereto as **Exh. B**.

10. At the time of the making of his Affidavit, Don Sanders was familiar with the Insurer’s Policy records. (Aff. of Don Sanders, **Exh. B** at ¶33).

11. According to the Policy records as verified by Don Sanders, no owner of the Policy ever submitted a beneficiary designation which designated “Simon Bernstein’s estate” or “the Estate” as beneficiary. (Aff. of Don Sanders, **Exh. B** at ¶70).

12. According to the Policy records as verified by Don Sanders, “on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as ‘LaSalle National Trust, N.A. as Successor Trustee’, and the Contingent Beneficiary was designated as ‘Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995.’ ” (Aff. of Don Sanders, **Exh. B** at ¶62).

⁶ The Affidavit of Donald Sanders is attached hereto and made a part hereof as **Exh. B**.

STANDARD OF REVIEW

A trial court must grant a motion to intervene as a matter of right if: (1) the petition is timely filed; (2) the representation by the parties already in the suit is inadequate; and (3) the party seeking intervention has a sufficient interest in the suit.

In order to show inadequacy of representation, for purposes of a motion to intervene as of right, one must not engage in speculation, but rather allege specific facts demonstrating a right to intervene. *In re Marriage of Vondra*, 2013 Ill. App. (1st) 123025, 373 Ill. Dec. 620, 994 N.E.2nd 105 (1st Dist., 2013).

This court's summary of the standard of review for a motion to intervene included the following:

“Whether an applicant has a sufficient interest to intervene is a highly fact-specific making comparison to other cases of limited value.” “Permissive intervention under Rule 24(b), permits “anyone to intervene who... has a claim or defense that shares with the main action a common question of law or fact,” unless intervention would “*unduly delay or prejudice the adjudication of the original parties rights.*”⁷ (emphasis added).

ARGUMENT

A. This court should apply the law of the case to bar the Estate's motion to intervene since the Estate is in privity with Stansbury whose own motion to intervene was previously denied in this same litigation.

Over six months ago, this Court denied Stansbury's motion to intervene. The holding was based, in part, on the tenuousness of the connection between the instant litigation over the Policy proceeds and Stansbury's claims pending in Florida against certain corporate defendants' and the Estate of Simon Bernstein relating to unpaid insurance commissions. The court rejected both of Stansbury's arguments for intervention as a matter of right, and for permissive intervention. Stansbury did not file any motion to reconsider or seek appellate review.

⁷ See Order of January 14, 2014 [Dkt. #110]

The basis for Stansbury's motion to intervene was identical to that set forth by the Estate in the instant motion to intervene. Both Stansbury and the Estate argue that the Estate's purported interest in the Policy proceeds is solely as a beneficiary of last resort. Neither Stansbury nor the Estate set forth any affirmative argument or evidence attempting to establish that the Estate was the named beneficiary of the Policy proceeds.

The doctrine of collateral estoppel applies to avoid relitigation of a substantially similar issue arising between the same parties (or their privies) where such issue has already been determined in the course of a separate proceeding. *Rekhi v. Wildwood Industries, Inc.*, 61 F.3d 1313, 130 Lab Cas. P57, 969, 2 Wage & Hour Cas.2d 1428 (7th Cir., 1995).

The doctrine of law of the case also applies to avoid relitigation of substantially similar issues but in the *same* proceeding. In *Radwill v. Manor Care of Westmont, IL LLC*, 2013 IL App (2d) 120957, 369 Ill. Dec. 452, 986 N.E.2d 765 (2nd Dist., 2013), the court explained the rationale behind the law of the case doctrine as follows:

"The law-of-the-case doctrine protects the parties' settled expectations, ensures uniformity of decisions, maintains consistency during the course of a single case, effectuates proper administration of justice, and brings litigation to an end. *Petre v. Kucich*, 356 Ill.App.3d 57, 63, 291 Ill.Dec 867, 824 N.E.2d 1117 (2005). Thus, the doctrine bars relitigation of an issue previously decided in the same case. *Long v. Elborno*, 397 Ill.App.3d 982, 989, 337 Ill.Dec. 432, 922 N.E.2d 555 (2010). Issues previously decided include issues of both law and fact. *Alwin v. Village of Wheeling*, 371 Ill.App.3d 898, 910, 309 Ill.Dec. 656, 864 N.E.2d 897 (2007).

As set forth in the transcript of the Probate hearing appointing the Curator as administrator ad litem, the Estate, in this instance, is in privity with Stansbury. It is a matter of public record that Stansbury is funding this venture, and was granted direct involvement in litigating this matter under the auspices of the "Estate".

The arguments set forth by the Estate mirror those contained in the prior motion made by Stansbury. Because the issues, and arguments are virtually identical, and the moving party (the Estate) is in privity with the prior movant (Stansbury), the law of the case must apply to bar relitigation of this issue. The court spoke in its Order of January 14, 2014, and nothing contained in the Estate's motion or complaint to intervene necessitates revisiting the issue.

B. The unrefuted sworn testimony of Don Sanders, Vice-President of Operations for the Insurer both supports Plaintiff's claim that it is the named beneficiary of the Policy proceeds and negates the Estate's claims. (go through the Paragraphs and cite in the statement of unrefuted facts).

As indicated in Plaintiffs' Statement of Undisputed Facts, the Insurer has provided its Policy records and the Affidavit of Don Sanders as evidence in this case. Don Sanders reviewed the Policy records and in his Affidavit Don Sanders declares that the Estate was never named a beneficiary of the Policy proceeds. The Estate has offered nothing to dispute this essential truth.

C. The Estate's motion to intervene is not based on any actual claim it has upon the Stake, instead it is based solely on efforts to negate the claims of the true beneficiary.

As stated above, the Estate's motion to intervene is not based on any allegation of its own claim to the Stake. Rather, the motion merely attempts to negate the claim of the Bernstein Trust by baldly asserting that the trust does not exist because a trust agreement cannot be located.

In an interpleader action each claimant has the burden of establishing its entitlement to the Stake, and it is insufficient to negate or rely on the weakness of the claims of others. *Eskridge v. Farmers New World Life Ins. Co.*, 250 Ill.App.3d 603 at 608-609, 190 Ill.Dec. 295, 621 N.E.2d 164 (1st Dist., 1983).

Here, the Estate argues that no one is representing its interests. But, the Estate, like Stansbury before it, fails to articulate any facts that support an affirmative claim by the Estate to the Stake.

The Estate argues that if all other claims are negated and thus fail then the Estate would have a claim by default. As such, the Estate needs no representation because under the Estate's theory it would simply be the beneficiary of last resort.

More importantly, in order to enforce the intent of Simon Bernstein as expressed in his Will, the Curator or Personal Representative of the Estate should be disclaiming any interest in the Stake. Instead, the Curator seeks to ignore the Will of the Simon Bernstein in order to unjustly enrich the Estate largely for the benefit and at the behest of a potential third-party creditor, and at the expense of the ultimate beneficiaries, decedent's five children. That's just plain wrong.

In Stansbury's prior motion to intervene, he attached the Petition filed by the Executors of the Estate admitting the Will to Probate in Palm Beach County, Florida, and the Petition includes a copy of the Last Will of Simon Bernstein (the "Will").

The Will was incorporated as an Exhibit in support of Stansbury's motion yet the Will itself contains a provision wherein Simon Bernstein reaffirms his beneficiary designations. The Will states in pertinent part as follows:

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 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 in the manner provided in such designation which is incorporated herein by reference.⁸

Here, the designations of beneficiary of the Policy proceeds point directly to one such beneficiary which is the Bernstein Trust. Simon Bernstein designated the Bernstein Trust as beneficiary of the VEBA, and the VEBA Trustee was always designated as the primary beneficiary of the Policy proceeds. The contingent but sole surviving beneficiary of the Policy proceeds as of the date of Simon Bernstein's Death was the Bernstein Trust itself. Since the VEBA had been previously dissolved, the Policy proceeds are payable to the Bernstein Trust. None of the Bank Defendants whose names appear in the caption above, and whom acted as corporate trustees of the VEBA from to time has made a claim to the Stake. In fact, the only Bank party to have appeared in this matter was dismissed on their own motion after having expressly disclaimed any such interest.⁹

In his Will, Simon Bernstein instructs the executor to disclaims the Estate's interest in the Policy proceeds at issue. Simon Bernstein's instructions were that in the case of an invalid testamentary disposition the instrument designating the beneficiary shall be incorporated into the Will and the proceeds shall be gifted to the intended beneficiaries as established by the beneficiary designation.

⁸ See (Dkt. #56-5, at pg. 35 of 41, Stansbury's Intervenor Complaint, Exh. B, Will of Simon Bernstein at p.6)

⁹ See Motion for Judgment on the Pleadings filed by JPMorgan Bank, and the Order dismissing JP Morgan . (Dkts. #102 and #106).

Here, it is clear that Simon Bernstein expressed his intent by named the Bernstein Trust as beneficiary of the Policy proceeds, that the Policy proceeds should go to the Bernstein Trust beneficiaries (the five Bernstein children) even in the event that the beneficiary designation is ruled to be an invalid testamentary disposition such as the Estate argues.

D. As set forth above, the Estate's motion to intervene is not based on any actual claim it has upon the Stake, instead it is based solely on his efforts to negate the claims of the true beneficiary of the Stake.

The Estate's motion to intervene is not based on any allegation of its own claim to the Stake. Rather, the Estate attempts to negate the claim of the Bernstein Trust by baldly asserting that the trust does not exist because a trust agreement cannot be located.

In an interpleader action each claimant has the burden of establishing its entitlement to the Stake, and it is insufficient to negate or rely on the weakness of the claims of others. *Eskridge v. Farmers New World Life Ins. Co.*, 250 Ill.App.3d 603 at 608-609, 190 Ill.Dec. 295, 621 N.E.2d 164 (1st Dist., 1983). Here, the Estate argues that no one is representing the claims of the Estate. But, the Estate fails to articulate any facts that support a claim by the Estate to the Stake.

It appears the Estate is arguing if all other claims are negated and thus fail then the Estate would have a claim by default. If that is the Estate's position, then the Estate needs no representation because under Stansbury's theory the Estate would simply be the beneficiary of last resort. Even this potential claim fails, as the Policy proceeds would likely pass by virtue of the laws of intestacy to the children of Simon Bernstein, as a last resort, and not through the Estate. Simon Bernstein, in his Will, expressly reaffirmed his beneficiary designations and in so doing he essentially disclaimed the Estate's interest in the Policy proceeds.

E. Stansbury's unsupported assertion that the court should grant his motion to intervene based on Permissive Intervention under FED. R. CIV. P. 24(b)(1)(B) fails for similar reasons.

The Estate's request for permissive intervention is based on its conclusory assertion that it "has a claim that shares with the main action a common question of law and fact, to wit, the proper disposition of the life insurance proceeds in excess of \$1,000,000.00."¹⁰

This language again mirrors the language in Stansbury's prior motion to intervene.¹¹ And like Stansbury, this conclusory allegation is totally unsupported by any evidence establishing a claim to the stake. Without any factual allegations of a claim, the court is left with nothing additional to determine as a result of the motion and complaint to intervene. Since the Estate has nothing to offer in support of its claim, there is no reason whatsoever for this court to add it to this litigation especially at this late date.

F. Public policy concerns mitigate against the Estate's motion.

Should the court grant the Estate's motion to intervene it will provide precedent to other similarly situated claimants who lack any factual basis for its claim. Allowing spurious claimants to participate in such litigation will only drive up costs, create needless delay and obfuscate matters for those with truly viable claims to the stake.

¹⁰ See Dkt. #110, Estate motion to intervene at ¶9.

¹¹ See Dkt. #56-5 at ¶9, Stansbury Motion to Intervene.

CONCLUSION

For all of the foregoing reasons (including the reasons set forth by this court in its prior Order of January 14, 2014) this court should deny the Estate's motion to intervene.

By: */s/Adam M. Simon*
Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
Phone: 312-819-0730
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*

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused a copy of the Plaintiff's Memorandum in Opposition to the Estate of Simon Bernstein Motion to Intervene to be served upon the following persons and entities electronically by ECF notification and/or by US Mail (if so indicated):

Eliot Ivan Bernstein
2753 NW 34th Street
Boca Raton, FL 33434
Via ECF and Mail
Pro Se

James John Stamos
Stamos & Trucco LLP
One East Wacker Drive
Suite 300
Chicago, IL 60601
(312) 630-7979
Email: jstamos@stamostrucco.com
Attorney for Benjamin Brown, as Curator and Administrator
Ad Litem for the Estate of Simon Bernstein

Kevin Patrick Horan
Stamos & Trucco Llp
1 E. Wacker Dr.
3rd Floor
Chicago, IL 60601
(312) 630-7979
Email: khoran@stamostrucco.com
Attorney for Benjamin Brown, as Curator and Administrator
Ad Litem for the Estate of Simon Bernstein

on the 28th day of June, 2014.

/s/ Adam M. Simon
Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
Phone: 312-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com
Attorney for Plaintiffs

In Re_ The Estate of Shirley Bernstein.txt

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1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA
2 PROBATE/GUARDIANSHIP DIVISION IY
3 CASE NO.: 502011CP000653XXXXSB

4 IN RE: THE ESTATE OF:
SHIRLEY BERNSTEIN,
Deceased

5 _____/
ELIOT IVAN BERNSTEIN, PRO SE,
6 Petitioner,

vs.

7
8 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,
ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA
(BOTH PERSONALLY & PROFESSIONALLY); DONALD
9 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);
THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL
10 REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH
PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE
11 DOE'S (1-5000),
Respondents.

12 _____/
13 TRANSCRIPT OF PROCEEDINGS
14 BEFORE
15 THE HONORABLE MARTIN H. COLIN

16
17 South County Courthouse
200 West Atlantic Avenue, Courtroom 8
18 Delray Beach, Florida 33344

19
20 Friday, September 13, 2013
1:30 p.m. - 2:15 p.m.

21
22
23
24 Stenographically Reported By:
JESSICA THIBAUT

25

♀

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1 APPEARANCES

2

3 On Behalf of the Petitioner:

4 ELIOT IVAN BERNSTEIN, PRO SE
2753 NW 34th Street
5 Boca Raton, Florida 33434

6

7 MR. MANCERI: That's when the order was
8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came
10 to court.

11 MR. ELIOT BERNSTEIN: Oh.

12 THE COURT: So let me see when he actually
13 filed it and signed the paperwork. November.
14 What date did your dad die?

15 MR. ELIOT BERNSTEIN: September. It's
16 hard to get through. He does a lot of things
17 when he's dead.

18 THE COURT: I have all of these waivers by
19 Simon in November. He tells me Simon was dead
20 at the time.

21 MR. MANCERI: Simon was dead at the time,
22 your Honor. The waivers that you're talking
23 about are waivers from the beneficiaries, I
24 believe.

25 THE COURT: No, it's waivers of

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1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of
4 discharge by Simon, Simon asked that he not
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date
10 of death.

11 THE COURT: Well, how could that happen
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened
17 was is the documents were submitted with the
18 waivers originally, and this goes to
19 Mr. Bernstein's fraud allegation. As you know,
20 your Honor, you have a rule that you have to
21 have your waivers notarized. And the original
22 waivers that were submitted were not notarized,
23 so they were kicked back by the clerk. They
24 were then notarized by a staff person from
25 Tescher and Spallina admittedly in error. They

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1 should not have been notarized in the absentia
2 of the people who purportedly signed them. And
3 I'll give you the names of the other siblings,
4 that would be Pamela, Lisa, Jill, and Ted
5 Bernstein.

6 THE COURT: So let me tell you because I'm
7 going to stop all of you folks because I think
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda
10 warnings?

11 THE COURT: Everyone of you might have to
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a
15 formal document filed here April 9, 2012,
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and
19 notarized on that same date by Kimberly. It's
20 a waiver and it's not filed with The Court
21 until November 19th, so the filing of it, and
22 it says to The Court on November 19th, the
23 undersigned, Simon Bernstein, does this, this,
24 and this. Signed and notarized on April 9,
25 2012. The notary said that she witnessed Simon

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1 sign it then, and then for some reason it's not
2 filed with The Court until after his date of
3 death with no notice that he was dead at the
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's
7 enough to give you Miranda warnings. Not you
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the
14 transaction?

15 MR. SPALLINA: I was involved as the
16 lawyer for the estate, yes. It did not come to
17 my attention until Kimberly Moran came to me
18 after she received a letter from the Governor's
19 Office stating that they were investigating
20 some fraudulent signatures on some waivers that
21 were signed in connection with the closing of

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

IN RE:

Case No.: 50 2012 CP 004391 SB
JUDGE MARTIN COLIN

ESTATE OF SIMON
BERNSTEIN,

Deceased.

Division: IY

**RESPONSE IN OPPOSITION TO 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**

COMES NOW Petitioner, William E. Stansbury (“Stansbury”), a creditor and “Interested Person,” pursuant to the §731.201(23) Fla. Stat. (2013), by and through his undersigned counsel, and files this Response in Opposition to the Motion for Appointment of Ted Bernstein as Successor Personal Representative and Motion for the Appointment of an Independent Third Party as Successor Personal Representative and Successor Trustee of the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2014 (the “Revocable Trust.”). In support, Petitioner states as follows:

I. Stansbury has standing to bring this Response and Motion

1. When removal of a Personal Representative is at issue, Fla. Prob. R. 5.440 specifically provides that, “... **any interested person, by petition**, may commence a proceeding to remove a personal representative. ...” (Emphasis added.) By logical extension an “interested person” would also have standing to petition the court for, and to participate in the proceedings involving, the appointment of a successor fiduciary.

2. 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...”

3. 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 (the "Stansbury Lawsuit.") A copy of the Statement of Claim is attached as Exhibit "A." A copy of the Second Amended Complaint by Interlineation which forms the basis of the Statement of Claim is attached hereto as Exhibit "B."

4. Stansbury, as a claimant of the Estate, has an interest in ensuring that the successor fiduciary ultimately appointed will act without bias and in the best interests of the creditors and devisees of the Estate. The Fourth District Court of Appeal has recognized that a claimant to an estate is an "interested person" and has standing in a proceeding to approve the personal representative's final accounting and petition for discharge. *See, Arzuman v. Estate of Prince Bander BIN Saud Bin, etc.*, 879 So.2d 675 (Fla. 4th DCA 2004).

II. Ted Bernstein should not be appointed as Successor Personal Representative

A. Misconduct in the Shirley Bernstein Estate

5. There are serious allegations of fraud and forgery in the Shirley Bernstein Estate where Ted Bernstein is now the Personal Representative. Documents were submitted to the Court bearing notarized signatures of Simon Bernstein, alleged signatures by him, but on a date after he had passed away.

6. This Court was apprised of these allegations in a hearing conducted September 13, 2013 wherein the Court questioned whether the potential parties involved should be read their Miranda Rights. (*See* Transcript of Proceedings, pages 15 and 16, attached as Exhibit "C.")

7. This Court should not appoint Ted Bernstein to serve as Personal Representative in the Estate of Simon Bernstein under circumstances where allegations of fraud and wrongdoing

are unresolved and arise out of the performance of his fiduciary duties in the estate of his mother, Shirley Bernstein.

B. The "lost" Insurance Trust

8. At the time of Simon Bernstein's death, it was determined that there existed a life insurance policy issued by Heritage Mutual Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust as beneficiary (the "Insurance Trust"). According to an SS-4 Application for EIN form submitted to the IRS on June 21, 1995, Shirley Bernstein was represented as Trustee of the Insurance Trust. (*See* SS-4 Application for EIN as Exhibit "D.")

9. Notwithstanding the earlier SS-4 EIN form, on November 1, 2012, Robert Spallina, one of the resigning Co-Personal Representatives of this Estate, submitted a claim form to Heritage on behalf of the Insurance Trust for the benefit of the grown children of Simon Bernstein. In doing so, Spallina represented that he was the Trustee of the Insurance Trust. (*See* Exhibit "E") Spallina made this representation despite having informed Heritage by letter shortly thereafter that he was "unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995." (*See* Exhibit "F" attached.) If the Trust instrument cannot be found, the insurance proceeds would be payable to the Simon Bernstein Estate, and as such, could be available to pay creditors of the Estate such as Stansbury.

10. Spallina, with the knowledge of Ted Bernstein, represented that he was "Trustee" of the Insurance Trust in an effort to collect the insurance proceeds on behalf the Insurance Trust and for the benefit of the grown children of Simon Bernstein, so as to circumvent the Simon Bernstein Estate.

11. Thereafter, Heritage refused to pay the life insurance proceeds to anyone without a court order. The alleged Insurance Trust then sued Heritage in the Circuit Court of Cook

County, Illinois (the case has since been removed to Federal Court). In paragraph 2 of the Complaint, the Plaintiff, the Insurance Trust, although apparently still “lost,” alleges that Ted Bernstein is the “trustee” of the Insurance Trust. Yet, there exists no trust document establishing the continued existence of the Insurance Trust, let alone that Ted is the Trustee. As a result, Ted’s representation, like that of Spallina, appears plainly false and should disqualify him from serving as a fiduciary in the Estate.

C. Ted Bernstein has Conflicts of Interest ---

(a) The Insurance Litigation in Chicago

12. Ted Bernstein, as well as his siblings (other than Eliot Bernstein) - Lisa Sue Friedstein, Pamela Beth Simon, and Jill Iantoni - have a conflict of interest precluding them from faithfully executing the duties of fiduciary on behalf of the Estate.

13. One of the considerations for removal of a Personal Representative as set forth in §733.504(9) (2013) is, “**(9) Holding or acquiring conflicting or adverse interests against the estate that will or may interfere with the administration of the estate as a whole.**”

14. A trail of e-mails indicates that Ted Bernstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni were advocating and scheming to keep the proceeds from the Heritage life insurance policy, as described above in paragraphs 8 thru 11 from being paid to the Estate. The stated purpose of this scheme was to avoid making the life insurance proceeds available to pay creditors of the Estate such as Stansbury. (*See*, selected e-mail messages, attached hereto as Composite Exhibit “G”.) The residuary beneficiaries of the Will, that is, the grandchildren of Simon Bernstein, would also be prejudiced by such a determination.

15. Section 733.602(1), Fla. Stat. (2013), expressly provides that “. . . A personal representative shall use the authority conferred by this code, the authority in the will, if any, and

the authority of any order of the court, **for the best interests of interested persons, including creditors.**” (Emphasis added.)

16. While the ultimate outcome of the adjudication of the issues surrounding the Heritage life insurance proceeds is uncertain, what is clear is that each of the children of Simon Bernstein, other than Eliot Bernstein, have advocated, and continue to advocate a position that is contrary to the best interests of the Estate, its creditors and beneficiaries. These two conflicting and contrary positions between the interests of the children of Simon Bernstein (other than Eliot) and the duty of the successor fiduciary to act in the best interests of the Estate, including the creditors and beneficiaries, render Ted Bernstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni unqualified to serve as successor fiduciaries. *See Estate of Bell v. Johnson*, 573 So.2d 57 (Fla. 1st DCA, 1990) (conflict between personal representative, in that capacity, and as power of attorney, necessitated removal as personal representative).

(b) Stansbury’s Lawsuit Against the Estate

17. The Stansbury Lawsuit filed against the Estate also named as Defendants Ted Bernstein individually and several entities with which Stansbury, Ted Bernstein and Simon Bernstein were associated. On June 9, 2014, through a mediation agreed upon by the parties, Stansbury settled with Ted and some entity Defendants.

18. Allegations of fraud are made against both Ted Bernstein and Simon Bernstein. The remaining Defendant of significance in the case is the Estate. As a consequence, Ted would have absolutely no objectivity serving as Personal Representative of the Estate when evaluating the Stansbury lawsuit.

D. The Ted Bernstein and Eliot Bernstein Litigation

19. The animus and “bad blood” that has surfaced between Ted Bernstein and Eliot Bernstein, and to a lesser extent the other Bernstein siblings, makes the selection of any of the

Bernstein siblings as successor Personal Representative ill-advised. Such an appointment would virtually guarantee that the Court's docket and courtroom will be continuously inundated with motions and other activities initiated by the warring factions, all to the detriment of the beneficiaries and creditors of the Estate such as Stansbury.

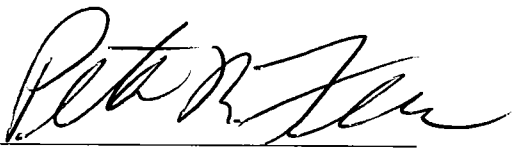
E. The Court Should Appoint an Independent Successor Personal Representative.

20. Stansbury moves this Court for the appointment of an independent, third party Successor Personal Representative that will administer the Estate in an objective, unbiased and fair manner, as set forth in § 733.5061, Fla. Stat. (2013) and in accordance with the procedure set forth in §733.501, Fla. Stat. (2013). Additionally, Stansbury moves this Court to appoint the same independent Successor Personal Representative to be Successor Trustee of the Simon Bernstein Revocable Trust as well.

21. In connection therewith, Stansbury offers the following individuals that have expressed a willingness to serve as both Successor Personal Representative and Trustee of the Revocable Trust:

- (a) Brian O'Connell, Esq.
- (b) Michael Mopsick, Esq.

22. The resumes setting forth the experience and qualifications of the aforementioned individuals are attached hereto as Exhibits "H" and "I".



Peter M. Feaman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to parties listed on the attached Service list by U.S. Mail and via e-mail service at arose@mrachek-law.com and mhandler@mrachek-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein*, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, and at courtfilings@pankauskilawfirm.com to John J. Pankauski, Esq., PANKAUSKI LAW FIRM, 120 South Olive Avenue, Suite 701, West Palm Beach, FL 33401; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; and William H. Glasko, Esq., Golden Cowan, P.A., PALMETTO BAY LAW CENTER, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com; Benjamin P. Brown, Esq., Matwiczuk & Brown, LLP, 625 N. Flagler Drive, Suite 401, West Palm Beach, FL 33401, bbrown@matbrolaw.com; John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, john@jmorrisseylaw.com, Irwin J. Block, Esq., 700 S. Federal Hwy., Suite 200, Boca Raton, FL 33432, ijb@ijblegal.com, on this 27th day of June, 2014.

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

By: _____


Peter M. Feaman
Florida Bar No.: 0260347

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

IN RE: Case No. 502012CP004391 SB

ESTATE OF SIMON
BERNSTEIN,
Deceased.

Division: IZ

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SOUTH COUNTY BRANCH OFFICE
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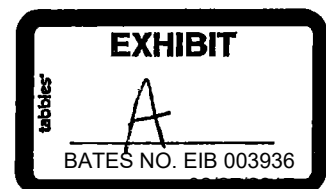
SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY

STATEMENT OF CLAIM BY WILLIAM E. STANSBURY

The undersigned hereby presents for filing against the above estate this Statement of Claim and alleges:

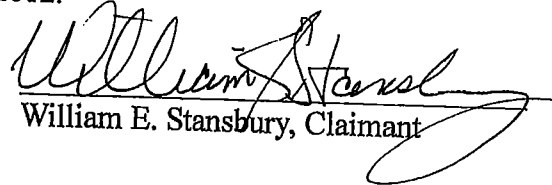
1. The basis for the claim is the action pending in Palm Beach County, Florida, *Stansbury v. Bernstein, et. al*, Case No. 502012CA 013933XXXX MB (the "Pending Action"). A true and correct copy of the Complaint filed by claimant that initiated the Pending Action is attached hereto as Exhibit "A" and is hereby incorporated by reference herein (the "Complaint").
2. The name and address of the claimant are William E. Stansbury, 6920 Caviro Lane, Boynton Beach, Florida 33437, and the name and address of the claimant's attorney is set forth below.
3. The amount of the claim is in excess of \$2.5 million dollars, which the Claimant is entitled to recover under the claims set forth in the Complaint, which amount the Claimant believes is now due.
4. The claim is contingent or unliquidated and uncertain to the extent that the Claimant's claim is dependent on the outcome of the Pending Action. The specific amount of Claimant's claim will be determined in Pending Action and the Claimant expects to recover in excess of \$2.5 million dollars in damages, as well as, but not limited to, treble damages, pre-judgment and post-judgment interest, and costs.
5. The claim is not secured.

[Signature page follows this page]

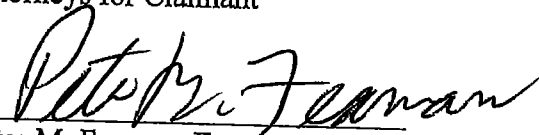


Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on November 6, 2012.


William E. Stansbury, Claimant

Attorneys for Claimant


Peter M. Feaman, Esq.
Florida Bar No.: 260347
PETER M. FEAMAN, P.A.
3615 West Boynton Beach Blvd.
Boynton Beach, FL 33436
Phone: (561) 734-5552
Facsimile: (561) 734-5554
Primary Electronic Mail Address:
pfeaman@feamanlaw.com

Copy mailed to attorney for Personal
Representative on _____
2012.

MUST BE FILED IN DUPLICATE

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: 50 2012 CA 013933 MB AA

v.

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

SECOND AMENDED COMPLAINT BY INTERLINEATION

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

1. This is an action for money damages in excess of \$15,000, and for equitable relief.
2. Plaintiff (hereinafter referred to as "STANSBURY") is *sui juris*, and a resident of Palm Beach County, Florida.
3. Defendant TED S. BERNSTEIN ("TED BERNSTEIN"), is *sui juris*, and a resident of Palm Beach County, Florida.
4. SIMON L. BERNSTEIN ("SIMON BERNSTEIN") died on or about September 13, 2012, after the filing of the initial Complaint in this action. At the time of his death, SIMON BERNSTEIN was *sui juris*, and was a resident of Palm Beach County, Florida. Defendants



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

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

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

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

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

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

General Allegations

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

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

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

13. TED BERNSTEIN, acting on his behalf and on behalf of, and in concert with, SIMON BERNSTEIN, approached STANSBURY in 2003, urging STANSBURY to spearhead the marketing of a unique insurance concept, newly developed by a prominent law firm, which was designed for use in the financial and estate planning of high net worth individuals.

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

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

16. STANSBURY agreed to become an employee of LIC Holdings, Inc. and ARBITRAGE and agreed to a salary of 15% of net retained commissions received on all products sold, including renewals. STANSBURY at this time was responsible for, among other duties, calculating, on a monthly basis, the commissions due him in connection with new business generated in the current year and renewals on business generated in previous years.

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

18. Also in 2006, SIMON BERNSTEIN, acting on his behalf and on behalf of, and in concert with, TED BERNSTEIN, told STANSBURY that STANSBURY was being rewarded for his efforts and the explosive growth of the business, such that he would receive a 10% ownership interest in LIC Holdings, Inc. SIMON BERNSTEIN and TED BERNSTEIN, collectively, were majority shareholders while STANSBURY was a minority shareholder in LIC Holdings, Inc.

19. STANSBURY has sued both LIC Holdings and ARBITRAGE because the BERNSTEINS represented that his employment relationship was with LIC Holdings, the company in which he owned a 10% interest, but STANSBURY'S W-2 statements were issued by ARBITRAGE as his employer.

20. In February of 2008, SIMON BERNSTEIN, acting on his behalf and on behalf of, and in concert with TED BERNSTEIN, approached STANSBURY and told him his time would

be better spent building the business rather than performing monthly calculations of income. The plan proposed was that, rather than STANSBURY performing computations on a monthly basis as to how much should be paid to him based upon 15% of the net retained commissions derived from both new policies sold and renewals from previous years, the BERNSTEINS and STANSBURY all would forego monthly payouts and defer compensation until the end of 2008, when year-end computations could be made. It was represented that in December, year-end computations would be made and salaries would be paid in December 2008 or January of 2009. It was specifically represented to STANSBURY that:

a) neither SIMON BERNSTEIN, TED BERNSTEIN nor STANSBURY would take any compensation during fiscal year 2008 but rather they all would wait until the year-end accounting was performed in December of 2008 or January, 2009;

b) SIMON BERNSTEIN, TED BERNSTEIN, and STANSBURY would each be paid a minimum salary of \$1,000,000 at year end, and STANSBURY'S salary was to be applied against his earned commissions of 15%. Any compensation due STANSBURY over and above the \$1,000,000 would be paid as a distribution on his stock ownership interest in LIC Holdings.

21. In January of 2008, STANSBURY was paid \$420,018 for commissions earned on some 2007 sales. However, STANSBURY was not, and has never been, paid the commissions due him on sales in 2008 and thereafter, and he was not and has never been paid the renewal commissions due him on sales made in previous years that were paid to LIC Holdings or ARBITRAGE in 2008 and thereafter, other than a nominal payment of \$30,000 made in 2010.

22. When STANSBURY was not paid as agreed in late 2008/2009 and thereafter, SIMON BERNSTEIN and TED BERNSTEIN, on behalf of and in concert with each other, stated to STANSBURY that salary and ownership distributions due and owing to SIMON BERNSTEIN, TED BERNSTEIN and STANSBURY would be deferred to a future time. This

deferral of payment was represented to be important because, as a result of the virtual collapse of the capital lending markets in 2008, it was necessary to retain the funds in the corporate bank accounts to demonstrate to potential lenders the financial stability of the companies.

23. The false statements set forth in paragraphs 18 through 21, above, were made by SIMON BERNSTEIN and TED BERNSTEIN, in concert with each other, with knowledge of their falsity and with the intention of never to fulfilling such promises.

24. Despite the representations to STANSBURY set forth above to the contrary, SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders of LIC Holdings and ARBITRAGE, authorized LIC Holdings and/or ARBITRAGE to pay themselves \$3,756,229.00 and \$5,225,825.00, respectively, in 2008. Contrary to the representations made as set forth in paragraph 20, STANSBURY received no compensation for first year commissions and renewal commissions due him in 2008.

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

26. Beginning late in 2007 or early in 2008, and continuing through at least 2012, LIC Holdings and/or ARBITRAGE became the alter ego of SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders, in that they disregarded corporate structure and wrongfully diverted, converted and depleted corporate assets of LIC Holdings and ARBITRAGE for their own personal benefit and the benefit of Bernstein family trusts and other entities as more specifically set forth below. Those trusts have since invested some of these wrongfully diverted and converted corporate assets in real estate, also as more particularly set forth below. The wrongful action of SIMON BERNSTEIN and TED BERNSTEIN in diverting and converting corporate assets rendered LIC Holdings, and possibly ARBITRAGE, insolvent.

27. Throughout 2009, SIMON BERNSTEIN and TED BERNSTEIN continued to make false statements to STANSBURY to hide the fact that LIC Holdings and/or ARBITRAGE was their alter ego, in that they converted corporate property and corporate assets of LIC and/or ARBITRAGE for their own personal benefit in 2008, 2009 and thereafter, all to the exclusion and financial detriment of STANSBURY, all the while fraudulently representing to STANSBURY that no money was being paid as salary or distributions to SIMON BERNSTEIN, TED BERNSTEIN or STANSBURY because it was necessary to hold the funds in the corporate bank accounts to show to potential lenders the financial stability of the company.

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

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

30. In furtherance of their scheme to deprive STANSBURY of salary he had earned and shareholder distributions to which he was entitled, SIMON BERNSTEIN and TED BERNSTEIN intercepted mail addressed to STANSBURY, removing commission checks representing commissions due to STANSBURY, deposited the funds into their own accounts and otherwise converted the funds. SIMON BERNSTEIN and TED BERNSTEIN also opened STANSBURY's mail containing checks payable to him which were unrelated to them and the businesses.

31. In December, 2011 STANSBURY had been battling a painful and debilitating disease that could only be managed through the administration of potentially harmful

prescription medications. On December 22, 2011, the Defendants BERNSTEIN, with knowledge of STANSBURY's health issues and his debilitated condition, decided to take advantage of and deceive STANSBURY further. STANSBURY had for years been given K-1 statements reflecting his 10% ownership of LIC Holdings. At that time, TED BERNSTEIN told STANSBURY that the company accountant had discovered a potential significant taxable event which could cause STANSBURY, as one of the owners of LIC Holdings to pay taxes on phantom income. TED BERNSTEIN promised that if STANSBURY would sign a paper ceding his 10% interest in LIC Holdings, he would not have to pay the tax if in fact the tax was due. TED BERNSTEIN promised he would hold the paper, promising it would not become operative until STANSBURY and the Defendants BERNSTEIN discussed the situation further in the first quarter of 2012.

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

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

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

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

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

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

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

WHEREFORE, Plaintiff STANSBURY prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, LIC Holdings and ARBITRAGE, and for such orders of Court as will require such Defendants to provide STANSBURY with all records and copies of documents from January 1, 2006 to the present, in order to reveal his right to, and the amount of all sums: (a) received as commissions to which STANSBURY was entitled to a share; (b) due to STANSBURY, whether paid or not; (c) paid to STANSBURY, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the BERNSTEIN Defendants out of monies received as commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid, to be paid, or not to be paid to STANSBURY, together with an award of court costs and such other and further relief as the Court may deem just and proper.

COUNT II - BREACH OF ORAL CONTRACT
(Against LIC Holdings, Inc., ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN)

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

39. The arrangement between STANSBURY and Defendants, as described in paragraphs 13 through 28 above, constituted a contract between them.

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

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

42. However, Defendants breached their contract with STANSBURY by withholding from STANSBURY monies due him under the contract for renewal commissions earned in 2007 and commissions and renewal commissions earned in 2008 and thereafter.

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

44. STANSBURY has sued both LIC Holdings and ARBITRAGE because the BERNSTEINS represented that his employment relationship was with LIC Holdings, the company in which he owned a 10% interest, but STANSBURY'S W-2 statements were issued by ARBITRAGE as his employer.

45. SIMON BERNSTEIN and TED BERNSTEIN are personally liable, jointly and severally, for the material breach of the oral employment contract with STANSBURY as LIC Holdings and/or ARBITRAGE were the alter ego of SIMON BERNSTEIN and TED

BERNSTEIN in that the BERNSTEINS depleted corporate assets for their personal benefit by causing the corporation or corporations to make exorbitant and inappropriate distributions to themselves, family members, and BERNSTEIN family trusts and other entities, at the expense of corporate creditors such as STANSBURY, to wit:

- a) SIMON BERNSTEIN and TED BERNSTEIN caused LIC Holdings and/or ARBITRAGE to pay to them at least \$3,756,229.00 and \$5,225,825.00, respectively, in fiscal 2008 during which time STANSBURY, other than the amount referenced in paragraph 21, was paid nothing;
- b) According to Palm Beach County public records, in December of 2007 TED BERNSTEIN purchased a property at 880 Berkeley Street, Boca Raton, Florida 33487, for \$4,400,000;
- c) According to Palm Beach County public records, on December 28, 2008, TED BERNSTEIN paid off the mortgage in the amount of \$486,400.00 on a property he owned at 15807 Menton Bay Court, Saturnia Isles, Delray Beach, Florida 33446;
- d) According to Palm Beach County public records, SIMON BERNSTEIN paid off the mortgage on property he and his wife owned, and subsequently transferred by quitclaim deed on May 20, 2008 to the trustee of SHIRLEY'S TRUST, at 7020 Lions Head Lane, Boca Raton, Florida, 33496. The amount of the mortgage pay-off is unknown, but in 2013 the property was listed for sale at \$2,399,000;
- e) According to Palm Beach County public records, on June 18, 2008, BERNSTEIN FAMILY REALTY, LLC acquired a property located at 2753 N.W. 34 Street, Boca Madera Unit 2, Boca Raton, Florida 33432 (the "Boca Madera Property). On July 8, 2008, SIMON BERNSTEIN loaned \$365,000 to BERNSTEIN FAMILY REALTY, LLC. The specific

purpose of the loan is unknown, but SIMON BERNSTEIN received a mortgage on the Boca Madera Property to secure the loan;

f) According to Palm Beach County public records, on May 20, 2008 SIMON BERNSTEIN and his wife transferred by quitclaim deed to the trustee of SHIRLEY'S TRUST a 4,220 square foot oceanfront condominium unit in a complex known as "The Aragon" in Boca Raton, located at 2494 South Ocean Boulevard, Boca Raton, Florida. The mortgage on that property was paid off on September 27, 2010.

g) The legal descriptions for each of the above referenced properties are attached hereto as Exhibit "B."

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

WHEREFORE, Plaintiff prays for judgment against SIMON BERNSTEIN and TED BERNSTEIN declaring that Defendants, LIC Holdings, Inc. and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, are or were the alter ego of SIMON BERNSTEIN and TED BERNSTEIN such that the corporate veil of LIC Holdings and/or ARBITRAGE should be pierced; for judgment against Defendants, LIC Holdings, Inc., ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, in excess of \$1,500,000.00 for the amounts due to Plaintiff under the terms of their contract, together with prejudgment and post-judgment interest; for his court costs herein expended and for such other relief as the Court may deem just and proper.

COUNT III - FRAUD IN THE INDUCEMENT- EMPLOYMENT AGREEMENT
(Against SIMON BERNSTEIN and TED BERNSTEIN)

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

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

49. The statements set forth in paragraphs 18 through 24, above, made by SIMON BERNSTEIN and TED BERNSTEIN, on behalf of and in concert with each other, and as officers and majority shareholders of LIC Holdings and ARBITRAGE, were false statements of material fact that SIMON BERNSTEIN and TED BERNSTEIN knew to be false at the time they were made, as SIMON BERNSTEIN and TED BERNSTEIN never intended to authorize LIC Holdings or ARBITRAGE to pay to STANSBURY the amounts due him as evidenced by the fact that the accountant for LIC Holdings and ARBITRAGE prepared financial worksheets for 2008 showing that the BERNSTEINS would receive compensation, but STANSBURY would not, for fiscal 2008, in direct contravention to their statements and promises to STANSBURY.

50. SIMON BERNSTEIN and TED BERNSTEIN intended for STANSBURY to rely on such statements that he would be ultimately be paid for his productivity in order to induce him into continuing his productive and revenue-generating sales activity as an employee of LIC Holding and/or ARBITRAGE and fraudulently created for STANSBURY the false expectation that STANSBURY would be paid as agreed.

51. STANSBURY in fact relied to his detriment on these false statements and was induced thereby to remain in his employment relationship with LIC Holdings and ARBITRAGE as he continued to sell, with the expectation of payment, products and generate revenue for LIC Holdings and/or ARBITRAGE until 2012, and was further induced not to pursue from LIC Holdings and/ARBITRAGE his right to payment of all amounts due him until after SIMON BERNSTEIN and TED BERNSTEIN had diverted and converted corporate assets for their personal benefit, rendering LIC Holdings, and possibly ARBITRAGE, insolvent.

52. STANSBURY was injured thereby as he was not and has not been compensated for his revenue-generating sales and other performance, and did not seek alternative employment, as a proximate result of his detrimental reliance on these false statements.

WHEREFORE, Plaintiff prays for judgment against Defendants SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, for damages in excess of \$1,500,000.00 together with prejudgment and post-judgment interest; for the imposition of an equitable lien and constructive trust on the Bernstein real estate described in paragraph 45 and Exhibit "B" as more fully set forth in Counts VII and VIII of this Second Amended Complaint; for his court costs herein expended; and for such other relief as the Court may deem just and proper. STANSBURY reserves the right to move to amend to request punitive damages in accordance with Florida Law.

COUNT IV - FRAUD IN THE INDUCEMENT -
CEDING OF LIC HOLDINGS OWNERSHIP INTEREST
(Against Ted Bernstein and LIC Holdings, Inc.)

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

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

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

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

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

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

COUNT V - CIVIL CONSPIRACY
(Against Simon Bernstein and Ted Bernstein)

58. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, and Counts III and IV, paragraphs 47 through 57, inclusive.

59. SIMON BERNSTEIN and TED BERNSTEIN, individually and as officers and majority shareholders of LIC Holdings and ARBITRAGE, knowingly, willfully, intentionally, and maliciously conspired, agreed, combined and confederated with each other to make fraudulent, false and misleading statements to STANSBURY intended to induce STANSBURY to continue his employment relationship with LIC Holdings and/or ARBITRAGE during 2008 and thereafter, without ever intending to authorize payment to STANSBURY for the amounts he was due, a relationship that generated substantial revenue for LIC Holdings and/or ARBITRAGE and, ultimately, SIMON BERNSTEIN and TED BERNSTEIN.

60. SIMON BERNSTEIN and TED BERNSTEIN, individually and as officers and majority shareholders of LIC Holdings and ARBITRAGE, knowingly, willfully, intentionally, and maliciously conspired, agreed, combined and confederated with each other to make fraudulent, false and misleading statements to STANSBURY intended to induce STANSBURY to delay pursuing his right to payment for all amounts due him until such time after SIMON BERNSTEIN and TED BERNSTEIN had converted and diverted corporate assets rendering LIC Holdings, and possibly ARBITRAGE, insolvent and uncollectible.

61. SIMON BERNSTEIN and TED BERNSTEIN, individually and as officers and majority shareholders of LIC Holdings and ARBITRAGE, knowingly, willfully, intentionally, and maliciously conspired, agreed, combined and confederated with each other to fraudulently induce STANSBURY, through false and misleading statements, to surrender and cede, without fair value payment, his 10% interest in LIC Holdings.

62. The numerous fraudulent, false and misleading statements made by SIMON BERNSTEIN and TED BERNSTEIN were all overt acts in furtherance of the conspiracy.

63. STANSBURY was injured thereby in that, as a proximate result of the conspiratorial conduct of SIMON BERNSTEIN and TED BERNSTEIN, he continued in his employment with LIC Holdings and/or ARBITRAGE, without payment of the compensation due him, he delayed pursuit of his right to collect the amounts due him, and ceded his 10% interest in LIC Holdings.

WHEREFORE, Plaintiff prays for judgment against Defendants, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, for damages in excess of \$1,500,000.00 together with prejudgment and post-judgment interest; for the imposition of an equitable lien and constructive trust on the Bernstein real estate described in paragraph 45 and Exhibit "B" as more fully set forth in Counts VII and VIII of this Second Amended Complaint;

for his court costs herein expended; and for such other relief as the Court may deem just and proper. STANSBURY reserves the right to move to amend to request punitive damages in accordance with Florida Law.

COUNT VI - CIVIL THEFT
(AGAINST ARBITRAGE INTERNATIONAL MARKETING, LLC)

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

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

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

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

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

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

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

COUNT VII - CONVERSION

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

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

WHEREFORE, Plaintiff prays for judgment for damages against Defendant, ABRITRAGE, SIMON BERNSTEIN, LIC Holdings, Inc. and TED BERNSTEIN, together with pre-judgment interest and post-judgment interest, court costs and any other relief this Court deems just and proper.

COUNT VIII - UNJUST ENRICHMENT
(LIC HOLDINGS, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN)

72. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, paragraphs 1 through 34, inclusive, and the allegations of Count III.

73. STANSBURY conferred a benefit on LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN by continuing his employment relationship with LIC Holdings and/or ARBITRAGE as a direct and proximate result of the fraudulent representations of SIMON BERNSTEIN and TED BERNSTEIN, as more fully set forth in Count III herein.

74. STANSBURY's continued employment resulted in the generation of substantial revenue for LIC Holdings and/or ARBITRAGE, which was then diverted and converted by the BERNSTEINS for their own personal use to the financial detriment of STANSBURY.

75. LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders of LIC Holdings and ARBITRAGE, had knowledge of the benefit of STANSBURY's continued employment with LIC Holdings and/or ARBITRAGE as they fraudulently induced STANSBURY to continue his productive employment activity while never intending to pay him the compensation he was due.

76. LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN accepted the revenues generated by STANSBURY in his capacity as employee.

77. There exists no adequate remedy at law as the conduct of the BERNSTEINS in diverting and converting the corporate assets of LIC Holdings and/or ARBITRAGE has resulted in the insolvency of LIC Holdings and possibly ARBITRAGE.

78. The circumstances are such that it would be inequitable for LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN to retain the benefits of the STANSBURY's productive revenue-generating labor without paying fair value for it.

WHEREFORE, Plaintiff prays for judgment against Defendants, LIC Holdings, Inc., ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, in an amount in excess of \$1,500,000.00 which the evidence shows Plaintiff is entitled for the fair value of the services Plaintiff provided to LIC Holdings and ARBITRAGE, together with prejudgment and post-judgment interest; for his court costs herein expended and for such other relief as the Court may deem just and proper.

COUNT IX - EQUITABLE LIEN
(AS TO SIMON BERNSTEIN, TED BERNSTEIN, BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT)

79. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, the allegations set forth in paragraphs 1 through 34, paragraph 45 and Counts III and VII, above.

80. STANSBURY has alleged essential facts in his General Allegations and Count III that show that SIMON BERNSTEIN and TED BERNSTEIN committed fraud by fraudulently inducing STANSBURY to continue in an employment relationship that proved to be highly lucrative for SIMON BERNSTEIN and TED BERNSTEIN.

81. STANSBURY has alleged essential facts in his General Allegations and Count VII that show that SIMON BERNSTEIN and TED BERNSTEIN were unjustly enriched by STANSBURY's uncompensated continued employment with LIC Holdings and/or ARBITRAGE.

82. The conduct of the BERNSTEINS in depleting the corporate assets of LIC Holdings and ARBITRAGE for their personal benefit by causing the corporation or corporations to make exorbitant and inappropriate distributions to themselves, family members, and BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT, at the expense of corporate creditors such as STANSBURY, rendered LIC Holdings and possibly ARBITRAGE insolvent. Therefore STANSBURY has no adequate remedy at law.

83. BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT were the transferees of some of the corporate assets of LIC Holdings and/or ARBITRAGE wrongfully diverted and converted by the BERNSTEIN and thus are proper parties to this action and this Count.

84. An equitable lien on the real estate described in paragraph 45 herein and Exhibit "B" attached hereto is justified as an equitable remedy for the wrongful conduct of the BERNSTEINS.

WHEREFORE, Plaintiff prays for the Court to declare and establish an equitable lien in favor of Plaintiff in an amount equal to the funds wrongfully diverted, on the property described in paragraph 45 and Exhibit "B" attached hereto, and on all other assets of the Defendants named in this Count IX, or third parties as yet unknown, which assets have been purchased wholly or in part, improved or benefitted by the diverted funds due Plaintiff, together with his costs herein expended, and such other and further relief as this Court may deem just and proper.

COUNT X - CONSTRUCTIVE TRUST
(AS TO SIMON BERNSTEIN, TED BERNSTEIN, BERNSTEIN FAMILY
REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT)

85. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 79 through 84 above.

WHEREFORE, Plaintiff prays for the Court to declare and establish a constructive trust in favor of Plaintiff on the property described in paragraph 45 and Exhibit "B" attached hereto in an amount equal to the funds wrongfully diverted and on all assets of Defendants or third parties as yet unknown, which assets have been purchased wholly or partly, improved or mortgaged by the diversion of said funds due Plaintiff. Plaintiff further prays for an award of court costs and such other and further relief as the Court may deem just and proper.

JURY DEMAND

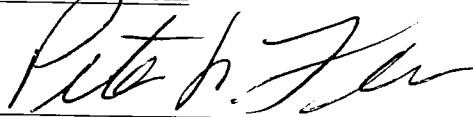
86. Plaintiff reiterates his demand for trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives*, 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc. and Arbitrage International Management, LLC*, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 20 day of November, 2013.

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

By: _____



Peter M. Feaman
Florida Bar No. 0260347

00001

1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,
2 IN AND FOR PALM BEACH COUNTY, FLORIDA
3 PROBATE/GUARDIANSHIP DIVISION IY
CASE NO.: 502011CP000653XXXXSB

4 IN RE: THE ESTATE OF:
5 SHIRLEY BERNSTEIN,
Deceased

6 ELIOT IVAN BERNSTEIN, PRO SE,
Petitioner,

7 vs.

8 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,
9 ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA
10 (BOTH PERSONALLY & PROFESSIONALLY); DONALD
11 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);
THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL
REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH
PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE
DOE'S (1-5000),
Respondents.

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18 TRANSCRIPT OF PROCEEDINGS
19 BEFORE
20 THE HONORABLE MARTIN H. COLIN

21 South County Courthouse
22 200 West Atlantic Avenue, Courtroom 8
23 Delray Beach, Florida 33344

24 Friday, September 13, 2013
1:30 p.m. - 2:15 p.m.

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33 Stenographically Reported By:
34 JESSICA THIBAUT

35

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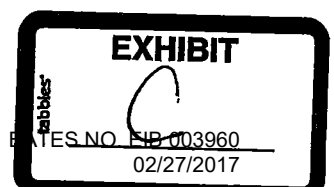
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APPEARANCES

On Behalf of the Petitioner:
ELIOT IVAN BERNSTEIN, PRO SE
2753 NW 34th Street
Boca Raton, Florida 33434



7
8 MR. MANCERI: That's when the order was
9 signed, yes, your Honor.

10 THE COURT: He filed it, physically came
11 to court.

12 MR. ELIOT BERNSTEIN: Oh.

13 THE COURT: So let me see when he actually
14 filed it and signed the paperwork. November.
15 What date did your dad die?

16 MR. ELIOT BERNSTEIN: September. It's
17 hard to get through. He does a lot of things
18 when he's dead.

19 THE COURT: I have all of these waivers by
20 Simon in November. He tells me Simon was dead
21 at the time.

22 MR. MANCERI: Simon was dead at the time,
23 your Honor. The waivers that you're talking
24 about are waivers from the beneficiaries, I
25 believe.

THE COURT: No, it's waivers of

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1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of
4 discharge by Simon, Simon asked that he not
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date
10 of death.

11 THE COURT: Well, how could that happen
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened
17 was is the documents were submitted with the
18 waivers originally, and this goes to
19 Mr. Bernstein's fraud allegation. As you know,
20 your Honor, you have a rule that you have to
21 have your waivers notarized. And the original
22 waivers that were submitted were not notarized,
23 so they were kicked back by the clerk. They
24 were then notarized by a staff person from
25 Tescher and Spallina admittedly in error. They

1 In Re_ The Estate of Shirley Bernstein.txt
2 should not have been notarized in the absentia
3 of the people who purportedly signed them. And
4 I'll give you the names of the other siblings,
5 that would be Pamela, Lisa, Jill, and Ted
6 Bernstein.

7 THE COURT: So let me tell you because I'm
8 going to stop all of you folks because I think
9 you need to be read your Miranda warnings.

10 MR. MANCERI: I need to be read my Miranda
11 warnings?

12 THE COURT: Everyone of you might have to
13 be.

14 MR. MANCERI: Okay.

15 THE COURT: Because I'm looking at a
16 formal document filed here April 9, 2012,
17 signed by Simon Bernstein, a signature for him.

18 MR. MANCERI: April 9th, right.

19 THE COURT: April 9th, signed by him, and
20 notarized on that same date by Kimberly. It's
21 a waiver and it's not filed with The Court
22 until November 19th, so the filing of it, and
23 it says to The Court on November 19th, the
24 undersigned, Simon Bernstein, does this, this,
25 and this. Signed and notarized on April 9,
2012. The notary said that she witnessed Simon

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1 sign it then, and then for some reason it's not
2 filed with The Court until after his date of
3 death with no notice that he was dead at the
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's
7 enough to give you Miranda warnings. Not you
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the
14 transaction?

15 MR. SPALLINA: I was involved as the
16 lawyer for the estate, yes. It did not come to
17 my attention until Kimberly Moran came to me
18 after she received a letter from the Governor's
19 Office stating that they were investigating
20 some fraudulent signatures on some waivers that
21 were signed in connection with the closing of

10/22/95
65-0178916

Form **SS-4**
(Rev. August 1989)
Department of the Treasury
Internal Revenue Service

Application for Employer Identification Number

(For use by employers and others. Please read the attached instructions before completing this form.) Please type or print clearly.

OMB No. 1545-0043
Expires 7-31-91

1 Name of applicant (True legal name) (See instructions.)
Simon Bernstein Irrevocable Insurance Trust

2 Trade name of business, if different from name in line 1
Shirley Bernstein

3 Executor, trustee, "care of name"
Shirley Bernstein

4a Mailing address (street address) (room, apt., or suite no.)
7020 Lions Head

4b City, state, and ZIP code
Boca Raton, FL 33496

5a Address of business (See instructions.)

5b City, state, and ZIP code

6 County and state where principal business is located

7 Name of principal officer, grantor, or general partner (See instructions.)
Simon Bernstein, Sec. 371-32-5211

8a Type of entity (Check only one box.) (See instructions.)

<input type="checkbox"/> Individual SSN	<input type="checkbox"/> Estate	<input checked="" type="checkbox"/> Trust
<input type="checkbox"/> REMIC	<input type="checkbox"/> PMA administrator SSN	<input type="checkbox"/> Partnership
<input type="checkbox"/> State/local government	<input type="checkbox"/> Personal service corp.	<input type="checkbox"/> Farmers' cooperative
<input type="checkbox"/> Other nonprofit organization (specify)	<input type="checkbox"/> National guard	<input type="checkbox"/> Church or church controlled organization
<input type="checkbox"/> Other (specify) \triangleright	<input type="checkbox"/> Other corporation (specify)	<input type="checkbox"/> Federal government/military
		<input type="checkbox"/> Church or church controlled organization

If nonprofit organization enter GEN (if applicable)

9a If a corporation, give name of foreign country (if applicable) or state in the U.S. where incorporated \triangleright

Foreign country: _____ State: _____

8 Reason for applying (Check only one box)

<input type="checkbox"/> Started new business	<input type="checkbox"/> Changed type of organization (specify) \triangleright
<input type="checkbox"/> Hired employees	<input type="checkbox"/> Purchased going business
<input type="checkbox"/> Created a pension plan (specify type) \triangleright	<input checked="" type="checkbox"/> Created a trust (specify) \triangleright Insurance Trust
<input type="checkbox"/> Banking purpose (specify) \triangleright	<input type="checkbox"/> Other (specify) \triangleright

10 Date business started or acquired (Mo., day, year) (See instructions.)
June 1, 1995

11 Enter closing month of accounting year. (See instructions.)
December 31

12 First date wages or annuities were paid or will be paid (Mo., day, year). Note: If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (Mo., day, year).

13 Enter highest number of employees expected in the next 12 months. Note: If the applicant does not expect to have any employees during the period, enter "0."

Nonagricultural	Agricultural	Household
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

14 Does the applicant operate more than one place of business?
If "Yes," enter name of business. \triangleright

Yes No

15 Principal activity or service (See instructions.) \triangleright

16 Is the principal business activity manufacturing?
If "Yes," principal product and raw material used \triangleright

Yes No

17 To whom are most of the products or services sold? Please check the appropriate box.

Public (retail) Other (specify) \triangleright Business (wholesale)

18a Has the applicant ever applied for an identification number for this or any other business?
Note: If "Yes," please complete lines 18b and 18c.

Yes No

18b If you checked the "Yes" box in line 18a, give applicant's true name and trade name, if different than name shown on prior application.

True name \triangleright _____ Trade name \triangleright _____

18c Enter approximate date, city, and state where the application was filed and the previous employer identification number if known.

Approximate date when filed (Mo., day, year) _____ City and state where filed _____ Previous EIN _____

Under penalty of perjury, I declare that I have examined this application, true to the best of my knowledge and belief, it is true, correct, and complete.

Name and title (Please type or print clearly) \triangleright **Shirley Bernstein, Trustee**

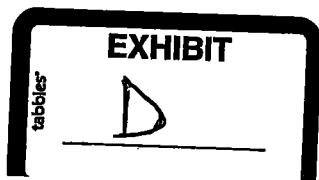
Telephone number (include area code) **407-477-9991**

Signature \triangleright **X** _____ Date \triangleright **June 21, 1995**

Please leave blank \triangleright Do not write below this line. For official use only.

Off. Use only: Title _____ Class _____ Size _____ Reason for applying _____

For Paperwork Reduction Act Notice, see attached instructions.



BT000104
BATES NO. EIB 003963
02/27/2017

CLAIMANT STATEMENT

DECEASED INFORMATION

1. Name of Deceased (Last, First Middle) Bernstein, Simon Leon		2. Last 4 digits of Deceased's Social Security No. 5221	
3. If the Deceased was known by any other names, such as maiden name, hyphenated name, nickname, derivative form of first and/or middle name or an alias, please provide them below			
4. Policy Number(s) 1009208		5. If policy is lost or not available, please explain: unable to locate, policy is 30 years old	
6. Deceased's Date of Death 09/13/12		7. Cause of Death natural causes	
8. <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending			

CLAIMANT INFORMATION

9. Claimant Name (Last, First, Middle) If trust, please list trust name and complete Trustee Certification section. Simon Bernstein Irrevocable Insurance Trust			
10. Street Address		11. City	
		12. State and Zip	
		13. Daytime Phone Number	
14. Date of Birth		15. Social Security or Tax ID Number	
		65-617 8916	
16. Relationship to Deceased			
17. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
18. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
19. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement? <input type="checkbox"/> Yes <input type="checkbox"/> No			

CLAIMANT INFORMATION (to be completed by 2nd claimant if any)

20. Claimant Name (Last, First, Middle) If trust, please list trust name and complete Trustee Certification section.			
21. Street Address		22. City	
		23. State and Zip	
		24. Daytime Phone Number	
25. Date of Birth		26. Social Security or Tax ID Number	
27. Relationship to Deceased			
28. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
29. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
30. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement? <input type="checkbox"/> Yes <input type="checkbox"/> No			

YOUR SIGNATURE IS REQUIRED ON THE NEXT PAGE.



BT000100

CLAIMANT STATEMENT

SETTLEMENT OPTIONS

The policy may contain one or more settlement options, such as Interest Payments, Installments for a Specified Amount, Life Annuity, Life Annuity with Period Certain, and/or Joint Life and Survivorship Annuity. You may choose to receive a lump sum payment or another settlement option available in the policy under which a claim is made. For more information, refer to the optional methods of policy settlement provision in the policy or contact us at the mailing address noted on the front of the claim form.

If you wish to select a settlement option, please indicate your settlement selection by name (not by number) on the line below after you have carefully reviewed the options available in the policy. Availability of settlement options are subject to the terms of the policy. If you do not choose a settlement option, we will send a lump sum settlement to you.

Name of Settlement Option from Policy _____

Important Information About the USA PATRIOT Act

To help fight the funding of terrorism and money-laundering activities, the U.S. government has passed the USA PATRIOT Act, which requires banks, including our processing agent bank, to obtain, verify and record information that identifies persons who engage in certain transactions with or through a bank. This means that we will need to verify the name, residential or street address (no P.O. Boxes), date of birth and social security number or other tax identification number of all account owners.

SUBSTITUTE FOR IRS FORM W-9

This information is being collected on this form versus IRS form W-9 and will be used for supplying information to the Internal Revenue Service (IRS). Under penalty of perjury, I certify that 1) the tax ID number above is correct (or I am waiting for a number to be issued to me), 2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3) I am a U.S. person (including a U.S. resident alien). Please cross through item 2 if you have been notified by the IRS that you are subject to backup withholding because you have failed to report all interest and dividends on your tax return.

SIGNATURES

I/We do hereby make claim to said insurance, declare that the answers recorded above are complete and true, and agree that the furnishing of this and any supplemental forms do not constitute an admission by the Company that there was any insurance in force on the life in question, nor a waiver of its rights or defenses.

For Residents of New York: Any person who knowingly and with intent to defraud my insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

For Residents of All Other States: See the Fraud Information section of this claim form.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Signature of Claimant and Title _____

Date _____

Signature of Second Claimant, if any, and Title _____

Date _____

BT000101

CLAIMANT STATEMENT

TRUSTEE CERTIFICATION

TRUSTEE CERTIFICATION (to be completed only if trust is claiming benefits)

COMPLETE THIS SECTION ONLY IF A TRUST IS CLAIMING BENEFITS

Please include a copy of the trust agreement, including the signature page(s) and any amendments.

I/We, the undersigned trustee(s), represent and warrant that the copy of the trust agreement, which we will provide you pursuant to this certification, is a true and exact copy of said agreement, that said agreement is in full force and effect, and that we have the authority to make this certification.

Generation Skipping Transfer Tax Information - THIS MUST BE COMPLETED FOR PAYMENT

I/We the undersigned, on oath, deposes and states as follows with respect to the possible application of the Generation Skipping Transfer (GST) tax to the death benefit payment (Mark the appropriate item):

- 1 The GST tax does not apply because the death benefit is not included in the decedent's estate for federal estate tax purposes.
- 2 The GST tax does not apply because the GST tax exemption will offset the GST tax.
- 3 The GST tax does not apply because at least one of the trust beneficiaries is not a "skipped" person.
- 4 The GST tax does not apply because of the reasons set forth in the attached document (Please attach document setting forth the reasons why you believe the GST tax does not apply.)
- 5 The GST tax may apply. As a result, the death benefit payment IS subject to withholding of the applicable GST tax. Enclosed is the completed Schedule R-1 (Form 706) for submission to the Internal Revenue Service.

Name of Trust

Simon Bernstein Irrevocable Insurance Trust

Date of Trust Agreement

06/01/1995

Date of all Amendments

Trust Tax ID Number

65-6178916

Printed Name of Trustee(s)

Signature(s)

a

Robert L. Spallina

b

c

d

BT000103

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

December 6, 2012

VIA FACSIMILE: 803-333-4936

Attn: Bree
Claims Department
Heritage Union Life Insurance Company
1275 Sandusky Road
Jacksonville, IL 62651

Re: **Insured: Simon L. Bernstein**
Contract No.: 1009208

Dear Bree:

As per our earlier telephone conversation:

- We are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.
- Mrs. Shirley Bernstein was the initial beneficiary of the 1995 trust, but predeceased Mr. Bernstein.
- The Bernstein children are the secondary beneficiaries of the 1995 trust.
- We are submitting the Letters of Administration for the Estate of Simon Bernstein showing that we are the named Personal Representatives of the Estate.
- We would like to have the proceeds from the Heritage policy released to our firm's trust account so that we can make distributions amongst the five Bernstein children.
- If necessary, we will prepare for Heritage an Agreement and Mutual Release amongst all the children.
- We are enclosing the SS4 signed by Mr. Bernstein in 1995 to obtain the EIN number for the 1995 trust.

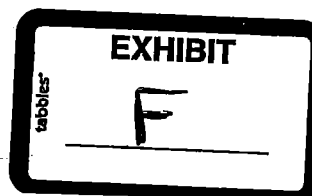
If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

Robert L. Spallina/km
ROBERT L. SPALLINA

RLS/km

Enclosures



BT000083

BATES NO. EIB 003967
02/27/2017

Robert Spallina

From: Christine Yates [cty@TrippScott.com]
Sent: Wednesday, January 30, 2013 6:17 AM
To: Robert Spallina
Cc: 'Eliot Ivan Bernstein'
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Heritage Policy

Robert, after discussions with my client, he is not in agreement with the plan proposed below. A more formal letter will follow.

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Tuesday, January 29, 2013 11:43 AM
To: Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Heritage Policy

I am following up on our telephone conference from last week. Ted has contacted me about circulating a draft of the settlement agreement that would be presented to the court. Again, prior to preparing an agreement, I want to make sure that you are ALL in agreement that the proceeds do not come to the estate. I can tell you that your father planned his estate intending and believing that the five children would split the proceeds equally. We would like to see his wishes carried out and not have the proceeds paid to the estate where they could be subject to creditor claims prior to being split in equal shares among the grandchildren. Please advise if you are in agreement to move forward to petition the court for an order that would split the proceeds equally among the five of you.

Robert L. Spallina, Esq.
TESCHER & SPALLINA, P.A.
4855 Technology Way, Suite 720
Boca Raton, Florida 33431
Telephone: 561-997-7008
Facsimile: 561-997-7308
E-mail: rspallina@tescherspallina.com

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at www.tescherspallina.com

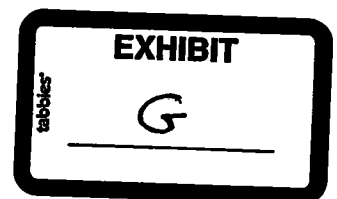
The information contained in this message is legally privileged and confidential information intended only for the use of the individual or entity named above. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. If you have received this communication in error, please immediately notify us by e-mail or telephone. Thank you.

From: Robert Spallina
Sent: Wednesday, January 23, 2013 1:14 PM
To: Ted Bernstein
Cc: Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates; Kimberly Moran
Subject: Re: Heritage Policy

Kim will send.

Sent from my iPhone

On Jan 23, 2013, at 1:11 PM, "Ted Bernstein" <tbernstein@lifeinsuranceconcepts.com> wrote:



Robert Spallina

From: Jill Iantoni [jilliantoni@gmail.com]
Sent: Tuesday, January 29, 2013 3:39 PM
To: Robert Spallina
Subject: Re: Heritage Policy

Thanks

Jill Iantoni
jill@ne.bah.com
Recruiting Services
Booz | Allen | Hamilton

On Jan 29, 2013, at 2:03 PM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:

The claim could be open for a long time but if it is cleared up then the money would be free from creditor claims. I do not know if there is a time frame for a pay out but if the proceeds are paid to the estate then your father's intent is not carried out.

From: Jill Iantoni [<mailto:jilliantoni@gmail.com>]
Sent: Tuesday, January 29, 2013 12:45 PM
To: Robert Spallina
Cc: Jill Iantoni
Subject: Re: Heritage Policy

Hi Robert,

If the money stays at the insurance company until the Bill S. claim is cleared up, can we then decide if ALL five are in agreement and if not, wouldn't that money be free from creditors at that point? Is there a time fram that the money has to leave the insurance company and be paid out?

Thanks.
Jill

On Tue, Jan 29, 2013 at 10:42 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

I am following up on our telephone conference from last week. Ted has contacted me about circulating a draft of the settlement agreement that would be presented to the court. Again, prior to preparing an agreement, I want to make sure that you are ALL in agreement that the proceeds do not come to the estate. I can tell you that your father planned his estate intending and believing that the five children would split the proceeds equally. We would like to see his wishes carried out and not have the proceeds paid to the estate where they could be subject to creditor claims prior to being split in equal shares among the grandchildren. Please advise if you are in agreement to move forward to petition the court for an order that would split the proceeds equally among the five of you.

From: Jill Iantoni [mailto:jilli_ni@gmail.com]
Sent: Thursday, January 24, 2013 3:12 PM
To: Robert Spallina
Cc: Jill Iantoni
Subject: Bernstein Estate 1/24/2013

Hi Robert,

thanks for todays call. Three questions.

One, if the 5 kids do NOT all agree that we should split the insurance proceeds amongst the 5 of us, what happens to the insurance proceeds? Can 4 out of 5 (or whatever the number is) over rule and move forward with the court hearing requesting that the insurance proceeds get paid out to the 5 children? If that is a NO, do the proceeds go directly to the estate? If the answer is the 10 grandchildren, will that be subject to creditors or would that money get paid out quickly (just as it would to the 5 of us) and avoid any potential law suit/creditors?

Two, if any of the 5 children have personal counsel representing them, are they allowed to have their bills sent to you/Estate for payment? If yes, is there a provision that the others can put in place that regulates the amount/or a provision that states it come out of their child(ren) portion of the estate?

Can you also clarify, that based on the conversation today, there is a chance that Bill S. case will be null and void and even if it is not, it is not towards Si Bernstein or his estate? Did I understand that correctly?

Thanks so much,

Jill

Robert Spallina

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]
Sent: Tuesday, January 22, 2013 1:34 PM
To: Robert Spallina; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: RE: Heritage Policy

Robert,

We are in the midst of arranging a phone call between myself, Pam, Eliot, Christine Yates, Jill and Lisa. We were hoping to have that call today but Christine cannot make it until Thursday. I think it is imperative for this call to occur prior to anything else being done, including your call with their legal department. This way, we can establish whether there is going to be an agreement among the 5 of us, or not.

I completely agree with your assessment below of the options available here.

Please feel free to call me to discuss.

Ted

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Tuesday, January 22, 2013 12:16 PM
To: Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: Heritage Policy

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

**PROFESSIONAL RESUME
BRIAN M. O'CONNELL**

EDUCATION

University of Florida, Holland Law Center, Masters of Law in Taxation. Graduated December, 1980. Class Rank: First out of six.

University of Florida, Holland Law Center, Juris Doctor. Graduated August, 1979 with honors. Class Rank: Top 10%.

Florida State University, Bachelor of Science. Graduated June, 1976, Summa cum laude. Average 4.0 (A = 4.0). Major: Government. Minor: Communications.

ADMITTED TO PRACTICE

Florida, 1980. United States Tax Court, 1981. Colorado, 1997.

CERTIFICATIONS

Board certified by the Florida Bar in Wills, Trusts and Estates (1990 – Present).

RATINGS

AV. Martindale-Hubbell.

SPECIFIC AREAS OF PROFESSIONAL EXPERTISE

Litigation, including appeals, regarding Estates, Trusts and Guardianships.

Estate Planning; Administration of Estates, Trusts and Guardianships.

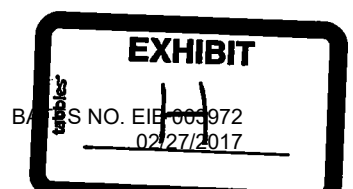
WORK EXPERIENCE

Partner, Ciklin Lubitz Martens & O'Connell, West Palm Beach, Florida. Probate, Guardianship, Business Law, Tax and Real Property Practice (October 1, 1985 - Present). Head of Wills, Trusts, Estates and Guardianships Department consisting of three associate attorneys, five paralegals, and two secretaries.

Shareholder, O'Connell & O'Connell, P.A., West Palm Beach, Florida. Probate, Tax, Real Property and Business Law practice (January, 1980 – October 1, 1985).

PROFESSIONAL MEMBERSHIPS/ACTIVITIES

- American Bar Association (Member, Taxation and Real Property, Probate and Trust Law Sections).



Florida Bar

Member, Executive Council, Taxation Section (1984-1985).
Member, 15th Circuit Fee Arbitration Committee (1998-1999).
Member, Probate & Trust Litigation Committee (1991-1992; 1999-2010).
Member, Wills, Trusts and Estates Certification Committee (1997-2003).
Member, Guardianship Law & Powers of Attorney Committee (1992-Present).
Member, Probate Rules Committee (1989-1994; 2002-2005).

Palm Beach County Bar Association

Chairman, Probate and Guardianship CLE Committee (1988-2010; Vice-Chairman, 1986-87; Member 2010 -- Present).
Co-Chairman, Guardianship Education Committee (2012-Present).
Member, Probate and Guardianship Practice Committee (1985-Present).
Member, Mental Health Practice Committee (1994-1999).
Member, Probate-Marchman Act Subcommittee (1993-1994).

LEGAL PUBLICATIONS

Chapter Author, "Helping Clients Prepare for Future Trends and Challenges in Relation to Florida Estate Plans," Thomson Reuters/Aspatore (2012).
Chapter Author, "Casualty and Theft Losses," Matthew Bender Tax Service (1990).
Chapter Author, "Real Estate Valuation," Bender's Federal Tax Service, (1989).
Chapter Author, "Liquidation Distributions," Matthew Bender Florida Corporate Law and Practice (1985).
Article, "Keeping It All In the Family: The Use of Section 704(b)(2) Special Allocations and Family Partnerships to Control Estate Tax Valuation," 33 University of Florida Law Review 1 (1981) (co-author).
Article, "The Due on Sale Clause in Florida: A Potential Battleground for Borrowers and Lenders," 31 University of Florida Law Review 933 (1980).

LECTURES & SEMINARS

Acted as chair and panelist of numerous seminars and lectures, including, but not limited to:

2010 Estate Tax Legislation: Tips and Solutions, sponsored by Palm Beach County Bar Association, 28th Annual Estate and Probate Seminar, Part 2 (May 17, 2011);
Practicing Guardianship Law in the New Millennium, sponsored by Florida Bar Association (March, 2000);
Myths and Realities of Estate Planning and Probate, sponsored by Palm Beach County Bar Association (April 29, 1998);
Protecting Your Assets, sponsored by Mental Health Association of Palm Beach County (May, 1997);

Ten Commonly Asked Estate Planning Questions, sponsored by Palm Beach County Bar Association (April, 1997);

Don't Be a Victim, Navigating the Shoals of Serving as a Guardian ad Litem, sponsored by Florida Bar Association (February, 1997);

Estate Planning, sponsored by ABC, Channel 25 (February, 1996);

Probate for the 90's, sponsored by Palm Beach Post, St. Mary's and the Palm Beach County Bar (March, 1994);

Florida Probate - Beyond the Basics, sponsored by the National Business Institute (May, 1991);

Surviving Spouse Seminar, sponsored by The Miami Herald (June, 1989);

Ask a Lawyer, sponsored by WXEL - Public Television, Channel 34 (August, 1989).

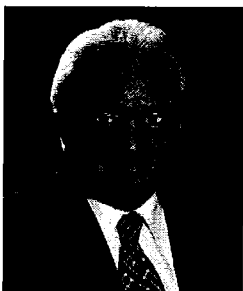
EXPERT WITNESS TESTIMONY

Retained as expert on over forty (40) occasions in the areas of professional negligence, fee disputes, fiduciary liability issues, administration of estates, trusts and guardianships, and tax matters regarding estates and trusts.

MEDIATION

Served as a mediator on multiple occasions since 1996. Area of concentration is probate litigation. Experience also includes general civil litigation. Cases have included complex, multiple parties, and multi-day mediations.

**Michael D. Mopsick, Esq.
Shapiro, Blasi, Wasserman & Gora, P.A.**



Michael D. Mopsick has over 40 years of practice experience, having begun his legal career in New Jersey in 1972. He has been a member of the Florida Bar since 1984. Mr. Mopsick represents clients at all levels of trust, probate, and guardianship disputes, from advising and counseling beneficiaries and pursuing beneficiary claims to defending fiduciaries in complex trust and estate litigation. His experience also includes a broad range of business and commercial litigation, including breach of contract, fraud, construction, real estate, and corporate and partnership issues. He is a Florida Supreme Court Certified Circuit Civil Mediator.

Mr. Mopsick attended Rutgers College, New Brunswick, New Jersey, where he was valedictorian of his class and graduated with highest honors in 1969; he was elected to Phi Beta Kappa in his junior year. He received his J.D. degree from the University of Virginia School of Law in 1972.

Prior to joining Shapiro Blasi Wasserman & Gora as Of Counsel, Mr. Mopsick was a member of the firm of Buckingham, Doolittle & Burroughs, where he served as Managing Partner of its Boca Raton office for many years and as Vice President of the firm and member of the firm's Board of Managers.

He has been recognized since 2007 as one of the Top Lawyers in South Florida by the *South Florida Legal Guide* and has been selected for inclusion in *Florida's Super Lawyers* as voted by his peers. His Martindale-Hubbell Peer Review Rating is "AV Preeminent," which is the highest possible rating in both legal ability and ethical standards as established by confidential opinions from members of the Bar. His AVVO rating is "10", "Superb".

Mr. Mopsick is Past President of the South Palm Beach County Bar Association and served on the Board of Directors of the Palm Beach County Bar Association. He is the immediate past Co-Chair of the Palm Beach County Bar Association's Professionalism Committee and serves as Chair of Florida Bar Grievance Committee "D" for Palm Beach County. He previously served on and was Chair of Grievance Committee "C". He is a member of the Palm Beach County Judicial Campaign Practices Commission, which hears and resolves complaints of improper conduct in judicial election campaigns. He serves as a Palm Beach County representative on the Joint Civility Committee, a project promoting the joint resolution of more than 40 voluntary bar associations and dozens of courts throughout Southern Florida advocating and fostering civility and professionalism among practicing attorneys. He is also a member of the Palm Beach County Bar's Alternative Dispute Resolution Committee.

While practicing in New Jersey, Mr. Mopsick was a member of the New Jersey State Bar Association and the Passaic County Bar Association (Trustee, 1985-86). He was



appointed by the Supreme Court of New Jersey to the District XI Ethics Committee for Passaic County and served as Vice Chair and Chair, 1984-1986.

Mr. Mopsick is honored to be a member of the Greater Boca Raton Estate Planning Council, one of the few litigators to be accepted as a member.

Mr. Mopsick has lectured on the topics of probate litigation and civility in litigation and mediation. Among his published articles are:

- "Managing Client Expectations: A Key to Successful Mediation," *Daily Business Review*, November 11, 2011.
- "Courtesy v. Clients' Rights: Drawing the Line," *Palm Beach County Bar Association Bulletin*, March, 2012.
- "Recent Case Gives Lesson in Navigating Florida's Homestead Laws," *Daily Business Review*, March 30, 2012 (with George Frank).
- "Civility in Mediation: The Mediator's Role," *Daily Business Review*, May 3, 2013.

Areas of Practice:

Probate Litigation
Trust Litigation
Guardianship Litigation
Commercial Litigation
Certified Circuit Civil Mediator

Current Position:

Of Counsel, Shapiro, Blasi, Wasserman & Gora, P.A.

Bar Admissions:

New Jersey, 1972
Florida, 1984
U.S. District Court:
District of New Jersey
Southern District of Florida
Northern District of Florida

Education:

Rutgers College, B.A. 1969
University of Virginia, J.D. 1972

Representative Appellate Cases:

Ligran, Inc. v. Medlawtel, Inc., 174 N.J. Super. 597 (App. Div. 1980), 86 N.J. 583, 432 A.2d 502 (N.J. 1981)
Aronson v. Aronson, 81 So. 3d 515 (Fla. 3d DCA 2012)
Aronson v. Aronson, 930 So. 2d 766 (Fla. 3d DCA 2006)

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

**OBJECTIONS TO FINAL ACCOUNTING
OF CO-PERSONAL REPRESENTATIVES**

COMES NOW creditor of the Estate of Simon Bernstein and interested person, William E. Stansbury (“Stansbury”), by and through his undersigned counsel, and for his objections to the Final Accounting submitted by now-resigned Co-Personal Representatives Donald R. Tescher and Robert L. Spallina, states as follows:

1. Stansbury objects to the omission from the estate assets the life insurance proceeds currently at issue in the case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95, Case No. 13 cv 3643*, filed in the United States District Court for the Northern District of Illinois, Eastern Division. The policy benefit is approximately \$1.7 million, and the Estate is a potential beneficiary of the policy should the federal court determine that the Plaintiff insurance trust either no longer exists or it fails for lack of identifiable beneficiaries. This potential expectancy should be represented in the Accounting.

2. Stansbury objects to Schedule B setting forth disbursements to Tescher & Spallina, P.A. in the amount of \$122,515.69. All or a portion of these fees paid are excessive, and/or are attributable to the intentional and/or negligent acts, errors and/or omissions of Tescher & Spallina, P.A. and should be disgorged to the Estate, in whole or in part.


3. Stansbury objects to the required minimum distributions to the Estate for the Simon Bernstein IRA as set forth in Schedule C for the reason that the minimum amounts represented were incorrectly calculated as per current Internal Revenue Service Regulations, Rules and/or Guidelines.

4. Stansbury, long acquainted with the Decedent, with knowledge of the Decedent's personal affairs, and upon Stansbury's own information and belief, objects to the dollar value of the furniture appraisal set forth in Schedule E on the basis that it is undervalued and understated.

5. Stansbury, upon Stansbury's information and belief, objects to the dollar value of the jewelry appraisal set forth in Schedule E on the basis that it is undervalued and understated.

WHEREFORE, interested person William E. Stansbury, respectfully requests that this Court enter an Order that:

- a) Sustains Stansbury's objections set forth above and enters judgment in favor of Stansbury sustaining the objections;
- b) Determines that the Final Accounting filed by Tescher & Spallina, P.A. is inaccurate and incomplete;
- c) Directs Tescher & Spallina, P.A. to file an Amended Final Accounting that reflects the objections raised by Stansbury as sustained by the Court's Order;
- d) Requires Tescher & Spallina, P.A. to disgorge to the Estate all fees and costs improperly paid from Estate assets;
- e) Awards attorney fees and costs to Stansbury; and,
- f) Grants such other relief as the Court deems just and proper.

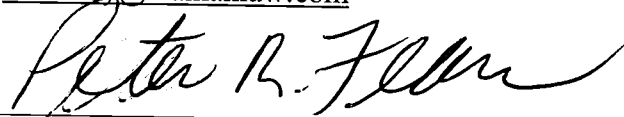

Peter M. Feaman, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service to: Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, courtfilings@pankauskilawfirm.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; and William H. Glasko, Esq., Golden Cowan, P.A., PALMETTO BAY LAW CENTER, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com; Benjamin P. Brown, Esq., Matwiczuk & Brown, LLP, 625 N. Flagler Drive, Suite 401, West Palm Beach, FL 33401, bbrown@matbrolaw.com; John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, john@jmorrisseylaw.com on this 2nd day of June, 2014.

PETER M. FEAMAN, P.A.
3695 W. Boynton Beach Blvd.
Suite #9
Boynton Beach, FL 33436
Tel.: (561) 734-5552
Fax: (561) 734-5554
Service: service@feamanlaw.com
mkoskey@feamanlaw.com

By: _____


Peter M. Feaman
Florida Bar No.: 260347

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

**JOINDER IN PETITION FILED BY ELIOT IVAN BERNSTEIN FOR
REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING**

COMES NOW, William E. Stansbury (“Stansbury”), creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, et al., by and through his undersigned counsel, and pursuant to §733.308, Fla. Stat. (2013) and Fla. Prob. R. 5.120 (2013), files this Motion to Join the Petition filed by Eliot Ivan Bernstein for Removal of Trustee and for a Trust Accounting (the “Eliot Petition”), and in support states as follows:

I. Stansbury has standing to Join the Eliot Petition

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, Ted Bernstein and several corporate defendants in August of 2012 to collect compensation and corporate distributions due to Stansbury arising out of a business venture in which Stansbury, Simon Bernstein and Ted Bernstein were principals. Stansbury claims damages in excess of two million dollars.

2. Simon Bernstein died in September of 2012 and his estate was substituted as a party defendant in Stansbury’s lawsuit. Stansbury also asserted claims against the Estate of Simon Bernstein (the “Estate”) in this Court.

3. 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...”

4. Stansbury, as a claimant of the Estate, has an interest in ensuring that the Estate is administered without bias and in the best interests of the devisees and creditors of the Estate. This means Stansbury has an interest in ensuring that the Estate marshals all the assets to which the Estate is entitled for the benefit of devisees and creditors.

5. The Fourth District Court of Appeal has recognized that a claimant or creditor 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.)

6. Pursuant to §733.707(3), Fla. Stat.:

Any portion of the trust with respect to which a decedent who is the grantor has at the decedent’s death a right of revocation...**is liable for the expenses of the administration and obligations of the decedent’s estate to the extent the decedent’s estate is insufficient to pay them...**” (emphasis added)

7. As a matter of law, the assets of the Revocable Trust are available to pay creditors of the Estate such as Stansbury under §733.707(3) in the event the Estate has insufficient assets to meet all its obligations. Stansbury is therefore an “interested person” in the Estate, and therefore he is entitled to file this Motion to Join the Eliot Petition. Further, Stansbury has standing to argue before the Court for the appropriate resolution of the issues affecting the Revocable Trust.

II. This Court has the Authority Under Florida Law to Resolve the Issues Raised in the Eliot Petition Relating to the Revocable Trust.

8. Under Florida law, this Court has broad authority to affect trust administration.

More specifically, under §736.0201, Fla. Stat. (2013), 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.

9. The two issues raised in the Eliot Petition pertain to: a) the removal of current putative trustee of the Revocable Trust, Ted Bernstein; and, b) the right of the Petitioner to an accounting relating to the administration of the trust. Both issues are within the authority of this Court to resolve.

III. Ted Bernstein Should Be Removed as Trustee of the Revocable Trust.

A. Ted Bernstein is Not Eligible to Serve as Trustee under the very terms of the Revocable Trust.

10. The previous co-trustees of the Revocable Trust were Donald Tescher and Robert Spallina by virtue of the Successor Trustee provision set forth in Article IV, Section C of the Revocable Trust. By letter dated January 14, 2014 addressed to the five children of Simon Bernstein, Donald Tescher for himself and on behalf of Robert Spallina, resigned as co-trustees of the Revocable Trust (and the Shirley Bernstein Trust and 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.”

11. Whether Ted Bernstein was actually appointed trustee is not clear. The Revocable Trust, at Article IV, Section C(3), specifically states, “The appointment [of the successor trustee] 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...” Whether such document was ever executed with respect to Ted’s appointment is not known to Stansbury, but Stansbury assumes Ted Bernstein has assumed the role of successor trustee, either *de facto* or *de jure*, based on the exercise of the power by the previous trustee.

12. If Ted Bernstein has succeeded as trustee of the Revocable Trust, he should be removed as he was ineligible under the terms of the Revocable Trust to serve as successor trustee. Article IV, Section C(3) of the Revocable Trust states:

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust.

13. The Revocable Trust, under Article II, Subsection E(7) defines a “Related or Subordinate Party” as follows:

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).

Under Subsection E(2), “Code” is defined as “**the Internal Revenue Code of 1986...**”

14. 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; . . .**”

15. Ted Bernstein is the son, or an "issue" of the Grantor, Simon Bernstein, and a related party to the beneficiary, Ted's son, Simon's grandson. Therefore, Ted Bernstein is ineligible as a Related or Subordinate Party to serve as a successor trustee.

B. Misconduct in the Shirley Bernstein Estate

16. There are serious allegations of fraud and forgery in the Shirley Bernstein Estate where Ted Bernstein is now the Personal Representative. Documents were submitted to the Court bearing notarized signatures of Simon Bernstein, alleged signatures by him, but on a date after he had passed away.

17. This Court was apprised of these allegations in a hearing conducted September 13, 2013 wherein the Court questioned whether the potential parties involved should be read their Miranda Rights. (*See* Transcript of Proceedings, pages 15 and 16, attached as Exhibit "A.")

18. Ted Bernstein's involvement in such activity involving the Estate of Shirley Bernstein should disqualify him from serving as Successor Trustee of the Revocable Trust.

C. The "lost" Insurance Trust

19. At the time of Simon Bernstein's death, it was determined that there existed a life insurance policy issued by Heritage Mutual Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust as beneficiary (the "Insurance Trust"). According to an SS-4 Application for EIN form submitted to the IRS on June 21, 1995, Shirley Bernstein was represented as Trustee of the Insurance Trust. (*See* SS-4 Application for EIN as Exhibit "B.")

20. Notwithstanding the earlier SS-4 EIN form, on November 1, 2012, Robert Spallina, one of the resigning Co-Personal Representatives of the Estate of Simon Bernstein and a resigning Co-Trustee of the Revocable Trust, submitted a claim form to Heritage on behalf of

the Insurance Trust for the benefit of the grown children of Simon Bernstein. In doing so, Spallina represented that he was the Trustee of the Insurance Trust. (See Exhibit "C") Spallina made this representation despite having informed Heritage by letter shortly thereafter that he was "unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995." (See Exhibit "D" attached.) If the Trust instrument cannot be found, the insurance proceeds would be payable to the Simon Bernstein Estate, and as such, would be available to pay creditors of the Estate of Simon Bernstein such as Stansbury.

21. Spallina, with the knowledge of Ted Bernstein, represented that he was "Trustee" of the Insurance Trust in an effort to collect the insurance proceeds on behalf the Insurance Trust and for the benefit of the grown children of Simon Bernstein, so as to circumvent the Simon Bernstein Estate.

22. Heritage refused to pay the life insurance proceeds to anyone without a court order. The Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois (the case has since been removed to Federal Court). In paragraph 2 of the Complaint, the Plaintiff, the Insurance Trust, although apparently still "lost," alleges that Ted Bernstein is the "trustee" of the Insurance Trust. Yet, there exists no trust document establishing the continued existence of the Insurance Trust, let alone that Ted is the Trustee. As a result, Ted's representation, like that of Spallina, appears plainly false.

23. Ted Bernstein's misrepresentations in connection with the Insurance Trust should disqualify him from serving as Successor Trustee of the Revocable Trust.

C. Ted Bernstein has a Conflict of Interest in The Insurance Trust Case.

24. Ted Bernstein has a conflict of interest precluding him from faithfully executing the duties of fiduciary on behalf of the Revocable Trust.

25. One of the considerations for removal of a Personal Representative as set forth in §733.504(9) (2013) is, “**(9) Holding or acquiring conflicting or adverse interests against the estate that will or may interfere with the administration of the estate as a whole.**”

26. A trail of e-mails indicates that Ted Bernstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni were advocating and scheming to keep the proceeds from the Heritage life insurance policy, as described above in paragraphs 9 thru 12 from being paid to the Estate. The stated purpose of this scheme was to avoid making the life insurance proceeds available to pay creditors of the Estate such as Stansbury. (*See*, selected e-mail messages, attached hereto as Composite Exhibit "E".) The residuary beneficiaries of the Will, that is, the grandchildren of Simon Bernstein, would also be prejudiced by such a determination.

27. Section 733.602(1), Fla. Stat. (2013), expressly provides that “. . . A personal representative shall use the authority conferred by this code, the authority in the will, if any, and the authority of any order of the court, **for the best interests of interested persons, including creditors.**” (Emphasis added.) Additionally, a conflict of interest is a proper basis for the removal of a trustee. *See DeMello v. Buckman*, 914 So. 2d 1090 (Fla. 4th DCA 2005).

28. While the ultimate outcome of the adjudication of the issues surrounding the Heritage life insurance proceeds is uncertain, what is clear is that each of the children of Simon Bernstein, other than Eliot Bernstein, have advocated, and continue to advocate a position that is contrary to the best interests of the Estate, its creditors and beneficiaries. These two conflicting and contrary positions between the interests of the children of Simon Bernstein (other than Eliot) and the duty of the successor fiduciary to act in the best interests of the Estate, including the creditors and beneficiaries, render Ted Bernstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni unqualified to serve as successor fiduciaries. *See Estate of Bell v. Johnson*, 573

So.2d 57 (Fla. 1st DCA, 1990) (conflict between personal representative, in that capacity, and as power of attorney, necessitated removal as personal representative). This means Ted Bernstein is similarly conflicted as Trustee of the Revocable Trust and should be removed.

E. Ted Bernstein has a Conflict of Interest as a Co-Defendant with the Estate in the William Stansbury Case.

29. Ted Bernstein and his father Simon Bernstein were initially joined as Co-Defendants in the case brought by Stansbury captioned *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida. The Estate was substituted as the party Defendant upon Simon Bernstein's death in September of 2012.

30. The allegations against Ted and Simon Bernstein, among others, are that they made false misrepresentations relied upon by Stansbury to his detriment, and, contrary to those representations, siphoned capital from the Arbitrage International Management, LLC and LIC Holdings, Inc., the Defendant Companies, for their own personal use to the further detriment of Stansbury.

31. The Estate of Simon Bernstein and Ted Bernstein have potential cross-claims against each other for contribution or indemnity that could further conflict Ted Bernstein. If he is permitted to remain Trustee of the Revocable Trust, which is a significant asset of the Estate, he will find himself in the conflicted position of managing a significant asset of the Estate against whom he potentially is a claimant. Additionally, it raises the further risk that funds of the Revocable Trust could be used for the prosecution of Ted's cross-claim, or the defense of a cross-claim by the Estate, both of which violate the trust documents. For this reason this Court should recognize that Ted Bernstein has an additional conflict of interest that warrants his removal as Trustee.

IV. Stansbury Supports Eliot Bernstein's Efforts to Secure an Accounting of the Revocable Trust.

32. Qualified beneficiaries are entitled to an accounting pursuant to §736.0813(1)(c), Fla. Stat. (2014). According to the Revocable Trust, the beneficiaries are separate Trusts established for his various grandchildren. Upon information and belief, Eliot Bernstein is the Trustee of the Trust established for the benefit of his children.

33. Under the circumstances, Eliot Bernstein is entitled to an accounting.


WHEREFORE, William E. Stansbury joins in the Petition of Eliot Bernstein and prays that the apparent successor trustee Ted Bernstein be removed and that the Court require the filing of a Trust Accounting.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Motion was forwarded via e-mail service to: Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mhandler@pm-law.com; John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, courtfilings@pankauskilawfirm.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, eservice@palmettobaylaw.com, and to Benjamin P. Brown, Esq., Matwiczuk & Brown, LLP, 625 N. Flagler Drive, Suite 401, West Palm Beach, FL 33401, bbrown@matbrolaw.com on this 22 day of May, 2014.

PETER M. FEAMAN, P.A.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
Service: service@feamanlaw.com
mkoskey@feamanlaw.com

By: _____


Peter M. Feaman
Florida Bar No. 0260347

00001

1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,
2 IN AND FOR PALM BEACH COUNTY, FLORIDA
3 PROBATE/GUARDIANSHIP DIVISION IY
4 CASE NO.: 502011CP000653XXXXSB

5 IN RE: THE ESTATE OF:
6 SHIRLEY BERNSTEIN,
7 Deceased

8 _____/
9 ELIOT IVAN BERNSTEIN, PRO SE,
10 Petitioner,

11 vs.

12 _____/
13 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,
14 ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA
15 (BOTH PERSONALLY & PROFESSIONALLY); DONALD
16 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);
17 THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL
18 REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH
19 PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE
20 DOE'S (1-5000),
21 Respondents.

22 _____/
23 TRANSCRIPT OF PROCEEDINGS
24 BEFORE
25 THE HONORABLE MARTIN H. COLIN

26 South County Courthouse
27 200 West Atlantic Avenue, Courtroom 8
28 Delray Beach, Florida 33344

29 Friday, September 13, 2013
30 1:30 p.m. - 2:15 p.m.

31 Stenographically Reported By:
32 JESSICA THIBAUT

33 ♀

00002

34 APPEARANCES

35 On Behalf of the Petitioner:
36 ELIOT IVAN BERNSTEIN, PRO SE
37 2753 NW 34th Street
38 Boca Raton, Florida 33434

In Re_ The Estate of Shirley Bernstein.txt

7
8 MR. MANCERI: That's when the order was
9 signed, yes, your Honor.

10 THE COURT: He filed it, physically came
11 to court.

12 MR. ELIOT BERNSTEIN: Oh.

13 THE COURT: So let me see when he actually
14 filed it and signed the paperwork. November.
15 What date did your dad die?

16 MR. ELIOT BERNSTEIN: September. It's
17 hard to get through. He does a lot of things
18 when he's dead.

19 THE COURT: I have all of these waivers by
20 Simon in November. He tells me Simon was dead
21 at the time.

22 MR. MANCERI: Simon was dead at the time,
23 your Honor. The waivers that you're talking
24 about are waivers from the beneficiaries, I
25 believe.

♀
THE COURT: No, it's waivers of

♀
00026
1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of
4 discharge by Simon, Simon asked that he not
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date
10 of death.

11 THE COURT: Well, how could that happen
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened
17 was is the documents were submitted with the
18 waivers originally, and this goes to
19 Mr. Bernstein's fraud allegation. As you know,
20 your Honor, you have a rule that you have to
21 have your waivers notarized. And the original
22 waivers that were submitted were not notarized,
23 so they were kicked back by the clerk. They
24 were then notarized by a staff person from
25 Tescher and Spallina admittedly in error. They

♀
00027

1 In Re_ The Estate of Shirley Bernstein.txt
2 should not have been notarized in the absentia
3 of the people who purportedly signed them. And
4 I'll give you the names of the other siblings,
5 that would be Pamela, Lisa, Jill, and Ted
6 Bernstein.

7 THE COURT: So let me tell you because I'm
8 going to stop all of you folks because I think
9 you need to be read your Miranda warnings.

10 MR. MANCERI: I need to be read my Miranda
11 warnings?

12 THE COURT: Everyone of you might have to
13 be.

14 MR. MANCERI: Okay.

15 THE COURT: Because I'm looking at a
16 formal document filed here April 9, 2012,
17 signed by Simon Bernstein, a signature for him.

18 MR. MANCERI: April 9th, right.

19 THE COURT: April 9th, signed by him, and
20 notarized on that same date by Kimberly. It's
21 a waiver and it's not filed with The Court
22 until November 19th, so the filing of it, and
23 it says to The Court on November 19th, the
24 undersigned, Simon Bernstein, does this, this,
25 and this. Signed and notarized on April 9,
2012. The notary said that she witnessed Simon

♀
00028

1 sign it then, and then for some reason it's not
2 filed with The Court until after his date of
3 death with no notice that he was dead at the
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's
7 enough to give you Miranda warnings. Not you
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the
14 transaction?

15 MR. SPALLINA: I was involved as the
16 lawyer for the estate, yes. It did not come to
17 my attention until Kimberly Moran came to me
18 after she received a letter from the Governor's
19 Office stating that they were investigating
20 some fraudulent signatures on some waivers that
21 were signed in connection with the closing of

10/22/95

Form **SS-4**
(Rev. August 1985)
Department of the Treasury
Internal Revenue Service

Application for Employer Identification Number

(For use by employers and others. Please read the attached instructions before completing this form.) Please type or print clearly.

05-0178916
OMB No. 1545-0043
Expires 7-31-91

1 Name of applicant (True legal name) (See instructions.)
Simon Bernstein Irrevocable Insurance Trust

2 Trade name of business, if different from name in line 1
Shirley Bernstein

3a Mailing address (street address) (room, apt., or suite no.)
7020 Lions Head

3b City, state, and ZIP code
Boca Raton, FL 33496

4 County and state where principal business is located
Boca Raton, FL

5 Executor, trustee, "care of name"
Shirley Bernstein

6a Address of business. (See instructions.)

6b City, state, and ZIP code

7 Name of principal officer, grantor, or general partner (See instructions.)
Simon Bernstein, Sec. 514(c)(2) 371-32-5211

- 8a Type of entity (Check only one box.) (See instructions.)
- Individual SSN
 - REMIC
 - State/local government
 - Other nonprofit organization (specify)
 - Other (specify)
 - Estate
 - Trust
 - Partnership
 - Former cooperative
 - Federal government/military
 - Church or church controlled organization
- If nonprofit organization enter GEN (if applicable)

9 If a corporation, give name of foreign country (if applicable) or state in the U.S. where incorporated
Foreign country: State:

- 10 Reason for applying (Check only one box)
- Started new business
 - Hired employees
 - Created a pension plan (specify type)
 - Banking purpose (specify)
 - Changed type of organization (specify)
 - Purchased going business
 - Created a trust (specify) Insurance Trust
 - Other (specify)

11 Date business started or acquired (Mo., day, year) (See instructions.)
June 1, 1995

12 Enter closing month of accounting year. (See instructions.)
December 31

13 First date wages or annuities were paid or will be paid (Mo., day, year). Note: If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (Mo., day, year).

14 Enter highest number of employees expected in the next 12 months. Note: If the applicant does not expect to have any employees during the period, enter "0."
Nonagricultural: Agricultural: Household:

15 Does the applicant operate more than one place of business?
If "Yes," enter name of business. Yes No

16 Principal activity or service (See instructions.)

17 Is the principal business activity manufacturing?
If "Yes," principal product and raw material used Yes No

18 To whom are most of the products or services sold? Please check the appropriate box.
 Public (retail) Other (specify) Business (wholesale) N/A

19 Has the applicant ever applied for an identification number for this or any other business?
Note: If "Yes," please complete lines 18b and 18c. Yes No

18b If you checked the "Yes" box in line 19, give applicant's true name and trade name, if different than name shown on prior application.
True name Trade name

18c Enter approximate date, city, and state where the application was filed and the previous employer identification number if known.
Approximate date when filed (Mo., day, year) City and state where filed Previous EIN

Under penalty of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.
Name and title (Please type or print clearly) Shirley Bernstein, Trustee Telephone number (include area code) 407-477-9991

Signature X Date June 21, 1995

Please leave blank Gov. Ind. Class Size Reason for applying

CLAIMANT STATEMENT

DECEASED INFORMATION

1. Name of Deceased (Last, First, Middle) Bernstein, Simon Leon		2. Last 4 digits of Deceased's Social Security No. 5221	
3. If the Deceased was known by any other names, such as maiden name, hyphenated name, and name derivative form of first and/or middle name or an alias, please provide them below			
4. Policy Number(s) 1009208		5. If policy is lost or not available, please explain: Unable to locate, policy is 30 years old	
6. Deceased's Date of Death 09/13/12	7. Cause of Death natural causes	8. <input type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending	

CLAIMANT INFORMATION

9. Claimant Name (Last, First, Middle) If trust, please list trust name and complete Trustee Certification section. Simon Bernstein Irrevocable Insurance Trust			
10. Street Address		11. City	12. State and Zip
			13. Daytime Phone Number
14. Date of Birth	15. Social Security or Tax ID Number 65-6178916		16. Relationship to Deceased
17. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
18. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
19. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement? <input type="checkbox"/> Yes <input type="checkbox"/> No			

CLAIMANT INFORMATION (to be completed by 2nd claimant, if any)

20. Claimant Name (Last, First, Middle) If trust, please list trust name and complete Trustee Certification section.			
21. Street Address		22. City	23. State and Zip
			24. Daytime Phone Number
25. Date of Birth	26. Social Security or Tax ID Number		27. Relationship to Deceased
28. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
29. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
30. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement? <input type="checkbox"/> Yes <input type="checkbox"/> No			

YOUR SIGNATURE IS REQUIRED ON THE NEXT PAGE.

EXHIBIT C BT000100

CLAIMANT STATEMENT

SETTLEMENT OPTIONS

The policy may contain one or more settlement options, such as Interest Payments, Installments for a Specified Amount, Life Annuity, Life Annuity with Period Certain, and/or Joint Life and Survivorship Annuity. You may choose to receive a lump sum payment or another settlement option available in the policy under which a claim is made. For more information, refer to the optional methods of policy settlement provision in the policy or contact us at the mailing address noted on the front of the claim form.

If you wish to select a settlement option, please indicate your settlement selection by name (not by number) on the line below after you have carefully reviewed the options available in the policy. Availability of settlement options are subject to the terms of the policy. If you do not choose a settlement option, we will send a lump sum settlement to you.

Name of Settlement Option from Policy _____

Important Information About the USA PATRIOT Act

To help fight the funding of terrorism and money-laundering activities, the U.S. government has passed the USA PATRIOT Act, which requires banks, including our processing agent bank, to obtain, verify and record information that identifies persons who engage in certain transactions with or through a bank. This means that we will need to verify the name, residential or street address (no P.O. Boxes), date of birth and social security number or other tax identification number of all account owners.

SUBSTITUTE FOR IRS FORM W-9

This information is being collected on this form versus IRS form W-9 and will be used for supplying information to the Internal Revenue Service (IRS). Under penalty of perjury, I certify that 1) the tax ID number above is correct (or I am waiting for a number to be issued to me), 2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3) I am a U.S. person (including a U.S. resident alien). Please cross through item 2 if you have been notified by the IRS that you are subject to backup withholding because you have failed to report all interest and dividends on your tax return.

SIGNATURES

I/We do hereby make claim to said insurance, declare that the answers recorded above are complete and true, and agree that the furnishing of this and any supplemental forms do not constitute an admission by the Company that there was any insurance in force on the life in question, nor a waiver of its rights or defenses.

For Residents of New York: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

For Residents of All Other States: See the Fraud Information section of this claim form.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Signature of Claimant and Title _____

Date _____

Signature of Second Claimant, if any, and Title _____

Date _____

BT000101

CLAIMANT STATEMENT

TRUSTEE CERTIFICATION

TRUSTEE CERTIFICATION (to be completed only by trustees claiming benefits)

COMPLETE THIS SECTION ONLY IF A TRUST IS CLAIMING BENEFITS

Please include a copy of the trust agreement, including the signature page(s) and any amendments

I/We, the undersigned trustee(s), represent and warrant that the copy of the trust agreement, which we will provide you pursuant to this certification, is a true and exact copy of said agreement, that said agreement is in full force and effect, and that we have the authority to make this certification.

Generation Skipping Transfer Tax Information - THIS MUST BE COMPLETED FOR PAYMENT

I/We the undersigned, on oath, deposes and states as follows with respect to the possible application of the Generation Skipping Transfer (GST) tax to the death benefit payment (Mark the appropriate item):

- 1 The GST tax does not apply because the death benefit is not included in the decedent's estate for federal estate tax purposes
- 2 The GST tax does not apply because the GST tax exemption will offset the GST tax
- 3 The GST tax does not apply because at least one of the trust beneficiaries is not a "skipped" person
- 4 The GST tax does not apply because of the reasons set forth in the attached document (Please attach document setting forth the reasons why you believe the GST tax does not apply)
- 5 The GST tax may apply. As a result, the death benefit payment IS subject to withholding of the applicable GST tax. Enclosed is the completed Schedule R-1 (Form 706) for submission to the Internal Revenue Service.

Name of Trust

Simon Bernstein Irrevocable Insurance Trust

Date of Trust Agreement

06/01/1995

Date of all Amendments

Trust Tax ID Number

65-0178916

Printed Name of Trustee(s)

Signature(s)

a

Robert L. Spallina

b

c

d

BT000103

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

December 6, 2012

VIA FACSIMILE: 803-333-4936

Attn: Bree
Claims Department
Heritage Union Life Insurance Company
1275 Sandusky Road
Jacksonville, IL 62651

Re: Insured: Simon L. Bernstein
Contract No.: 1009208

Dear Bree:

As per our earlier telephone conversation:

- We are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.
- Mrs. Shirley Bernstein was the initial beneficiary of the 1995 trust, but predeceased Mr. Bernstein.
- The Bernstein children are the secondary beneficiaries of the 1995 trust.
- We are submitting the Letters of Administration for the Estate of Simon Bernstein showing that we are the named Personal Representatives of the Estate.
- We would like to have the proceeds from the Heritage policy released to our firm's trust account so that we can make distributions amongst the five Bernstein children.
- If necessary, we will prepare for Heritage an Agreement and Mutual Release amongst all the children.
- We are enclosing the SS4 signed by Mr. Bernstein in 1995 to obtain the FIN number for the 1995 trust.

If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

Robert L. Spallina/km
ROBERT L. SPALLINA

RLS/km

Enclosures

EXHIBIT D

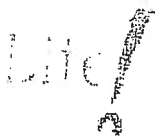
BATES NO. JEB 003996
02/27/2017

...going to do what is necessary. I have the proceeds paid where they were intended to be paid, as quickly as possible now. If you think I am factually incorrect about any of this, please either call me or email me and explain where I may be wrong. It goes without saying, this is not my expertise. I am processing the same information that everyone else is working with and this is how I see it.

Ted

This is my analysis on the Heritage payout thus far. First, I would like to review the insurance policy as well as the official statements respecting investment returns, use of returns to pay premiums and loans taken from the policy. I understand Ted and Pam have the policy, and do not understand why Mr. Spallina thinks it is curious that I also want to review these materials. Second, I understand the expressed concerns that if the proceeds are paid to the estate then the proceeds would be subject to the claims of creditors of the estate. It is my understanding that the "plan" is to have the proceeds payable to a trust to avoid creditor claims; however, I have also been counseled that if a trust is utilized an estate creditor can challenge the trust transaction as a fraudulent conveyance used to avoid the creditor's claim. We have been told that Dad designated his 1995 trust as his beneficiary with Heritage. We were also told that that trust cannot be located. I would also like to review an affidavit that indicates the precise steps that were taken and by whom and with whom to locate the 1995 trust, and I would imagine that Heritage will require the same. Heritage, we were told, is now saying that the proceeds may have to go to the State under the applicable escheat laws, so Mr. Spallina is telling us that if Heritage accepts a new trust with all potential beneficiaries agreeing to the mechanism, that Heritage may pay the proceeds to this new trust and not to the State. I have been told that the reason the law requires a trust document (and not simply statements from someone who claims they saw the trust) is that it demonstrates Dad's desires, and because Dad had the right to change his mind and thus the beneficiaries under the trust, nothing short of the actual 1995 trust document may be sufficient to Heritage. Last, because the 1995 trust document cannot be located, the proceeds should go to the beneficiaries under [Article IV 2j] and [Article III] of Dad's will, which picks up insurance proceeds under failed beneficiary designations. Under Dad's will and trust, these amounts, like the rest of his estate goes to his grandchildren in equal parts. Thus, to the extent it is decided to use a new trust to avoid the escheat laws, the only beneficiaries that may be acceptable to me is the grandchildren. As I stated above, I and my siblings should remain concerned that any estate creditor could challenge the transaction as a fraudulent conveyance. Also, having the 5 children as beneficiaries with each having the right to disclaim in favor of their children (i.e., Dad's grandchildren) is not acceptable for 2 reasons. First, such a scheme is not consistent with Dad's wishes under his will and trust agreement. Whatever Dad may have provided under the 1995 trust is both unknown and not relevant as stated above. The second reason is simple economics. My kids would get a 33% distribution under the proper method, but only 20% under the other scheme.

Ted Bernstein - President



Life Insurance Concepts
950 Peninsula Corporate Circle, Suite 3010
Boca Raton, FL 33487
Tel: 561.988.8984
Toll Free: 866.395.8984
Fax: 561.988.0833
Email: Tbernstein@lifeInsuranceConcepts.com
www.LifeInsuranceConcepts.com

EXHIBIT E

Robert Spallina

From: Christine Yates [cty@TrippScott.com]
Sent: Wednesday, January 30, 2013 6:17 AM
To: Robert Spallina
Cc: 'Eliot Ivan Bernstein'
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Heritage Policy

Robert, after discussions with my client, he is not in agreement with the plan proposed below. A more formal letter will follow.

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Tuesday, January 29, 2013 11:43 AM
To: Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Heritage Policy

I am following up on our telephone conference from last week. Ted has contacted me about circulating a draft of the settlement agreement that would be presented to the court. Again, prior to preparing an agreement, I want to make sure that you are ALL in agreement that the proceeds do not come to the estate. I can tell you that your father planned his estate intending and believing that the five children would split the proceeds equally. We would like to see his wishes carried out and not have the proceeds paid to the estate where they could be subject to creditor claims prior to being split in equal shares among the grandchildren. Please advise if you are in agreement to move forward to petition the court for an order that would split the proceeds equally among the five of you.

Robert L. Spallina, Esq.
TESCHER & SPALLINA, P.A.
4855 Technology Way, Suite 720
Boca Raton, Florida 33431
Telephone: 561-997-7008
Facsimile: 561-997-7308
E-mail: rspallina@tescherspallina.com

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at www.tescherspallina.com

The information contained in this message is legally privileged and confidential information intended only for the use of the individual or entity named above. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. If you have received this communication in error, please immediately notify us by e-mail or telephone. Thank you.

From: Robert Spallina
Sent: Wednesday, January 23, 2013 1:14 PM
To: Ted Bernstein
Cc: Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates; Kimberly Moran
Subject: Re: Heritage Policy

Kim will send.

Sent from my iPhone

On Jan 23, 2013, at 1:11 PM, "Ted Bernstein" <tbernstein@lifeinsuranceconcepts.com> wrote:

Robert Spallina

From: Jill Iantoni [jilliantoni@gmail.com]
Sent: Tuesday, January 29, 2013 3:39 PM
To: Robert Spallina
Subject: Re: Heritage Policy

Thanks

Jill Iantoni
jill@ne.bah.com
Recruiting Services
Booz | Allen | Hamilton

On Jan 29, 2013, at 2:03 PM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:

The claim could be open for a long time but if it is cleared up then the money would be free from creditor claims. I do not know if there is a time frame for a pay out but if the proceeds are paid to the estate then your father's intent is not carried out.

From: Jill Iantoni [<mailto:jilliantoni@gmail.com>]
Sent: Tuesday, January 29, 2013 12:45 PM
To: Robert Spallina
Cc: Jill Iantoni
Subject: Re: Heritage Policy

Hi Robert,

If the money stays at the insurance company until the Bill S. claim is cleared up, can we then decide if ALL five are in agreement and if not, wouldn't that money be free from creditors at that point? Is there a time fram that the money has to leave the insurance company and be paid out?

Thanks.
Jill

On Tue, Jan 29, 2013 at 10:42 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

I am following up on our telephone conference from last week. Ted has contacted me about circulating a draft of the settlement agreement that would be presented to the court. Again, prior to preparing an agreement, I want to make sure that you are ALL in agreement that the proceeds do not come to the estate. I can tell you that your father planned his estate intending and believing that the five children would split the proceeds equally. We would like to see his wishes carried out and not have the proceeds paid to the estate where they could be subject to creditor claims prior to being split in equal shares among the grandchildren. Please advise if you are in agreement to move forward to petition the court for an order that would split the proceeds equally among the five of you.

From: Jill Iantoni [mailto:jilli_anti@gmail.com]
Sent: Thursday, January 24, 2013 3:12 PM
To: Robert Spallina
Cc: Jill Iantoni
Subject: Bernstein Estate 1/24/2013

Hi Robert,

thanks for todays call. Three questions.

One, if the 5 kids do NOT all agree that we should split the insurance proceeds amongst the 5 of us, what happens to the insurance proceeds? Can 4 out of 5 (or whatever the number is) over rule and move forward with the court hearing requesting that the insurance proceeds get paid out to the 5 children? If that is a NO, do the proceeds go directly to the estate? If the answer is the 10 grandchildren, will that be subject to creditors or would that money get paid out quickly (just as it would to the 5 of us) and avoid any potential law suit/creditors?

Two, if any of the 5 children have personal counsel representing them, are they allowed to have their bills sent to you/Estate for payment? If yes, is there a provision that the others can put in place that regulates the amount/or a provision that states it come out of their child(ren) portion of the estate?

Can you also clarify, that based on the conversation today, there is a chance that Bill S. case will be null and void and even if it is not, it is not towards Si Bernstein or his estate? Did I understand that correctly?

Thanks so much,

Jill

Robert Spallina

From: Robert Spallina
Sent: Tuesday, January 22, 2013 12:38 PM
To: 'Jill Iantoni'
Cc: Ted Bernstein; Lisa Friedstein; Pam Simon; Christine Yates; Kimberly Moran
Subject: RE: Heritage Policy

We can discuss on Thursday but yes and no

From: Jill Iantoni [mailto:jilliantoni@gmail.com]
Sent: Tuesday, January 22, 2013 12:36 PM
To: Robert Spallina
Cc: Ted Bernstein; Lisa Friedstein; Pam Simon; Christine Yates; Kimberly Moran
Subject: Re: Heritage Policy

That time works for me/Jill.

Robert, if the proceeds go to the estate/grandchildren's share, is there a chance that creditors could get this money AND would this amount of 1.7 Million put the estate over 5.1 Million, where it would be taxed?

Thanks
Jill

On Tue, Jan 22, 2013 at 11:16 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: [561-997-7008](tel:561-997-7008)

Facsimile: [561-997-7308](tel:561-997-7308)

E-mail: rspallina@tescherspallina.com

Robert Spallina

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]
Sent: Tuesday, January 22, 2013 1:34 PM
To: Robert Spallina; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: RE: Heritage Policy

Robert,

We are in the midst of arranging a phone call between myself, Pam, Eliot, Christine Yates, Jill and Lisa. We were hoping to have that call today but Christine cannot make it until Thursday. I think it is imperative for this call to occur prior to anything else being done, including your call with their legal department. This way, we can establish whether there is going to be an agreement among the 5 of us, or not.

I completely agree with your assessment below of the options available here.

Please feel free to call me to discuss.

Ted

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Tuesday, January 22, 2013 12:16 PM
To: Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: Heritage Policy

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

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

**PETITION FOR APPOINTMENT
OF ADMINISTRATOR AD LITEM**

COMES NOW, William E. Stansbury (“Stansbury”), creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, et al., by and through his undersigned counsel, and pursuant to §733.308, Fla. Stat. (2013) and Fla. Prob. R. 5.120 (2013), files this Motion for Appointment of Administrator Ad Litem and in support states as follows:

I. Stansbury has standing to bring this Petition

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, Ted Bernstein and several corporate defendants in August of 2012 to collect compensation and corporate distributions due to Stansbury arising out of a business venture in which Stansbury, Simon Bernstein and Ted Bernstein were principals. Stansbury claims damages in excess of two million dollars.

2. Simon Bernstein died in September of 2012 and his estate was substituted as a party defendant in Stansbury’s lawsuit. Stansbury also asserted claims against the Estate of Simon Bernstein (the “Estate”) in this Court.

3. 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...”

4. Stansbury, as a claimant of the Estate, has an interest in ensuring that the Estate is administered without bias and in the best interests of the devisees and creditors of the Estate. This means Stansbury has an interest in ensuring that the Estate marshals all the assets to which the Estate is entitled for the benefit of devisees and creditors.

5. The Fourth District Court of Appeal has recognized that a claimant or creditor 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.)

6. Stansbury is therefore an “interested person” entitled to file and advance this Petition for Appointment of Administrator Ad Litem.

II. The Life Insurance Litigation

7. At the time of Simon Bernstein’s death, it was determined that there existed a life insurance policy issued by Heritage Union Insurance Company (“Heritage”). The policy proceeds are approximately \$1.7 million, which, if included in the Estate, would more than double its assets. The policy was allegedly payable to a Simon Bernstein Irrevocable Insurance Trust as its beneficiary (the “Insurance Trust”).

8. Robert Spallina, one of the now-resigned Co-Personal Representatives, submitted a claim form to Heritage on behalf of the alleged Insurance Trust for the benefit of the grown

children of Simon Bernstein. In doing so, Spallina represented that he was the Trustee of the Insurance Trust. Spallina made this representation despite having informed Heritage by letter shortly thereafter that he was “unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995.” (See Exhibit “1,” attached.) If the alleged Trust instrument cannot be found and the beneficiaries of the Trust cannot be established, the insurance proceeds would be payable to the Simon Bernstein Estate, and as such, would be available to pay the devisees and creditors of the Estate. The devisee of the Estate is the Simon Bernstein Trust. The beneficiaries of the Simon Bernstein Trust are the grandchildren of Simon Bernstein, not the grown children of Simon Bernstein.

9. Spallina represented that he was “Trustee” of the Insurance Trust in an effort to collect the insurance proceeds for the benefit of the grown children of Simon Bernstein, and to circumvent the Estate.

10. Heritage refused to pay the life insurance proceeds to anyone without a court order. The alleged Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois, and the case was subsequently removed to Federal Court. (The “Life Insurance Litigation”) See Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company, Case No. 13 cv 3643 (N.D. Ill., E. Div.) (A copy of the original Complaint filed in state court is attached as Exhibit “2.”) There, Ted Bernstein represented to the court that he was the trustee of the Insurance Trust, even though the Trust has never been located.

11. The Estate of Simon Bernstein is not a party to the action, even though the Estate will clearly be affected by the outcome of the litigation.

12. The current parties in the Life Insurance Litigation will not adequately represent the interests of the Estate. The Plaintiff Trust and the grown children of Simon Bernstein are

advocating that the Insurance Trust exists and that the Simon Bernstein grown children are the proper beneficiaries. If they prevail, the life insurance proceeds will be paid directly to the grown children of Simon Bernstein, circumventing the Estate. The life insurance proceeds would then be unavailable to pay devisees (the grandchildren of Simon Bernstein as beneficiaries of his trust) and creditors of the Estate. None of the current parties to the action in Illinois will advocate or are advocating that the life insurance proceeds are or should be payable to the Estate and made available to pay the devisees and creditors.

13. As a consequence of the foregoing, it is imperative that this Court appoint an Administrator Ad Litem to represent the interests of the Estate to intervene in the Life Insurance Litigation. At present, there is no Personal Representative representing the interests of the Estate as this Court recently appointed a Curator. As such, the interests of the Estate will go unrepresented if an Administrator Ad Litem is not appointed.

14. Section 733.309, Fla. Stat. (2013) gives this Court the authority to appoint an Administrator Ad Litem under these circumstances. That statute specifically states:

733.308. Administrator ad litem. When an estate must be represented and the personal representative is unable to do so, the court shall appoint an administrator ad litem without bond to represent the estate in that proceeding.

15. Additionally, Fla. Prob. R. 5.120 states:

Rule 5.120. Administrator Ad Litem and Guardian Ad Litem

(a) Appointment. When it is necessary that the estate of a decedent...be represented in any probate...proceeding and there is no personal representative...or the necessity arises otherwise, the court may appoint an administrator ad litem...without bond or notice for that particular proceeding....

16. There currently is only a curator of the Estate of Simon Bernstein. Additionally, the Life Insurance Litigation is a matter that requires that the Estate intervene in order to protect

its interests and the interests of its devisees, Simon Bernstein's grandchildren and creditors of the Estate.

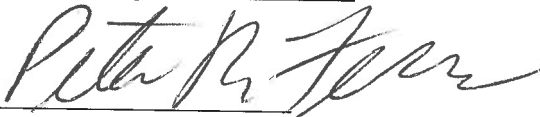
WHEREFORE, Interested Person, William E. Stansbury moves this Honorable Court for an Order Appoint an Administrator Ad Litem to protect the interests of the Estate of Simon Bernstein in Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company, Case No. 13 cv 3643 (N.D. Ill., E. Div.), together with any other relief this court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Motion was forwarded via e-mail service to: Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, courtfilings@pankauskilawfirm.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com on this 14th day of March, 2014.

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

By: _____


Peter M. Feaman
Florida Bar No.: 0260347

of
PETER M. FEAMAN, P.A.
Strategic Counselors. Proven Advocates.™

Peter M. Feaman, Esq.
Nancy E. Guffey, Esq.
Jeffrey T. Royer, Esq.



www.FeamanLaw.com

3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Telephone: (561) 734-5552
Facsimile: (561) 734-5554

March 4, 2014

Via e-mail bbrown@matbrolaw.com
and U.S. Mail

Benjamin P. Brown, Esq.
625 North Flagler Drive
Suite 401
West Palm Beach, FL 33401

RE: Estate of Simon Bernstein - Intervention in Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Mutual Life Insurance Company
Case No. 13 cv 3643 (No. Dist. Ill., Eastern Division-Chicago)

Dear Mr. Brown:

This letter is in follow-up to our discussion of last week wherein we discussed several matters that may be of interest to you as you assume your responsibilities as Curator of the Estate of Simon Bernstein (the "Estate"). Of particular concern to our client, Bill Stansbury, which we believe should also be of concern to the Estate, is the lawsuit filed in Chicago regarding the proper disposition of life insurance proceeds payable upon the death of Simon to beneficiaries that will be determined by the court. We attempted to intervene in that case on behalf of Mr. Stansbury to assert the interests of the Estate, but our intervention was denied. We have attached a copy of our motion and all the attachments for your review, along with a copy of the court's decision denying intervention. Should you decide, on behalf of the Estate, to attempt to intervene, these materials may be of assistance to you.

While the attached documents should set forth what you need to know about the nature of this proceeding, it may be useful for us to outline the important sequence of events.

At the time of Simon Bernstein's death, it was determined that there existed a life insurance policy issued by Heritage Mutual Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust DTD June 21, 1995 as beneficiary (the "Trust"). The current death benefit is approximately \$1.7 million.

According to the SS-4 Application for EIN form submitted to the IRS on June 21, 1995, Shirley Bernstein, Simon's wife, was identified as Trustee of the Trust. On November 1, 2012, despite the fact that the SS-4 identified Shirley as the Trustee, Robert Spallina, one of the now

Benjamin P. Brown, Esq.

March 4, 2014

Page 2

resigned Co-Personal Representatives, represented on the insurance claim form submitted to Heritage on behalf of the Trust that he was the Trustee. (See Exhibit "1") Spallina submitted this form seeking to have the proceeds of the policy paid directly to Simon's five children, not the Estate. Spallina made these representations 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 "2" attached.)

As you know, if the Trust instrument cannot be found and the beneficiaries cannot be identified, the insurance proceeds would be payable to the Estate, and as such, would be available to pay creditors of the Estate such as Stansbury. Spallina, we believe with the knowledge of Ted Bernstein, represented that he was Trustee of the Insurance Trust in an effort to collect the insurance proceeds on behalf the Trust for the benefit of the grown children of Simon Bernstein so as to circumvent the Estate.

Predictably, since no trust document exists that clearly identifies the appropriate beneficiary or beneficiaries, Heritage refused to pay the insurance proceeds to anyone without a court order. The Trust then sued Heritage in the Circuit Court of Cook County, Illinois (the case was then removed to Federal Court). To make matters worse, in paragraph 2 of the Complaint, the Plaintiff, the Trust, alleges that Ted Bernstein is the "trustee" of the Trust. This is alleged even though no trust document has ever been found establishing the continued existence of the Trust, let alone that either Spallina or Ted Bernstein is or ever was the Trustee. As a result, Ted's representation, like that of Spallina, appears plainly false.

The five children of Simon Bernstein - Ted Bernstein, Pamela Simon, Lisa Friedstein, Jill Iantoni and Eliot Bernstein - are all parties to the case as Third Party Defendants. It seems to us that the Estate should be an indispensable party to the action in Illinois.

A reading of Eliot's filed court documents suggests that, at least at this point in time, Eliot is an ally of the Estate and will advance the Estate's interests in the Chicago litigation. Unfortunately, Eliot is the only advocate, if anyone is, on behalf of the Estate, which imperils the interests of the Estate and places the Estate in a precarious position for several reasons. First, Eliot is proceeding *pro se*, which means his effectiveness in advocating his position to a Federal Judge is questionable at best. He was recently scolded by the Judge for failure to follow court procedural rules in a written decision denying one of his motions.

The deceased's grandchildren are the residual beneficiaries of the funds in the Estate after payment of creditors, yet have no representation at this point.

This is why we believe it is in the best interests of the Estate that the Estate attempt to intervene in the Chicago case to protect its interests and the interests of its beneficiaries and creditors. Failure to do so could result in an adverse court decision with no real opposition,

Benjamin P. Brown, Esq.
March 4, 2014
Page 3

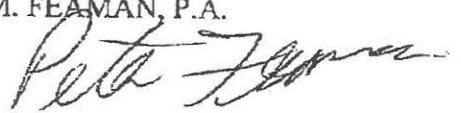
effective or otherwise, to the Plaintiff's position, or in the settlement of the case by the current parties which results in a disposition of the insurance proceeds outside the Estate.

Please advise as to your position on this.

Very truly yours,

PETER M. FEAMAN, P.A.

By:



Peter M. Feaman

PMF/mk
Enclosures
cc: William E. Stansbury

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

IN RE:

Case No.: 50 2012 CP 004391 SB
JUDGE MARTIN COLIN

ESTATE OF SIMON
BERNSTEIN,

Deceased.

Division: IY

**RESPONSE IN OPPOSITION TO MOTION FOR APPOINTMENT OF TED
BERNSTEIN AS CURATOR AND MOTION FOR THE APPOINTMENT OF ELIOT
BERNSTEIN AS CURATOR OR SUCCESSOR PERSONAL REPRESENTATIVE OR,
IN THE ALTERNATIVE, FOR APPOINTMENT OF AN INDEPENDENT THIRD
PARTY AS SUCCESSOR PERSONAL REPRESENTATIVE OR CURATOR**

COMES NOW Petitioner, William E. Stansbury (“Stansbury”), an unsecured creditor and “Interested Person,” pursuant to the §731.201(23) Fla. Stat. (2013), by and through his undersigned counsel, and files this Response in Opposition to Motion for Appointment of Ted Bernstein as Curator and Motion for the Appointment of Eliot Bernstein as Curator or Successor Personal Representative or, in the Alternative, for Appointment of an Independent Third Party as Successor Personal Representative or Curator. In support, Petitioner states as follows:

1. The currently serving Co-Personal Representatives of the Estate, Donald R. Tescher and Robert L. Spallina have petitioned this Court for Resignation and Discharge. In considering the resignation, the Court, under the provisions of Fla. Prob. R. 5.430(d), is required to determine the necessity of appointing a successor fiduciary.

2. In this Estate, the Court is required to appoint a successor fiduciary since both Co-Personal Representatives are resigning. The Court is also empowered to appoint a curator under §733.506, Fla. Stat. (2013) and Fla. Prob. R. 5.122(a) until a new Successor Personal Representative is appointed.

I. Stansbury has standing to bring this Response and Motion

3. When removal of a Personal Representative is at issue, Fla. Prob. R. 5.440 specifically provides that, “ ... **any interested person, by petition**, may commence a proceeding to remove a personal representative. ...” (Emphasis added.) By logical extension an “interested person” would also have standing to petition the court for the appointment of a successor fiduciary.

4. The provisions of §731.201(23), Fla. Stat. (2013) define an “interested person” as:

(23) “Interested person” means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved...”

5. Stansbury has filed a claim against the Estate of Simon Bernstein (the “Estate”) and has sued the Estate in a separate lawsuit styled *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida. A copy of the Statement of Claim is attached as Exhibit “A.” A copy of the Amended Complaint which forms the basis of the Statement of Claim is attached hereto as Exhibit “B.”

6. Stansbury, as a claimant of the Estate, has an interest in ensuring that the successor fiduciary ultimately appointed will act without bias and in the best interests of the creditors and devisees of the Estate. The Fourth District Court of Appeal has recognized that a claimant to an estate is an “interested person” and has standing in a proceeding to approve the personal representative’s final accounting and petition for discharge. *See, Arzuman v. Estate of Prince Bander BIN Saud Bin, etc., 879 So.2d 675 (Fla. 4th DCA 2004).* *See also, Montgomery v. Cribb, 484 So.2d 73 (Fla. 2d DCA 1986)* (Wrongful death claimant was entitled to notice of hearing as an “interested person” under the probate code even though case was dismissed by trial court and disputed settlement was on appeal.) Stansbury is therefore an “interested person” as to

the outcome of this or any subsequent proceeding in which a successor fiduciary or a curator will be appointed, and Stansbury has standing to file and advance this Petition.

II. Ted Bernstein should not be appointed as Curator or Successor Personal

Representative

A. Misconduct in the Shirley Bernstein Estate

7. There are serious allegations of fraud and forgery in the Shirley Bernstein Estate where Ted Bernstein is now the Personal Representative. Documents were submitted to the Court bearing notarized signatures of Simon Bernstein, alleged signatures by him, but on a date after he had passed away.

8. This Court was apprised of these allegations in a hearing conducted September 13, 2013 wherein the Court questioned whether the potential parties involved should be read their Miranda Rights. (*See* Transcript of Proceedings, pages 15 and 16, attached as Exhibit "C.")

B. The "lost" Insurance Trust

9. At the time of Simon Bernstein's death, it was determined that there existed a life insurance policy issued by Heritage Mutual Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust as beneficiary (the "Insurance Trust"). According to an SS-4 Application for EIN form submitted to the IRS on June 21, 1995, Shirley Bernstein was represented as Trustee of the Insurance Trust. (*See* SS-4 Application for EIN as Exhibit "D.")

10. Notwithstanding the earlier SS-4 EIN form, on November 1, 2012, Robert Spallina, one of the resigning Co-Personal Representatives, submitted a claim form to Heritage on behalf of the Insurance Trust for the benefit of the grown children of Simon Bernstein. In doing so, Spallina represented that he was the Trustee of the Insurance Trust. (*See* Exhibit "E")

Spallina made this representation despite having informed Heritage by letter shortly thereafter that he was “unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995.” (See Exhibit “F” attached.) If the Trust instrument cannot be found, the insurance proceeds would be payable to the Simon Bernstein Estate, and as such, would be available to pay creditors of the Estate such as Stansbury.

11. Spallina, with the knowledge of Ted Bernstein, represented that he was “Trustee” of the Insurance Trust in an effort to collect the insurance proceeds on behalf the Insurance Trust and for the benefit of the grown children of Simon Bernstein, so as to circumvent the Simon Bernstein Estate.

12. Heritage refused to pay the life insurance proceeds to anyone without a court order. The Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois (the case has since been removed to Federal Court). In paragraph 2 of the Complaint, the Plaintiff, the Insurance Trust, although apparently still “lost,” alleges that Ted Bernstein is the “trustee” of the Insurance Trust. Yet, there exists no trust document establishing the continued existence of the Insurance Trust, let alone that Ted is the Trustee. As a result, Ted’s representation, like that of Spallina, appears plainly false.

C. Ted Bernstein has a Conflict of Interest ---

13. Ted Bernstein, as well as his siblings (other than Eliot) - Lisa Sue Friedstein, Pamela Beth Simon, and Jill Iantoni - have a conflict of interest precluding them from faithfully executing the duties of fiduciary on behalf of the Estate.

14. One of the considerations for removal of a Personal Representative as set forth in §733.504(9) (2013) is, “**(9) Holding or acquiring conflicting or adverse interests against the estate that will or may interfere with the administration of the estate as a whole.**”

15. A trail of e-mails indicates that Ted Bernstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni were advocating and scheming to keep the proceeds from the Heritage life insurance policy, as described above in paragraphs 9 thru 12 from being paid to the Estate. The stated purpose of this scheme was to avoid making the life insurance proceeds available to pay creditors of the Estate such as Stansbury. (*See*, selected e-mail messages, attached hereto as Composite Exhibit “G”.) The residuary beneficiaries of the Will, that is, the grandchildren of Simon Bernstein, would also be prejudiced by such a determination.

16. Section 733.602(1), Fla. Stat. (2013), expressly provides that “. . . A personal representative shall use the authority conferred by this code, the authority in the will, if any, and the authority of any order of the court, **for the best interests of interested persons, including creditors.**” (Emphasis added.)

17. While the ultimate outcome of the adjudication of the issues surrounding the Heritage life insurance proceeds is uncertain, what is clear is that each of the children of Simon Bernstein, other than Eliot Bernstein, have advocated, and continue to advocate a position that is contrary to the best interests of the Estate, its creditors and beneficiaries. These two conflicting and contrary positions between the interests of the children of Simon Bernstein (other than Eliot) and the duty of the successor fiduciary to act in the best interests of the Estate, including the creditors and beneficiaries, render Ted Bernstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni unqualified to serve as successor fiduciaries. *See Estate of Bell v. Johnson*, 573 So.2d 57 (Fla. 1st DCA, 1990) (conflict between personal representative, in that capacity, and as power of attorney, necessitated removal as personal representative).

D. The “Schiller” Lawsuit

18. Further, Ted Bernstein is a Defendant in yet another lawsuit filed in this Circuit Court. *See, Schiller v. Life Insurance Concepts, et al*, Case No. 502013CA007442 AD, wherein Ted Bernstein and others are accused of negligence and other business torts in connection with their business dealings.

E. Curator and Successor Personal Representative

19. Stansbury nominates Eliot Bernstein (“Eliot”), a son of the Decedent, to serve as successor Personal Representative. Eliot is qualified under §733.302, Fla. Stat. (2013) as he is *sui juris* and was a resident of Florida at the time of his father’s death on September 13, 2012. Additionally, he is entitled to “preferential” consideration under §733.301(1)(a)(3) in that he is a devisee under Simon Bernstein’s Will dated July 25, 2012 that has been admitted to probate.

20. In addition to his technical qualifications to serve as Personal Representative under the Florida Probate Code, Eliot also deserves significant consideration since he has been the only child of Simon and Shirley Bernstein to bring to the Court’s attention the potential fraud and forgery issues that exist in connection with the closing of the Estate of Shirley Bernstein, as more fully set forth in paragraphs 7 and 8 above.

21. Stansbury acknowledges that Eliot’s siblings, Theodore “Ted” Bernstein, Lisa Sue Friedstein, Pamela Beth Simon, and Jill Iantoni are also technically qualified to serve under §733.302, Fla. Stat. (2013) and §733.301(1)(a)(3). However, for the reasons set forth above, each of them should not be considered or appointed Curator or Successor Personal Representative by this Court.

22. Alternatively, should the Court determine that all of the Bernstein children, Eliot included, are not appropriate to serve, Stansbury moves this Court for the appointment of an

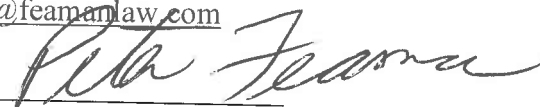
independent, third party Curator or Personal Representative that will administer the Estate in an objective, unbiased and fair manner, as set forth in § 733.5061, Fla. Stat. (2013) and in accordance with the procedure set forth in §733.501, Fla. Stat. (2013).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to parties listed on the attached Service list by U.S. Mail and via e-mail service at arose@mrachek-law.com and mchandler@mrachek-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein*, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, and at courtfilings@pankauskilawfirm.com to John J. Pankauski, Esq., PANKAUSKI LAW FIRM, 120 South Olive Avenue, Suite 701, West Palm Beach, FL 33401, on this 11th day of February, 2014.

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

By: _____


Peter M. Feaman
Florida Bar No.: 0260347

SERVICE LIST

Ted S. Bernstein
880 Berkeley Street
Boca Raton, FL 33487

Pamela Beth Simon
950 N. Michigan Avenue
Apartment 2603
Chicago, IL 60611

Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035

Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035

Alexandra Bernstein
3000 Washington Blvd, Apt 424
Arlington, VA, 22201

Eric Bernstein
2231 Bloods Grove Circle
Delray Beach, FL 33445

Michael Bernstein
2231 Bloods Grove Circle
Delray Beach, FL 33445

Matt Logan
2231 Bloods Grove Circle
Delray Beach, FL 33445

Molly Simon
1731 N. Old Pueblo Drive
Tucson, AZ 85745

Daniel Bernstein, a Minor
c/o Eliot and Candice Bernstein,
His Parents and Natural Guardians
2753 NW 34th Street
Boca Raton, FL 33434

Jacob Bernstein, a Minor
c/o Eliot and Candice Bernstein,
His Parents and Natural Guardians
2753 NW 34th Street
Boca Raton, FL 33434

Joshua Bernstein, a Minor
c/o Eliot and Candice Bernstein,
His Parents and Natural Guardians
2753 NW 34th Street
Boca Raton, FL 33434

Julia Iantoni, a Minor
c/o Guy and Jill Iantoni,
Her Parents and Natural Guardians
2101 Magnolia Lane
Highland Park, IL 60035

Max Friedstein, a Minor
c/o Jeffrey and Lisa Friedstein,
His Parents and Natural Guardians
2142 Churchill Lane
Highland Park, IL 60035

Carley Friedstein, a Minor
c/o Jeffrey and Lisa Friedstein,
Her Parents and Natural Guardians
2142 Churchill Lane
Highland Park, IL 60035

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

IN RE: Case No. 502012CP004391 SB

ESTATE OF SIMON
BERNSTEIN,
Deceased.

Division: IZ

COPY
SOUTH COUNTY BRANCH OFFICE
ORIGINAL RECEIVED

NOV 06 2012

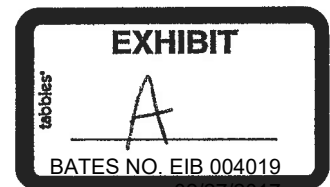
SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY

STATEMENT OF CLAIM BY WILLIAM E. STANSBURY

The undersigned hereby presents for filing against the above estate this Statement of Claim and alleges:


1. The basis for the claim is the action pending in Palm Beach County, Florida, *Stansbury v. Bernstein, et. al*, Case No. 502012CA 013933XXXX MB (the "Pending Action"). A true and correct copy of the Complaint filed by claimant that initiated the Pending Action is attached hereto as Exhibit "A" and is hereby incorporated by reference herein (the "Complaint").
2. The name and address of the claimant are William E. Stansbury, 6920 Caviro Lane, Boynton Beach, Florida 33437, and the name and address of the claimant's attorney is set forth below.
3. The amount of the claim is in excess of \$2.5 million dollars, which the Claimant is entitled to recover under the claims set forth in the Complaint, which amount the Claimant believes is now due.
4. The claim is contingent or unliquidated and uncertain to the extent that the Claimant's claim is dependent on the outcome of the Pending Action. The specific amount of Claimant's claim will be determined in Pending Action and the Claimant expects to recover in excess of \$2.5 million dollars in damages, as well as, but not limited to, treble damages, pre-judgment and post-judgment interest, and costs.
5. The claim is not secured.

[Signature page follows this page]

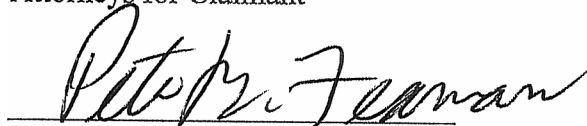


Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on November 6, 2012.


William E. Stansbury, Claimant

Attorneys for Claimant



Peter M. Feaman, Esq.
Florida Bar No.: 260347
PETER M. FEAMAN, P.A.
3615 West Boynton Beach Blvd.
Boynton Beach, FL 33436
Phone: (561) 734-5552
Facsimile: (561) 734-5554
Primary Electronic Mail Address:
pfeaman@feamanlaw.com

Copy mailed to attorney for Personal Representative on _____ 2012.

MUST BE FILED IN DUPLICATE

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

WILLIAM E. STANSBURY,
Plaintiff,

vs.

Case No.

2012 CA013 933 XXXXNB

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

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RECEIVED FOR FILING

JUL 30 2012

SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

COMPLAINT
And JURY DEMAND

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

1. This is an action for money damages in excess of \$15,000, and for equitable relief.
2. Plaintiff is *sui juris*, and a resident of Palm Beach County, Florida.
3. Defendants TED S. BERNSTEIN ("TED BERNSTEIN"), and SIMON BERNSTEIN are both *sui juris*, and are both residents of Palm Beach County, Florida.
4. The corporate Defendants, LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C., are entities organized and existing under the laws of the State of Florida, all do business in the State of Florida and all have their principal offices in the State of Florida, and in Palm Beach County, Florida.
5. Defendants SIMON BERNSTEIN and TED BERNSTEIN (collectively "Defendants

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

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

Background

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

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

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

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

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

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

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

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

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

business generated by Plaintiff consisted of more than 40 individuals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and appropriate.

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

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

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

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

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

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

III. BREACH OF ORAL CONTRACT
(Against All the Defendants)

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

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

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

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

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

37. Defendants did withhold such moneys due Plaintiff.

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

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

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

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

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

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

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

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

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

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

V. BREACH OF FIDUCIARY DUTY

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

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

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

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

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

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

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

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

VI. CIVIL THEFT
Against All Defendants

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

specifically §772.11, Fla.Stats.

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

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

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

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

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

VII. FRAUD
(Against All Defendants)

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

herein, preceding paragraphs 1 through 24, inclusive.

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

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

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

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

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

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

VIII. EQUITABLE LIEN

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

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

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

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

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

IX. CONTRACT IMPLIED IN LAW

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

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

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

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

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

X. CONSTRUCTIVE TRUST

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

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

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

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

XL INDEMNIFICATION

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

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

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

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

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

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

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

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

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

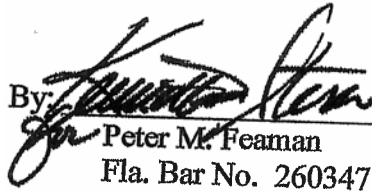
78. Moreover, Defendants had ceased to pay Plaintiff any commissions. Instead, as an employee he was now receiving a salary. To reflect Plaintiff's successful generation of Defendants' business, Defendants made Plaintiff's salary approximate 15% of the amount of commissions received. Nonetheless, as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

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

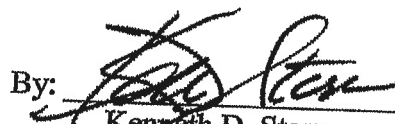
and against refund claims for said commissions, to the extent of 100% thereof, and for such other and further relief as the Court shall deem just and appropriate.

July 30, 2012

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

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

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

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

F

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: 50 2012 CA 013933 MB AA

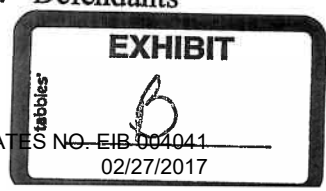
v.

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

AMENDED COMPLAINT

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

1. This is an action for money damages in excess of \$15,000, and for equitable relief.
2. Plaintiff (hereinafter referred to as "STANSBURY") is *sui juris*, and a resident of Palm Beach County, Florida.
3. Defendant TED S. BERNSTEIN ("TED BERNSTEIN"), is *sui juris*, and a resident of Palm Beach County, Florida.
4. SIMON L. BERNSTEIN ("SIMON BERNSTEIN") died on or about September 13, 2012, after the filing of the initial Complaint in this action. At the time of his death, SIMON BERNSTEIN was *sui juris*, and was a resident of Palm Beach County, Florida. Defendants



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

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

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

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

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

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

Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a) directing LIC Holdings and ARBITRAGE to make payments to third parties not employed by the corporations and who had performed no services on behalf of the corporations for the personal benefit of the BERNSTEINS;
- b) directing the corporations to pay for personal expenses of the wives and other friends of the BERNSTEIN Defendants through corporate credit cards and other forms of payment, notwithstanding that they provided no services for the corporations;
- c) transferring monies from LIC Holdings and ARBITRAGE to third party entities including the BERNSTEIN Defendants, the BERNSTEIN FAMILY REALTY, LLC and the

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

- d) paying themselves exorbitant compensation to the exclusion of STANSBURY;
- e) treating LIC Holdings and ARBITRAGE as alter egos of themselves and otherwise handling the affairs of LIC Holdings and ARBITRAGE without regard to corporate protocol;
- f) failing to convene annual meetings of the stockholders of LIC Holdings and ARBITRAGE, in violation of Florida law;
- g) committing corporate waste by unnecessarily expending corporate assets on unrelated corporate activities;
- h) failing to account for the revenue and expenses of LIC Holdings and ARBITRAGE to STANSBURY, who was entitled to compensation as an employee and as a minority shareholder;
- i) directing LIC Holdings and ARBITRAGE to take actions to reduce the profit of LIC Holdings and ARBITRAGE so as to prevent STANSBURY from earning his just compensation, in violation of prior agreement of the parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

V. CONVERSION

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

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

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

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

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

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

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

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

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

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

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

VII. EQUITABLE LIEN

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

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

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

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

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

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

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

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

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

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

VIII. CONSTRUCTIVE TRUST

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

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

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

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

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

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

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

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

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

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


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

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

CERTIFICATE OF SERVICE

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

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel.: 561073405552
Fax: 561-734-5554
pfeaman@feamanlaw.com

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

The Law Offices
of
PETER M. FEAMAN, P.A.
Strategic Counselor. Proven Advocate.™



Main Office:
3615 Boynton Beach Blvd.
Boynton Beach, FL 33436

Branch Office:
7900 Glades Road
Boca Raton, FL 33434

Peter M. Feaman, Esq.
Nancy E. Guffey, Esq.
Of Counsel

Telephone: (561) 734-5552
Facsimile: (561) 734-5554
pfeaman@feamanlaw.com

June 20, 2012

Via Certified Mail, Return Receipt Requested

PERSONAL and CONFIDENTIAL

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

Re: William (Bill) Stansbury

Dear Mr. Bernstein:

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

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

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

EXHIBIT



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

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

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

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

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

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

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

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

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

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

2. Indemnification issues.

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

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

3. Unauthorized interception of U.S. Mail.

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

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

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

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

4. Shareholder status.

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

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

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

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

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

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

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

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

Very truly yours,

PETER M. FEAMAN, P.A.

By:


Peter M. Feaman

PMF/mk

cc: William Stansbury

CC Riggs (e-mail)

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1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,
2 IN AND FOR PALM BEACH COUNTY, FLORIDA
3 PROBATE/GUARDIANSHIP DIVISION IV
CASE NO.: 502011CP000653XXXXSB

4 IN RE: THE ESTATE OF:
5 SHIRLEY BERNSTEIN,
Deceased

6 ELIOT IVAN BERNSTEIN, PRO SE,
Petitioner,

7 vs.

8 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,
9 ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA
10 (BOTH PERSONALLY & PROFESSIONALLY); DONALD
11 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);
THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL
REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH
PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE
DOE'S (1-5000),
Respondents.

12 TRANSCRIPT OF PROCEEDINGS
13 BEFORE
14 THE HONORABLE MARTIN H. COLIN

15 South County Courthouse
16 200 West Atlantic Avenue, Courtroom 8
17 Delray Beach, Florida 33344

18 Friday, September 13, 2013
19 1:30 p.m. - 2:15 p.m.

20
21 Stenographically Reported By:
22 JESSICA THIBAUT
23
24

25

†

00002

1 APPEARANCES

2
3 On Behalf of the Petitioner:
4 ELIOT IVAN BERNSTEIN, PRO SE
2753 NW 34th Street
5 Boca Raton, Florida 33434
6



7
8 MR. MANCERI: That's when the order was
9 signed, yes, your Honor.

10 THE COURT: He filed it, physically came
11 to court.

12 MR. ELIOT BERNSTEIN: Oh.

13 THE COURT: So let me see when he actually
14 filed it and signed the paperwork. November.
15 What date did your dad die?

16 MR. ELIOT BERNSTEIN: September. It's
17 hard to get through. He does a lot of things
18 when he's dead.

19 THE COURT: I have all of these waivers by
20 Simon in November. He tells me Simon was dead
21 at the time.

22 MR. MANCERI: Simon was dead at the time,
23 your Honor. The waivers that you're talking
24 about are waivers from the beneficiaries, I
25 believe.

THE COURT: No, it's waivers of

♀
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1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of
4 discharge by Simon, Simon asked that he not
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date
10 of death.

11 THE COURT: Well, how could that happen
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened
17 was is the documents were submitted with the
18 waivers originally, and this goes to
19 Mr. Bernstein's fraud allegation. As you know,
20 your Honor, you have a rule that you have to
21 have your waivers notarized. And the original
22 waivers that were submitted were not notarized,
23 so they were kicked back by the clerk. They
24 were then notarized by a staff person from
25 Tescher and Spallina admittedly in error. They

In Re_ The Estate of Shirley Bernstein.txt
1 should not have been notarized in the absentia
2 of the people who purportedly signed them. And
3 I'll give you the names of the other siblings,
4 that would be Pamela, Lisa, Jill, and Ted
5 Bernstein.

6 THE COURT: So let me tell you because I'm
7 going to stop all of you folks because I think
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda
10 warnings?

11 THE COURT: Everyone of you might have to
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a
15 formal document filed here April 9, 2012,
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and
19 notarized on that same date by Kimberly. It's
20 a waiver and it's not filed with The Court
21 until November 19th, so the filing of it, and
22 it says to The Court on November 19th, the
23 undersigned, Simon Bernstein, does this, this,
24 and this. Signed and notarized on April 9,
25 2012. The notary said that she witnessed Simon

♀
00028

1 sign it then, and then for some reason it's not
2 filed with The Court until after his date of
3 death with no notice that he was dead at the
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's
7 enough to give you Miranda warnings. Not you
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the
14 transaction?

15 MR. SPALLINA: I was involved as the
16 lawyer for the estate, yes. It did not come to
17 my attention until Kimberly Moran came to me
18 after she received a letter from the Governor's
19 Office stating that they were investigating
20 some fraudulent signatures on some waivers that
21 were signed in connection with the closing of

10/22/95
05-0178916
OMB No. 1545-0003
Expires 7-31-91

Form **SS-4**
(Rev. August 1989)
Department of the Treasury
Internal Revenue Service

Application for Employer Identification Number

(For use by employers and others. Please read the attached instructions before completing this form.) Please type or print clearly.

1 Name of applicant (True legal name) (See instructions.)
Simon Bernstein Irrevocable Insurance Trust

2 Trade name of business, if different from name in line 1
Shirley Bernstein

3a Mailing address (street address) (room, apt., or suite no.)
7020 Lions Head
3b Address of business (See instructions.)
Boca Raton, FL 33496

4a City, state, and ZIP code
Boca Raton, FL 33496
4b City, state, and ZIP code
Boca Raton, FL 33496

5 County and state where principal business is located
Boca Raton, FL

6 Name of principal officer, grantor, or general partner (See instructions.)
Simon Bernstein

7a Type of entity (Check only one box.) (See instructions.)
 Individual SSN
 REMIC
 State/local government
 Other nonprofit organization (specify)
 Other (specify) \triangleright
 Estate
 Personal service corp.
 National guard
 Partnership
 Farmers' cooperative
 Church or church controlled organization
 Federal government/military
If nonprofit organization enter GEN (if applicable)

8a If corporation, give name of foreign country (if applicable) or state in the U.S. where incorporated \triangleright
Foreign country: _____ State: _____

9 Reason for applying (Check only one box)
 Started new business
 Hired employees
 Created a pension plan (specify type) \triangleright
 Banking purpose (specify) \triangleright
 Changed type of organization (specify) \triangleright
 Purchased going business
 Created a trust (specify) \triangleright Insurance Trust
 Other (specify) \triangleright

10 Date business started or acquired (Mo., day, year) (See instructions.)
June 1, 1995

11 Enter closing month of accounting year. (See instructions.)
December 31

12 First date wages or annuities were paid or will be paid (Mo., day, year). Note: If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (Mo., day, year).

13 Enter highest number of employees expected in the next 12 months. Note: If the applicant does not expect to have any employees during the period, enter "0."
Nonagricultural: _____ Agricultural: _____ Household: _____

14 Does the applicant operate more than one place of business?
If "Yes," enter name of business. \triangleright Yes No

15 Principal activity or service (See instructions.) \triangleright Yes No

16 Is the principal business activity manufacturing?
If "Yes," principal product and raw material used \triangleright Yes No

17 To whom are most of the products or services sold? Please check the appropriate box.
 Public (retail) Other (specify) \triangleright Business (wholesale)

18a Has the applicant ever applied for an identification number for this or any other business?
Note: If "Yes," please complete lines 18b and 18c. Yes No

18b If you checked the "Yes" box in line 18a, give applicant's true name and trade name, if different than name shown on prior application.
True name \triangleright _____ Trade name \triangleright _____

18c Enter approximate date, city, and state where the application was filed and the previous employer identification number if known.
Approximate date when filed (Mo., day, year) _____ City and state where filed _____ Previous EIN _____

19 Name and title (Please type or print clearly) \triangleright Shirley Bernstein, Trustee
Telephone number (include area code) 407-477-9991

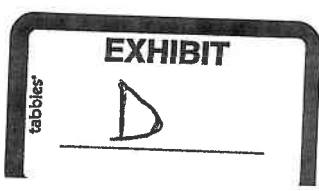
Signature \triangleright X _____ Date \triangleright June 21, 1995

Please leave blank \triangleright Ind. Class Size Reason for applying

For Paperwork Reduction Act Notice, see attached instructions.

U.S. Government Printing Office: 1985-267-131/10143

Form SS-4 (Rev. 8-89)



BT000104
BATES NO. EIB 004067
02/27/2017

CLAIMANT STATEMENT

DECEDENT INFORMATION

1. Name of Deceased (Last, First Middle) Bernstein, Simon Leon		2. Last 4 digits of Deceased's Social Security No. 5211
3. If the Deceased was known by any other names, such as maiden name, hyphenated name, nick name, derivative form of first and/or middle name or an alias, please provide them below		
4. Policy Number(s) 1009208	5. If policy is lost or not available, please explain: unable to locate, policy is 30 years old	
6. Deceased's Date of Death 09/13/12	7. Cause of Death natural causes	8. <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending

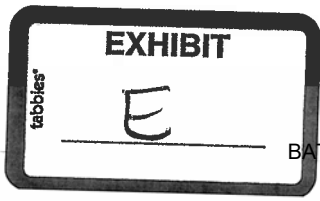
CLAIMANT INFORMATION

9. Claimant Name (Last, First, Middle) If trust, please list trust name and complete Trustee Certification section. Simon Bernstein Irrevocable Insurance Trust			
10. Street Address	11. City	12. State and Zip	13. Daytime Phone Number
14. Date of Birth	15. Social Security or Tax ID Number 65-6178916	16. Relationship to Deceased	
17. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
18. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
19. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement?			<input type="checkbox"/> Yes <input type="checkbox"/> No

CLAIMANT INFORMATION (to be completed by 2nd claimant if any)

20. Claimant Name (Last, First, Middle) If trust, please list trust name and complete Trustee Certification section.			
21. Street Address	22. City	23. State and Zip	24. Daytime Phone Number
25. Date of Birth	26. Social Security or Tax ID Number	27. Relationship to Deceased	
28. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
29. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
30. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement?			<input type="checkbox"/> Yes <input type="checkbox"/> No

YOUR SIGNATURE IS REQUIRED ON THE NEXT PAGE.



BT000100

CLAIMANT STATEMENT

SETTLEMENT OPTIONS

The policy may contain one or more settlement options, such as Interest Payments, Installments for a Specified Amount, Life Annuity, Life Annuity with Period Certain, and/or Joint Life and Survivorship Annuity. You may choose to receive a lump sum payment or another settlement option available in the policy under which a claim is made. For more information, refer to the optional methods of policy settlement provision in the policy or contact us at the mailing address noted on the front of the claim form.

If you wish to select a settlement option, please indicate your settlement selection by name (not by number) on the line below after you have carefully reviewed the options available in the policy. Availability of settlement options are subject to the terms of the policy. If you do not choose a settlement option, we will send a lump sum settlement to you.

Name of Settlement Option from Policy _____

Important Information About the USA PATRIOT Act

To help fight the funding of terrorism and money-laundering activities, the U.S. government has passed the USA PATRIOT Act, which requires banks, including our processing agent bank, to obtain, verify and record information that identifies persons who engage in certain transactions with or through a bank. This means that we will need to verify the name, residential or street address (no P.O. Boxes), date of birth and social security number or other tax identification number of all account owners.

SUBSTITUTE FOR IRS FORM W-9

This information is being collected on this form versus IRS form W-9 and will be used for supplying information to the Internal Revenue Service (IRS). Under penalty of perjury, I certify that 1) the tax ID number above is correct (or I am waiting for a number to be issued to me), 2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3) I am a U.S. person (including a U.S. resident alien). Please cross through item 2 if you have been notified by the IRS that you are subject to backup withholding because you have failed to report all interest and dividends on your tax return.

SIGNATURES

I/We do hereby make claim to said insurance, declare that the answers recorded above are complete and true, and agree that the furnishing of this and any supplemental forms do not constitute an admission by the Company that there was any insurance in force on the life in question, nor a waiver of its rights or defenses.

For Residents of New York: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

For Residents of All Other States: See the Fraud Information section of this claim form.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Signature of Claimant and Title _____

Date _____

Signature of Second Claimant, if any, and Title _____

Date _____

BT000101

CLAIMANT STATEMENT

TRUSTEE CERTIFICATION

TRUSTEE CERTIFICATION (to be completed only if trust is claiming proceeds)

COMPLETE THIS SECTION ONLY IF A TRUST IS CLAIMING BENEFITS

Please include a copy of the trust agreement, including the signature page(s) and any amendments

I/We, the undersigned trustee(s), represent and warrant that the copy of the trust agreement, which we will provide you pursuant to this certification, is a true and exact copy of said agreement, that said agreement is in full force and effect, and that we have the authority to make this certification.

Generation Skipping Transfer Tax Information - THIS MUST BE COMPLETED FOR PAYMENT

I/We the undersigned, on oath, deposes and states as follows with respect to the possible application of the Generation Skipping Transfer (GST) tax to the death benefit payment (Mark the appropriate item):

- 1. The GST tax does not apply because the death benefit is not included in the decedent's estate for federal estate tax purposes.
- 2. The GST tax does not apply because the GST tax exemption will offset the GST tax.
- 3. The GST tax does not apply because at least one of the trust beneficiaries is not a "skipped" person.
- 4. The GST tax does not apply because of the reasons set forth in the attached document (Please attach document setting forth the reasons why you believe the GST tax does not apply.)
- 5. The GST tax may apply. As a result, the death benefit payment IS subject to withholding of the applicable GST tax. Enclosed is the completed Schedule R-1 (Form 706) for submission to the Internal Revenue Service.

Name of Trust

Simon Bernstein Irrevocable Insurance Trust

Date of Trust Agreement

06/01/1995

Date of all Amendments

Trust Tax ID

Number

65-6178916

Printed Name of Trustee(s)

Signature(s)

a

Robert L. Spallina

b

c

d

BT000103

LAW OFFICES
TESCHER & SPALLINA, P.A.

BOCA VILLAGE CORPORATE CENTER I
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FLORIDA 33431

TEL: 561-997-7008
FAX: 561-997-7308
TOLL FREE: 888-997-7008
WWW.TESCHERSPALLINA.COM

SUPPORT STAFF
DIANE DUSTIN
KIMBERLY MORAN
SUANN TESCHER

ATTORNEYS
DONALD R. TESCHER
ROBERT L. SPALLINA
LAUREN A. GALVANI

December 6, 2012

VIA FACSIMILE: 803-333-4936

Attn: Bree
Claims Department
Heritage Union Life Insurance Company
1275 Sandusky Road
Jacksonville, IL 62651

Re: Insured: Simon L. Bernstein
Contract No.: 1009208

Dear Bree:

As per our earlier telephone conversation:

- We are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.
- Mrs. Shirley Bernstein was the initial beneficiary of the 1995 trust, but predeceased Mr. Bernstein.
- The Bernstein children are the secondary beneficiaries of the 1995 trust.
- We are submitting the Letters of Administration for the Estate of Simon Bernstein showing that we are the named Personal Representatives of the Estate.
- We would like to have the proceeds from the Heritage policy released to our firm's trust account so that we can make distributions amongst the five Bernstein children.
- If necessary, we will prepare for Heritage an Agreement and Mutual Release amongst all the children.
- We are enclosing the SS4 signed by Mr. Bernstein in 1995 to obtain the EIN number for the 1995 trust.

If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

Robert L. Spallina/km
ROBERT L. SPALLINA

RLS/km

Enclosures



BT0000083

BATES NO. EIB 004071
02/27/2017

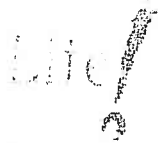
We are going to do what is necessary to have the proceeds paid where they were intended to be paid, as quickly as possible now. If you think I am factually incorrect about any of this, please either call me or email me and explain where I may be wrong. It goes without saying, this is not my expertise. I am processing the same information that everyone else is working with and this is how I see it.

Ted

This is my analysis on the Heritage payout thus far. First, I would like to review the insurance policy as well as the official statements respecting investment returns, use of returns to pay premiums and loans taken from the policy. I understand Ted and Pam have the policy, and do not understand why Mr. Spallina thinks it is curious that I also want to review these materials. Second, I understand the expressed concerns that if the proceeds are paid to the estate then the proceeds would be subject to the claims of creditors of the estate. It is my understanding that the "plan" is to have the proceeds payable to a trust to avoid creditor claims; however, I have also been counseled that if a trust is utilized an estate creditor can challenge the trust transaction as a fraudulent conveyance used to avoid the creditor's claim. We have been told that Dad designated his 1995 trust as his beneficiary with Heritage. We were also told that that trust cannot be located. I would also like to review an affidavit that indicates the precise steps that were taken and by whom and with whom to locate the 1995 trust, and I would imagine that Heritage will require the same. Heritage, we were told, is now saying that the proceeds may have to go to the State under the applicable escheat laws, so Mr. Spallina is telling us that if Heritage accepts a new trust with all potential beneficiaries agreeing to the mechanism, that Heritage may pay the proceeds to this new trust and not to the State. I have been told that the reason the law requires a trust document (and not simply statements from someone who claims they saw the trust) is that it demonstrates Dad's desires, and because Dad had the right to change his mind and thus the beneficiaries under the trust, nothing short of the actual 1995 trust document may be sufficient to Heritage. Last, because the 1995 trust document cannot be located, the proceeds should go to the beneficiaries under {Article IV 2j} and [Article III] of Dad's will, which picks up insurance proceeds under failed beneficiary designations. Under Dad's will and trust, these amounts, like the rest of his estate goes to his grandchildren in equal parts. Thus, to the extent it is decided to use a new trust to avoid the escheat laws, the only beneficiaries that may be acceptable to me is the grandchildren. As I stated above, I and my siblings should remain concerned that any estate creditor could challenge the transaction as a fraudulent conveyance. Also, having the 5 children as beneficiaries with each having the right to disclaim in favor of their children (i.e., Dad's grandchildren) is not acceptable for 2 reasons. First, such a scheme is not consistent with Dad's wishes under his will and trust agreement. Whatever Dad may have provided under the 1995 trust is both unknown and not relevant as stated above. The second reason is simple economics. My kids would get a 33% distribution under the proper method, but only 20% under the other scheme.

Regards,

Ted Bernstein - President



Life Insurance Concepts
950 Peninsula Corporate Circle, Suite 3010
Boca Raton, FL 33487
Tel: 561.988.8984
Toll Free: 866.395.8984
Fax: 561.988.0833
Email: Tbernstein@lifeInsuranceConcepts.com
www.LifeInsuranceConcepts.com



BT000052
BATES NO. EIB 004072
02/27/2017

Robert Spallina

From: Christine Yates [cty@TrippScott.com]
Sent: Wednesday, January 30, 2013 6:17 AM
To: Robert Spallina
Cc: 'Eliot Ivan Bernstein'
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Heritage Policy

Robert, after discussions with my client, he is not in agreement with the plan proposed below. A more formal letter will follow.

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Tuesday, January 29, 2013 11:43 AM
To: Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Heritage Policy

I am following up on our telephone conference from last week. Ted has contacted me about circulating a draft of the settlement agreement that would be presented to the court. Again, prior to preparing an agreement, I want to make sure that you are ALL in agreement that the proceeds do not come to the estate. I can tell you that your father planned his estate intending and believing that the five children would split the proceeds equally. We would like to see his wishes carried out and not have the proceeds paid to the estate where they could be subject to creditor claims prior to being split in equal shares among the grandchildren. Please advise if you are in agreement to move forward to petition the court for an order that would split the proceeds equally among the five of you.

Robert L. Spallina, Esq.
TESCHER & SPALLINA, P.A.
4855 Technology Way, Suite 720
Boca Raton, Florida 33431
Telephone: 561-997-7008
Facsimile: 561-997-7308
E-mail: rspallina@tescherspallina.com

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at www.tescherspallina.com

The information contained in this message is legally privileged and confidential information intended only for the use of the individual or entity named above. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. If you have received this communication in error, please immediately notify us by e-mail or telephone. Thank you.

From: Robert Spallina
Sent: Wednesday, January 23, 2013 1:14 PM
To: Ted Bernstein
Cc: Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates; Kimberly Moran
Subject: Re: Heritage Policy

Kim will send.

Sent from my iPhone

On Jan 23, 2013, at 1:11 PM, "Ted Bernstein" <tbernstein@lifeinsuranceconcepts.com> wrote:

Robert Spallina

From: Jill Iantoni [jilliantoni@gmail.com]
Sent: Tuesday, January 29, 2013 3:39 PM
To: Robert Spallina
Subject: Re: Heritage Policy

Thanks

Jill Iantoni
iantoni_jill@ne.bah.com
Recruiting Services
Booz | Allen | Hamilton

On Jan 29, 2013, at 2:03 PM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:

The claim could be open for a long time but if it is cleared up then the money would be free from creditor claims. I do not know if there is a time frame for a pay out but if the proceeds are paid to the estate then your father's intent is not carried out.

From: Jill Iantoni [mailto:jilliantoni@gmail.com]
Sent: Tuesday, January 29, 2013 12:45 PM
To: Robert Spallina
Cc: Jill Iantoni
Subject: Re: Heritage Policy

Hi Robert,

If the money stays at the insurance company until the Bill S. claim is cleared up, can we then decide if ALL five are in agreement and if not, wouldn't that money be free from creditors at that point? Is there a time fram that the money has to leave the insurance company and be paid out?

Thanks.
Jill

On Tue, Jan 29, 2013 at 10:42 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

I am following up on our telephone conference from last week. Ted has contacted me about circulating a draft of the settlement agreement that would be presented to the court. Again, prior to preparing an agreement, I want to make sure that you are ALL in agreement that the proceeds do not come to the estate. I can tell you that your father planned his estate intending and believing that the five children would split the proceeds equally. We would like to see his wishes carried out and not have the proceeds paid to the estate where they could be subject to creditor claims prior to being split in equal shares among the grandchildren. Please advise if you are in agreement to move forward to petition the court for an order that would split the proceeds equally among the five of you.

From: Jill Iantoni [mailto:jilliantoni@gmail.com]
Sent: Thursday, January 24, 2013 3:12 PM
To: Robert Spallina
Cc: Jill Iantoni
Subject: Bernstein Estate 1/24/2013

Hi Robert,

thanks for todays call. Three questions.

One, if the 5 kids do NOT all agree that we should split the insurance proceeds amongst the 5 of us, what happens to the insurance proceeds? Can 4 out of 5 (or whatever the number is) over rule and move forward with the court hearing requesting that the insurance proceeds get paid out to the 5 children? If that is a NO, do the proceeds go directly to the estate? If the answer is the 10 grandchildren, will that be subject to creditors or would that money get paid out quickly (just as it would to the 5 of us) and avoid any potential law suit/creditors?

Two, if any of the 5 children have personal counsel representing them, are they allowed to have their bills sent to you/Estate for payment? If yes, is there a provision that the others can put in place that regulates the amount/or a provision that states it come out of their child(ren) portion of the estate?

Can you also clarify, that based on the conversation today, there is a chance that Bill S. case will be null and void and even if it is not, it is not towards Si Bernstein or his estate? Did I understand that correctly?

Thanks so much,

Jill

Robert Spallina

From: Robert Spallina
Sent: Tuesday, January 22, 2013 12:38 PM
To: 'Jill Iantoni'
Cc: Ted Bernstein; Lisa Friedstein; Pam Simon; Christine Yates; Kimberly Moran
Subject: RE: Heritage Policy

We can discuss on Thursday but yes and no

From: Jill Iantoni [mailto:jilliantoni@gmail.com]
Sent: Tuesday, January 22, 2013 12:36 PM
To: Robert Spallina
Cc: Ted Bernstein; Lisa Friedstein; Pam Simon; Christine Yates; Kimberly Moran
Subject: Re: Heritage Policy

That time works for me/Jill.

Robert, if the proceeds go to the estate/grandchildren's share, is there a chance that creditors could get this money AND would this amount of 1.7 Million put the estate over 5.1 Million, where it would be taxed?

Thanks
Jill

On Tue, Jan 22, 2013 at 11:16 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: [561-997-7008](tel:561-997-7008)

Facsimile: [561-997-7308](tel:561-997-7308)

E-mail: rspallina@tescherspallina.com

Robert Spallina

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]
Sent: Tuesday, January 22, 2013 1:34 PM
To: Robert Spallina; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: RE: Heritage Policy

Robert,

We are in the midst of arranging a phone call between myself, Pam, Eliot, Christine Yates, Jill and Lisa. We were hoping to have that call today but Christine cannot make it until Thursday. I think it is imperative for this call to occur prior to anything else being done, including your call with their legal department. This way, we can establish whether there is going to be an agreement among the 5 of us, or not.

I completely agree with your assessment below of the options available here.

Please feel free to call me to discuss.

Ted

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Tuesday, January 22, 2013 12:16 PM
To: Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: Heritage Policy

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

*** FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. ***

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

IN RE: Case No.: 502011CP000653XXXXSB

ESTATE OF SHIRLEY
BERNSTEIN,
Deceased.

Division: IY

_____ /

MOTION TO INTERVENE

COMES NOW William E. Stansbury (“Stansbury”), Creditor of the Estate of Simon Bernstein, the late husband of the decedent, SHIRLEY BERNSTEIN, and Plaintiff in a lawsuit against the Shirley Bernstein Trust, the beneficiary of the Estate of Shirley Bernstein, and pursuant to Florida Rule of Civil Procedure 1.230, serves this, his Motion to Intervene in this Estate and states as follows:

1. Stansbury is a Creditor of the Estate of Simon Bernstein, deceased husband of Shirley Bernstein.

2. All of the assets of the Estate of Shirley Bernstein have passed or will pass to the Shirley Bernstein Trust. The Personal Representatives of the Estate of Shirley Bernstein, the Trustees of the Shirley Bernstein Trust and the Personal Representatives of the Estate of Simon Bernstein are Defendants in Mr. Stansbury’s lawsuit against the Estate of Simon Bernstein and the Shirley Bernstein Trust. A copy of the Second Amended Complaint is attached hereto as Exhibit “A.”

3. The Shirley Bernstein Trust is the primary beneficiary of the Estate of Shirley Bernstein. There are allegations of misconduct on the part of the Personal Representatives of the Estate of Shirley Bernstein and who are also the Trustees of the Shirley Bernstein Trust. A Motion has been filed to remove the Personal Representatives of the Estate.

4. In accordance with Florida Rule of Civil Procedure 1.230:

Anyone claiming an interest in pending litigation made at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to and in recognition of the propriety of the main proceeding unless otherwise ordered by the Court in its discretion.

5. Asserting an interest in property that is part of the Probate Estate is sufficient grounds for the Court to allow intervention. *See, State Dep't of Legal Affairs v. Rains*, 654 So.2d 1254, 1255 (Fla. 2d DCA 1995). In the instant case, the assets that have been transferred or may be transferred from the Shirley Bernstein Estate to the Shirley Bernstein Trust are part of the lawsuit filed by proposed Intervenor, William E. Stansbury.

6. Count X of the Second Amended Complaint alleges a constructive trust on certain assets held by the Shirley Bernstein Trust. Indeed, one of the assets may have already been sold, to wit, a condominium on the ocean in Boca Raton.


WHEREFORE, proposed Intervenor, William E. Stansbury moves this Honorable Court for an Order allowing him to intervene in this matter.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to **Mark R. Manceri, Esq.**, Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives of the Estate of Simon Bernstein and Bernstein Family Realty*, 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to **Alan Rose, Esq.**, PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc, Arbitrage International Management, LLC and the Shirley Bernstein Trust*, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; and **Eliot Bernstein**, *pro se*, 2753 NW 34th Street, Boca Raton, FL 33434, at iviewit@iviewit.tv on this 17 day of October, 2013.

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

By: _____


Peter M. Feaman
Florida Bar No.: 0260347

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: 50 2012 CA 013933 MB AA

v.

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

SECOND AMENDED COMPLAINT

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

1. This is an action for money damages in excess of \$15,000, and for equitable relief.
2. Plaintiff (hereinafter referred to as "STANSBURY") is *sui juris*, and a resident of Palm Beach County, Florida.
3. Defendant TED S. BERNSTEIN ("TED BERNSTEIN"), is *sui juris*, and a resident of Palm Beach County, Florida.
4. SIMON L. BERNSTEIN ("SIMON BERNSTEIN") died on or about September 13, 2012, after the filing of the initial Complaint in this action. At the time of his death, SIMON BERNSTEIN was *sui juris*, and was a resident of Palm Beach County, Florida. Defendants

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

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

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

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

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

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

General Allegations

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

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

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

13. TED BERNSTEIN, acting on his behalf and on behalf of, and in concert with, SIMON BERNSTEIN, approached STANSBURY in 2003, urging STANSBURY to spearhead the marketing of a unique insurance concept, newly developed by a prominent law firm, which was designed for use in the financial and estate planning of high net worth individuals.

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

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

16. STANSBURY agreed to become an employee of LIC Holdings, Inc. and ARBITRAGE and agreed to a salary of 15% of net retained commissions received on all products sold, including renewals. STANSBURY at this time was responsible for, among other duties, calculating, on a monthly basis, the commissions due him in connection with new business generated in the current year and renewals on business generated in previous years.

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

18. Also in 2006, SIMON BERNSTEIN, acting on his behalf and on behalf of, and in concert with, TED BERNSTEIN, told STANSBURY that STANSBURY was being rewarded for his efforts and the explosive growth of the business, such that he would receive a 10% ownership interest in LIC Holdings, Inc. SIMON BERNSTEIN and TED BERNSTEIN, collectively, were majority shareholders while STANSBURY was a minority shareholder in LIC Holdings, Inc.

19. STANSBURY has sued both LIC Holdings and ARBITRAGE because the BERNSTEINS represented that his employment relationship was with LIC Holdings, the company in which he owned a 10% interest, but STANSBURY'S W-2 statements were issued by ARBITRAGE as his employer.

20. In February of 2008, SIMON BERNSTEIN, acting on his behalf and on behalf of, and in concert with TED BERNSTEIN, approached STANSBURY and told him his time would

be better spent building the business rather than performing monthly calculations of income. The plan proposed was that, rather than STANSBURY performing computations on a monthly basis as to how much should be paid to him based upon 15% of the net retained commissions derived from both new policies sold and renewals from previous years, the BERNSTEINS and STANSBURY all would forego monthly payouts and defer compensation until the end of 2008, when year-end computations could be made. It was represented that in December, year-end computations would be made and salaries would be paid in December 2008 or January of 2009. It was specifically represented to STANSBURY that:

a) neither SIMON BERNSTEIN, TED BERNSTEIN nor STANSBURY would take any compensation during fiscal year 2008 but rather they all would wait until the year-end accounting was performed in December of 2008 or January, 2009;

b) SIMON BERNSTEIN, TED BERNSTEIN, and STANSBURY would each be paid a minimum salary of \$1,000,000 at year end, and STANSBURY'S salary was to be applied against his earned commissions of 15%. Any compensation due STANSBURY over and above the \$1,000,000 would be paid as a distribution on his stock ownership interest in LIC Holdings.

21. In January of 2008, STANSBURY was paid \$420,018 for commissions earned on some 2007 sales. However, STANSBURY was not, and has never been, paid the commissions due him on sales in 2008 and thereafter, and he was not and has never been paid the renewal commissions due him on sales made in previous years that were paid to LIC Holdings or ARBITRAGE in 2008 and thereafter, other than a nominal payment of \$30,000 made in 2010.

22. When STANSBURY was not paid as agreed in late 2008/2009 and thereafter, SIMON BERNSTEIN and TED BERNSTEIN, on behalf of and in concert with each other, stated to STANSBURY that salary and ownership distributions due and owing to SIMON BERNSTEIN, TED BERNSTEIN and STANSBURY would be deferred to a future time. This

deferral of payment was represented to be important because, as a result of the virtual collapse of the capital lending markets in 2008, it was necessary to retain the funds in the corporate bank accounts to demonstrate to potential lenders the financial stability of the companies.

23. The false statements set forth in paragraphs 18 through 21, above, were made by SIMON BERNSTEIN and TED BERNSTEIN, in concert with each other, with knowledge of their falsity and with the intention of never to fulfilling such promises.

24. Despite the representations to STANSBURY set forth above to the contrary, SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders of LIC Holdings and ARBITRAGE, authorized LIC Holdings and/or ARBITRAGE to pay themselves \$3,756,229.00 and \$5,225,825.00, respectively, in 2008. Contrary to the representations made as set forth in paragraph 20, STANSBURY received no compensation for first year commissions and renewal commissions due him in 2008.

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

26. Beginning late in 2007 or early in 2008, and continuing through at least 2012, LIC Holdings and/or ARBITRAGE became the alter ego of SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders, in that they disregarded corporate structure and wrongfully diverted, converted and depleted corporate assets of LIC Holdings and ARBITRAGE for their own personal benefit and the benefit of Bernstein family trusts and other entities as more specifically set forth below. Those trusts have since invested some of these wrongfully diverted and converted corporate assets in real estate, also as more particularly set forth below. The wrongful action of SIMON BERNSTEIN and TED BERNSTEIN in diverting and converting corporate assets rendered LIC Holdings, and possibly ARBITRAGE, insolvent.

27. Throughout 2009, SIMON BERNSTEIN and TED BERNSTEIN continued to make false statements to STANSBURY to hide the fact that LIC Holdings and/or ARBITRAGE was their alter ego, in that they converted corporate property and corporate assets of LIC and/or ARBITRAGE for their own personal benefit in 2008, 2009 and thereafter, all to the exclusion and financial detriment of STANSBURY, all the while fraudulently representing to STANSBURY that no money was being paid as salary or distributions to SIMON BERNSTEIN, TED BERNSTEIN or STANSBURY because it was necessary to hold the funds in the corporate bank accounts to show to potential lenders the financial stability of the company.

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

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

30. In furtherance of their scheme to deprive STANSBURY of salary he had earned and shareholder distributions to which he was entitled, SIMON BERNSTEIN and TED BERNSTEIN intercepted mail addressed to STANSBURY, removing commission checks representing commissions due to STANSBURY, deposited the funds into their own accounts and otherwise converted the funds. SIMON BERNSTEIN and TED BERNSTEIN also opened STANSBURY's mail containing checks payable to him which were unrelated to them and the businesses.

31. In December, 2011 STANSBURY had been battling a painful and debilitating disease that could only be managed through the administration of potentially harmful

prescription medications. On December 22, 2011, the Defendants BERNSTEIN, with knowledge of STANSBURY's health issues and his debilitated condition, decided to take advantage of and deceive STANSBURY further. STANSBURY had for years been given K-1 statements reflecting his 10% ownership of LIC Holdings. At that time, TED BERNSTEIN told STANSBURY that the company accountant had discovered a potential significant taxable event which could cause STANSBURY, as one of the owners of LIC Holdings to pay taxes on phantom income. TED BERNSTEIN promised that if STANSBURY would sign a paper ceding his 10% interest in LIC Holdings, he would not have to pay the tax if in fact the tax was due. TED BERNSTEIN promised he would hold the paper, promising it would not become operative until STANSBURY and the Defendants BERNSTEIN discussed the situation further in the first quarter of 2012.

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

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

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

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

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

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

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

WHEREFORE, Plaintiff STANSBURY prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, LIC Holdings and ARBITRAGE, and for such orders of Court as will require such Defendants to provide STANSBURY with all records and copies of documents from January 1, 2006 to the present, in order to reveal his right to, and the amount of all sums: (a) received as commissions to which STANSBURY was entitled to a share; (b) due to STANSBURY, whether paid or not; (c) paid to STANSBURY, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the BERNSTEIN Defendants out of monies received as commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid, to be paid, or not to be paid to STANSBURY, together with an award of court costs and such other and further relief as the Court may deem just and proper.

COUNT II - BREACH OF ORAL CONTRACT

(Against LIC Holdings, Inc., ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN)

38. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 37, inclusive.

39. The arrangement between STANSBURY and Defendants, as described in paragraphs 13 through 28 above, constituted a contract between them.

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

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

42. However, Defendants breached their contract with STANSBURY by withholding from STANSBURY monies due him under the contract for renewal commissions earned in 2007 and commissions and renewal commissions earned in 2008 and thereafter.

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

44. STANSBURY has sued both LIC Holdings and ARBITRAGE because the BERNSTEINS represented that his employment relationship was with LIC Holdings, the company in which he owned a 10% interest, but STANSBURY'S W-2 statements were issued by ARBITRAGE as his employer.

45. SIMON BERNSTEIN and TED BERNSTEIN are personally liable, jointly and severally, for the material breach of the oral employment contract with STANSBURY as LIC Holdings and/or ARBITRAGE were the alter ego of SIMON BERNSTEIN and TED

BERNSTEIN in that the BERNSTEINS depleted corporate assets for their personal benefit by causing the corporation or corporations to make exorbitant and inappropriate distributions to themselves, family members, and BERNSTEIN family trusts and other entities, at the expense of corporate creditors such as STANSBURY, to wit:

a) SIMON BERNSTEIN and TED BERNSTEIN caused LIC Holdings and/or ARBITRAGE to pay to them at least \$3,756,229.00 and \$5,225,825.00, respectively, in fiscal 2008 during which time STANSBURY, other than the amount referenced in paragraph 21, was paid nothing;

b) According to Palm Beach County public records, in December of 2007 TED BERNSTEIN purchased a property at 880 Berkeley Street, Boca Raton, Florida 33487, for \$4,400,000;

c) According to Palm Beach County public records, on December 28, 2008, TED BERNSTEIN paid off the mortgage in the amount of \$486,400.00 on a property he owned at 15807 Menton Bay Court, Saturnia Isles, Delray Beach, Florida 33446;

d) According to Palm Beach County public records, SIMON BERNSTEIN paid off the mortgage on property he and his wife owned, and subsequently transferred by quitclaim deed on May 20, 2008 to the trustee of SHIRLEY'S TRUST, at 7020 Lions Head Lane, Boca Raton, Florida, 33496. The amount of the mortgage pay-off is unknown, but in 2013 the property was listed for sale at \$2,399,000;

e) According to Palm Beach County public records, on June 18, 2008, BERNSTEIN FAMILY REALTY, LLC acquired a property located at 2753 N.W. 34 Street, Boca Madera Unit 2, Boca Raton, Florida 33432 (the "Boca Madera Property). On July 8, 2008, SIMON BERNSTEIN loaned \$365,000 to BERNSTEIN FAMILY REALTY, LLC. The specific

purpose of the loan is unknown, but SIMON BERNSTEIN received a mortgage on the Boca Madera Property to secure the loan;

f) According to Palm Beach County public records, on May 20, 2008 SIMON BERNSTEIN and his wife transferred by quitclaim deed to the trustee of SHIRLEY'S TRUST a 4,220 square foot oceanfront condominium unit in a complex known as "The Aragon" in Boca Raton, located at 2494 South Ocean Boulevard, Boca Raton, Florida. The mortgage on that property was paid off on September 27, 2010.

g) The legal descriptions for each of the above referenced properties are attached hereto as Exhibit "B."

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

WHEREFORE, Plaintiff prays for judgment against SIMON BERNSTEIN and TED BERNSTEIN declaring that Defendants, LIC Holdings, Inc. and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, are or were the alter ego of SIMON BERNSTEIN and TED BERNSTEIN such that the corporate veil of LIC Holdings and/or ARBITRAGE should be pierced; for judgment against Defendants, LIC Holdings, Inc., ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, in excess of \$1,500,000.00 for the amounts due to Plaintiff under the terms of their contract, together with prejudgment and post-judgment interest; for his court costs herein expended and for such other relief as the Court may deem just and proper.

COUNT III - FRAUD IN THE INDUCEMENT- EMPLOYMENT AGREEMENT
(Against SIMON BERNSTEIN and TED BERNSTEIN)

47. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 46, inclusive.

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

49. The statements set forth in paragraphs 18 through 24, above, made by SIMON BERNSTEIN and TED BERNSTEIN, on behalf of and in concert with each other, and as officers and majority shareholders of LIC Holdings and ARBITRAGE, were false statements of material fact that SIMON BERNSTEIN and TED BERNSTEIN knew to be false at the time they were made, as SIMON BERNSTEIN and TED BERNSTEIN never intended to authorize LIC Holdings or ARBITRAGE to pay to STANSBURY the amounts due him as evidenced by the fact that the accountant for LIC Holdings and ARBITRAGE prepared financial worksheets for 2008 showing that the BERNSTEINS would receive compensation, but STANSBURY would not, for fiscal 2008, in direct contravention to their statements and promises to STANSBURY.

50. SIMON BERNSTEIN and TED BERNSTEIN intended for STANSBURY to rely on such statements that he would be ultimately be paid for his productivity in order to induce him into continuing his productive and revenue-generating sales activity as an employee of LIC Holding and/or ARBITRAGE and fraudulently created for STANSBURY the false expectation that STANSBURY would be paid as agreed.

51. STANSBURY in fact relied to his detriment on these false statements and was induced thereby to remain in his employment relationship with LIC Holdings and ARBITRAGE as he continued to sell, with the expectation of payment, products and generate revenue for LIC Holdings and/or ARBITRAGE until 2012, and was further induced not to pursue from LIC Holdings and/ARBITRAGE his right to payment of all amounts due him until after SIMON BERNSTEIN and TED BERNSTEIN had diverted and converted corporate assets for their personal benefit, rendering LIC Holdings, and possibly ARBITRAGE, insolvent.

52. STANSBURY was injured thereby as he was not and has not been compensated for his revenue-generating sales and other performance, and did not seek alternative employment, as a proximate result of his detrimental reliance on these false statements.

WHEREFORE, Plaintiff prays for judgment against Defendants SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, for damages in excess of \$1,500,000.00 together with prejudgment and post-judgment interest; for the imposition of an equitable lien and constructive trust on the Bernstein real estate described in paragraph 45 and Exhibit "B" as more fully set forth in Counts VII and VIII of this Second Amended Complaint; for his court costs herein expended; and for such other relief as the Court may deem just and proper. STANSBURY reserves the right to move to amend to request punitive damages in accordance with Florida Law.

**COUNT IV - FRAUD IN THE INDUCEMENT -
CEDING OF LIC HOLDINGS OWNERSHIP INTEREST
(Against Ted Bernstein and LIC Holdings, Inc.)**

53. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 52, inclusive.

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

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

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

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

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

COUNT V - CIVIL CONSPIRACY
(Against Simon Bernstein and Ted Bernstein)

58. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, and Counts III and IV, paragraphs 47 through 57, inclusive.

59. SIMON BERNSTEIN and TED BERNSTEIN, individually and as officers and majority shareholders of LIC Holdings and ARBITRAGE, knowingly, willfully, intentionally, and maliciously conspired, agreed, combined and confederated with each other to make fraudulent, false and misleading statements to STANSBURY intended to induce STANSBURY to continue his employment relationship with LIC Holdings and/or ARBITRAGE during 2008 and thereafter, without ever intending to authorize payment to STANSBURY for the amounts he was due, a relationship that generated substantial revenue for LIC Holdings and/or ARBITRAGE and, ultimately, SIMON BERNSTEIN and TED BERNSTEIN.

60. SIMON BERNSTEIN and TED BERNSTEIN, individually and as officers and majority shareholders of LIC Holdings and ARBITRAGE, knowingly, willfully, intentionally, and maliciously conspired, agreed, combined and confederated with each other to make fraudulent, false and misleading statements to STANSBURY intended to induce STANSBURY to delay pursuing his right to payment for all amounts due him until such time after SIMON BERNSTEIN and TED BERNSTEIN had converted and diverted corporate assets rendering LIC Holdings, and possibly ARBITRAGE, insolvent and uncollectible.

61. SIMON BERNSTEIN and TED BERNSTEIN, individually and as officers and majority shareholders of LIC Holdings and ARBITRAGE, knowingly, willfully, intentionally, and maliciously conspired, agreed, combined and confederated with each other to fraudulently induce STANSBURY, through false and misleading statements, to surrender and cede, without fair value payment, his 10% interest in LIC Holdings.

62. The numerous fraudulent, false and misleading statements made by SIMON BERNSTEIN and TED BERNSTEIN were all overt acts in furtherance of the conspiracy.

63. STANSBURY was injured thereby in that, as a proximate result of the conspiratorial conduct of SIMON BERNSTEIN and TED BERNSTEIN, he continued in his employment with LIC Holdings and/or ARBITRAGE, without payment of the compensation due him, he delayed pursuit of his right to collect the amounts due him, and ceded his 10% interest in LIC Holdings.

WHEREFORE, Plaintiff prays for judgment against Defendants, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, for damages in excess of \$1,500,000.00 together with prejudgment and post-judgment interest; for the imposition of an equitable lien and constructive trust on the Bernstein real estate described in paragraph 45 and Exhibit "B" as more fully set forth in Counts VII and VIII of this Second Amended Complaint;

for his court costs herein expended; and for such other relief as the Court may deem just and proper. STANSBURY reserves the right to move to amend to request punitive damages in accordance with Florida Law.

COUNT V - CIVIL THEFT
(Against ARBITRAGE INTERNATIONAL MARKETING, LLC)

64. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 63, inclusive.

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

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

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

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

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

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

COUNT VII - CONVERSION

70. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 63, inclusive.

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

WHEREFORE, Plaintiff prays for judgment for damages against Defendant, ABRITRAGE, SIMON BERNSTEIN, LIC Holdings, Inc. and TED BERNSTEIN, together with pre-judgment interest and post-judgment interest, court costs and any other relief this Court deems just and proper.

COUNT VIII - UNJUST ENRICHMENT
(LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN)

72. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, paragraphs 1 through 65, above.

73. STANSBURY conferred a benefit on LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN by continuing his employment relationship with LIC Holdings and/or ARBITRAGE as a direct and proximate result of the fraudulent representations of SIMON BERNSTEIN and TED BERNSTEIN, as more fully set forth in Count III herein.

74. STANSBURY's continued employment resulted in the generation of substantial revenue for LIC Holdings and/or ARBITRAGE, which was then diverted and converted by the BERNSTEINS for their own personal use to the financial detriment of STANSBURY.

75. LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders of LIC Holdings and ARBITRAGE, had knowledge of the benefit of STANSBURY's continued employment with LIC Holdings and/or ARBITRAGE as they fraudulently induced STANSBURY to continue his productive employment activity while never intending to pay him the compensation he was due.

76. LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN accepted the revenues generated by STANSBURY in his capacity as employee.

77. There exists no adequate remedy at law as the conduct of the BERNSTEINS in diverting and converting the corporate assets of LIC Holdings and/or ARBITRAGE has resulted in the insolvency of LIC Holdings and possibly ARBITRAGE.

78. The circumstances are such that it would be inequitable for LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN to retain the benefits of the STANSBURY's productive revenue-generating labor without paying fair value for it.

WHEREFORE, Plaintiff prays for judgment against Defendants, LIC Holdings, Inc., ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, in an amount in excess of \$1,500,000.00 which the evidence shows Plaintiff is entitled for the fair value of the services Plaintiff provided to LIC Holdings and ARBITRAGE , together with prejudgment and post-judgment interest; for his court costs herein expended and for such other relief as the Court may deem just and proper.

COUNT IX - EQUITABLE LIEN
(As to SIMON BERNSTEIN, TED BERNSTEIN, BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT)

79. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, the allegations set forth in paragraphs 1 through 34, paragraph 45 and Counts III and VII, above.

80. STANSBURY has alleged essential facts in his General Allegations and Count III that show that SIMON BERNSTEIN and TED BERNSTEIN committed fraud by fraudulently inducing STANSBURY to continue in an employment relationship that proved to be highly lucrative for SIMON BERNSTEIN and TED BERNSTEIN.

81. STANSBURY has alleged essential facts in his General Allegations and Count VII that show that SIMON BERNSTEIN and TED BERNSTEIN were unjustly enriched by STANSBURY's uncompensated continued employment with LIC Holdings and/or ARBITRAGE.

82. The conduct of the BERNSTEINS in depleting the corporate assets of LIC Holdings and ARBITRAGE for their personal benefit by causing the corporation or corporations to make exorbitant and inappropriate distributions to themselves, family members, and BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT, at the expense of corporate creditors such as STANSBURY, rendered LIC Holdings and possibly ARBITRAGE insolvent. Therefore STANSBURY has no adequate remedy at law.

83. BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT were the transferees of some of the corporate assets of LIC Holdings and/or

ARBITRAGE wrongfully diverted and converted by the BERNSTEIN and thus are proper parties to this action and this Count.

84. An equitable lien on the real estate described in paragraph 45 herein and Exhibit “B” attached hereto is justified as an equitable remedy for the wrongful conduct of the BERNSTEINS.

WHEREFORE, Plaintiff prays for the Court to declare and establish an equitable lien in favor of Plaintiff in an amount equal to the funds wrongfully diverted, on the property described in paragraph 45 and Exhibit “B” attached hereto, and on all other assets of the Defendants named in this Count IX, or third parties as yet unknown, which assets have been purchased wholly or in part, improved or benefitted by the diverted funds due Plaintiff, together with his costs herein expended, and such other and further relief as this Court may deem just and proper.

COUNT X - CONSTRUCTIVE TRUST
(As to SIMON BERNSTEIN, TED BERNSTEIN, BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT)

85. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 79 through 84 above.


WHEREFORE, Plaintiff prays for the Court to declare and establish a constructive trust in favor of Plaintiff on the property described in paragraph 45 and Exhibit “B” attached hereto in an amount equal to the funds wrongfully diverted and on all assets of Defendants or third parties as yet unknown, which assets have been purchased wholly or partly, improved or mortgaged by the diversion of said funds due Plaintiff. Plaintiff further prays for an award of court costs and such other and further relief as the Court may deem just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at mrmlaw@comcast.net; and mrmlaw1@gmail.com to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives*, 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at arose@pm-law.com and mchandler@pm-law.com to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc. and Arbitrage International Management, LLC*, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 3 day of September, 2013.

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

By: _____


Peter M. Feaman
Florida Bar No. 0260347

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of
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Nancy E. Guffey, Esq.
Of Counsel

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June 20, 2012

Via Certified Mail, Return Receipt Requested

PERSONAL and CONFIDENTIAL

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

Re: William (Bill) Stansbury

Dear Mr. Bernstein:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Unauthorized interception of U.S. Mail.

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

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

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

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

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

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

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

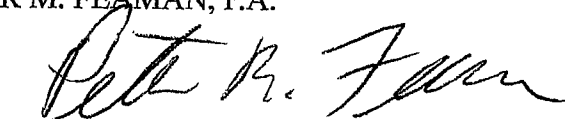
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Please have your legal counsel contact us within ten (10) days. Should we fail to receive a response within that time, Mr. Stansbury will take legal action to protect his rights and interests.

Very truly yours,

PETER M. FEAMAN, P.A.

By:



Peter M. Feaman

PMF/mk

cc: William Stansbury

CC Riggs (e-mail)

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>[Handwritten Signature]</i></p> <p>B. Received by (Printed Name) C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p>Mr. Ted Bernstein, Pres. LIC Holdings, Inc. 950 Peninsula Corp. Cir. Suite 3010 Boca Raton, FL 33487</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <hr/> <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <hr/> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7011 0110 0000 6015 5239</p>

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

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June 20, 2012

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Mr. Ted Bernstein, President
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Boca Raton, FL 33487

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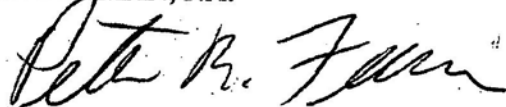
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Very truly yours,

PETER M. FEAMAN, P.A.

By:


Peter M. Feaman

PMF/mk

cc: William Stansbury

cc: Rigas (e-mail)

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

TED BERNSTEIN, AS TRUSTEE
OF THE SHIRLEY BERNSTEIN TRUST
AGREEMENT DATED MAY 20, 2008,
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

_____/

Other Applicable Related Cases this Disqualification of Circuit Judge John L. Phillips, Should
Apply to:

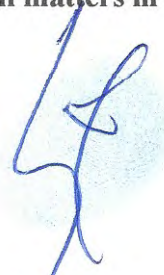
Case # 502012CP004391XXXXSB – Simon Bernstein Estate
Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
Case # 502014CP003698XXXXSB – Shirley Trust Construction
Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case
OLD CASE # 502014CA014637XXXXMB

_____/

**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.**



1. Judge John Phillips is a circuit judge in the 15th Judicial Circuit Probate Division and therefore this rule applies.

Rule 2.330 (b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.

2. Petitioner, a party to the case moves for mandatory disqualification on behalf of himself and his three minor children and to otherwise disqualify Judge Phillips provided by rules, statute and by the Code of Judicial Conduct.

3. Judge Phillips is alleged to have violated Statutes and Court and Judicial Rules related to, including but not limited to;

a. Fraud on the Court and by the Court –

This Disqualification shall Reset the case, render void all relevant Orders and Decisions which shall be vacated, all OFFICERS and FIDUCIARIES presently appointed by such Judge shall be replaced and other relief as is just and proper;

b. Continued Fraud in the Court;

c. Continued Fraud by the Court;

d. Continued Obstruction of Justice through

Denial of Due Process;

e. Aiding and Abetting Court Appointed Fiduciaries and Court Appointed Attorneys at Law in covering up Fraud on the Court and Fraud by the Court and continuing Fraud on the Court and Fraud on the Beneficiaries;

f. Violations of Probate Statutes and Rules ;

g. Violations of Judicial Cannons - Judge

Phillips has violated the following Judicial Canons, including but not limited to:

1 of 30

Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary

4. Judge Phillips has failed to Uphold the Integrity and Independence of the Judiciary as further set forth herein.

Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities

5. Judge Phillips express and direct conduct, statement and activities in the case have created the Appearance of Impropriety in violation of this Canon as set further set forth herein.

Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

6. Judge Phillips was required to mandatorily disqualify upon the filing of the Disqualification Motion¹ filed by Petitioner on December 04, 2015 for all the ground set forth therein and should have already Disqualified on his own motion sua sponte prior to Petitioner filing said written motion as it has already been alleged by Petitioner and suggested by Creditor attorney Peter Feaman that the transfer of the cases to Phillips Court was improperly interfered with post recusal by the former Judge Martin Colin as further set forth herein and set forth in the All Writs Petition² filed with the Florida Supreme Court in these cases and then Transferred to the 4th DCA³

¹ December 04, 2015 Disqualification 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>

and
Corrections @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

² See All Writ Filed with the Florida Supreme Court @

2 of 30



7. Any competent Judge acting impartially knew or should have known prior Judge Martin Colin was a material fact witness to the multiple frauds occurring in his Court specifically involving Fiduciaries Robert Spallina, Donald Tescher, the Tescher Spallina law firm, and at minimum Ted Bernstein also purporting to act in an alleged fiduciary capacity specifically involving the very case, the Shirley Estate and Trust, which Judge Phillips illegally set for Trial on Sept. 15, 2015 acting in a case Not Noticed for Case Management by the current PR of the Simon Bernstein Estate Brian O'Connell and Joy Foglietta of the Ciklin Lubitz & O'Connell law firm.
8. Thus, Judge Phillips should now be Disqualified further for failing to mandatorily Disqualify previously and knowing he is acting outside his jurisdiction and acting in the clear absence of jurisdiction.
9. Had Judge Phillips not been immediately disqualified due to his being a witness to relevant matters in the improper Transfer and steering of the case to the North Branch where it ended up with Judge Coates who not only was a Proskauer Rose partner (Proskauer also a Counter Defendant in these matters) but turned out he worked in the exact office across the hall from Petitioner where some of the initial frauds and thefts occurred of IP that should be a part of the Estates and Trust values for Shirley and Simon Bernstein, the only proper initial action for Judge Phillips would have been to freeze and enjoin all Court files from the Colin and French and Main Branch courts, freeze and enjoin all Estate and Trust accounts, freeze and enjoin all evidence and

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See Amended All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

³ Transfer Order Florida Supreme Court to Fourth District Court of Appeals @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20151013%20Supreme%20Court%20Florida%20Transfer%20Probate%20Trust%20Cases%20to%20Fourth%20District%20Court.pdf>

records, documents, computer files and all alleged “Originals” and other instruments which instead are still in the hands of the prior fiduciaries Spallina and Tescher who committed some of the original frauds in Judge Colin’s court, then Phillips should have further moved to invalidate the entire proceedings held under Colin and remove all Fiduciaries, Officers of the Court and attorneys involved for having committed FRAUD UPON THE COURT by OFFICERS OF THE COURT who submitted fraudulent documents to the court and used a deceased party to close the Estate of his deceased wife in a bizarre fraud lasting several months after Simon Bernstein died, where he was used post mortem to posit documents with the court to close an estate.

10. A simple, basic, non-octopus wrangling competent reading and review of the Case files assigned to Judge Phillips by the improper Transfer should have revealed to any marginally competent independent and neutral jurist acting consistent with US Constitutional due process that Ted Bernstein had to know of the frauds committed by the fiduciaries Tescher Spallina in Shirley’s Estate, the counsel he retained to represent him in his fiducial capacities before Judge Colin since Ted Bernstein had NOT signed any Waiver in Shirley’s Estate prior to April 9, 2012 and thus Ted Bernstein knew and had to know as early as 2012 or at minimum May of 2013 by Petitioners May 6, 2013 Emergency Filing that ANY document posited by the TESCHER SPALLINA law firm to the contrary to close Shirley’s Estate such as the April 9, 2012 Sworn Petition to Discharge allegedly signed by Simon Bernstein before Robert Spallina was fraud upon the Court, fraud against the Estate of Shirley Bernstein, and fraud involving the use of his father Simon Bernstein prior to his passing and after his passing.

11. A competent impartial judge who is neutral and independent and acting consistent with US Constitutional Due process knew and had to know that in addition to actual Frauds Upon the Court and likely involving the Court, these matters also raised the important issue of whether

Simon Bernstein himself was being unduly influenced and improperly pressured since there would be no reason for Simon Bernstein to sign an April 9, 2012 Petition to Discharge knowing this was fraudulent since a phone call to discuss matters with the Beneficiaries did not even occur until May of 2012 and some of the beneficiaries did not even sign the Waiver until after Simon passed in Sept. of 2012 and that Ted Bernstein, instead of securing ALL files and evidence away from TESCHER and SPALLINA immediately as a proper fiduciary and seeking forensic investigation of key and critical documents and instruments instead continued along and became part of the fraud acting together with TESCHER and SPALLINA and where TED and his counsel Alan Rose, a material fact witness, continued to work with and interact with former fiduciaries SPALLINA and TESCHER even into and during the illegal trial of Dec. 15, 2015. Having failed to properly act in all these matters, Judge Phillips has demonstrated bias, prejudice, lack of impartiality, complete abdication of judicial responsibilities and obligations, intentionally and knowingly denied due process, aided and abetted the crimes using the machinery of the courts and furthering the fraud using the machinery of the courts and thus must mandatorily be disqualified at this time.

12. A minimally and marginally competent impartial judge who is neutral and independent and acting consistent with US Constitutional Due process knew and had to know from even the most minimally marginally competent review of the Transcript of Hearings before Judge Colin on Sept. 13, 2013, that instead, not only did TED BERNSTEIN purporting to Act as Fiduciary “stay silent” on the issues of FRAUD in the Court despite having to possess actual knowledge of these frauds, but further that Judge Martin Colin immersed himself deeper as material and fact witness on such date by including but not limited to: a) failing to get any clear answers out of Spallina specifically including how and who filed the fraudulent instruments in the court; b) failing to get

admissions from Ted Bernstein on his actual knowledge that these matters had to be fraudulent; c) failing to ask Ted Bernstein and Spallina that if Ted was legally supposed to be the Trustee and PR of Shirley's Trust and Estate after Simon passed, why Spallina and Tescher simply didn't have Ted Bernstein act to file proper documents to close the Estate but instead carried on an elaborate fraud scheme; d) how Ted Bernstein could have been permitted to act to illegally sell off multi-million dollar properties such as Shirley's Condo when involved in the nucleus of fraud with TESCHER and SPALLINA; and more. Judge John Phillips having knowingly and intentionally failed in all these matters must be further mandatorily disqualified and is acting outside his jurisdiction and in the clear absence of jurisdiction by instead aiding and abetting ongoing frauds in the machinery of the Palm Beach courts by the fraudulent and illegal orchestration of an alleged Trial in his own Court on Dec. 15, 2015.

13. Judge John L. Phillips is clearly acting knowingly and intentionally outside his jurisdiction knowingly violating due process and further aiding and abetting fraud upon the Courts by the Courts by acting in concert with Alan Rose on Dec. 15, 2015 knowing Alan Rose should have been disqualified as a material fact witness for his magical sudden possession and finding of various "Original" documents and instruments herein being intertwined in the chain of custody but instead permitting Alan Rose to fraudulently hand Judge Phillips a proposed Order on Dec. 15, 2015 without permitting Petitioner to review which contained a proposed Judicial Finding by Judge Phillips that Ted Bernstein is not involved in the frauds when both Alan Rose and Judge Phillips have actual and direct knowledge that the Dec. 15, 2015 Trial which was illegally scheduled anyway was further Not Noticed to hear such matters of Ted Bernstein thus further constituting knowing, intentional and purposeful Due process violations mandating Judge

Phillips immediate Disqualification as further evidenced by the attached Order allegedly signed by Phillips on Dec. 16, 2015⁴,

14. That Ted Bernstein, acting as alleged fiduciary in Shirley's Estate and Trusts and his elaborate team of lawyers were all involved in the Frauds committed and the attorneys who committed the crimes were retained by Ted as his counsel and were his business associates and who committed the frauds to benefit Ted's family directly to the detriment of other beneficiaries. Yet, Phillips allowed Ted and his replacement counsel Alan Rose, as Tescher and Spallina resigned after admitting to fraud, to continue and attempt to cover up and continue the crimes in the court as did Colin.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

15. Judge Phillips has not maintained professional competence in hearing the Estate and Trust matters of Simon and Shirley Bernstein as further set forth herein and as shown by the facts alleged in the entirety of this document.

D. Disciplinary Responsibilities.

(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.

16. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another judge, Martin Colin, has committed a violation of the Judicial Cannons and has failed to take appropriate action in regards to the fraud in and on his court that has already been proven, committed by Fiduciaries and Attorneys at Law involved in these matters, which has

⁴ December 16, 2015 Phillips Order

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151222%20Received%20US%20Mail%20Entered%20by%20Phillips%20Dec%2016%202015%20Order%20Final%20Judgment%20on%20Count%20II%20of%20the%20Amended%20Complaint.pdf>

A blue ink signature is written over a circular stamp that contains the text "7 of 30".

material impact on these matters before Judge Phillips now. Further, Judge Phillips ability to hear the case forward is now precluded for all these reasons and due to improper transfer of the case post recusal by Judge Colin through interference in the transfer process as petitioned in the All Writs Petition pending before the Florida Supreme Court. Judge Phillips had such knowledge as of Dec. 15th, 2015 but instead of properly acting to Disqualify himself and have an illegally scheduled Trial “continued” / “stayed”, acted in disregard of his judicial obligations mandating disqualification at this time.

(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.

17. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another lawyer, Alan B. Rose, Esq. has committed a violation of the Rules Regulating the Florida Bar and has failed to take appropriate action. Judge Phillips was made aware prior to an illegally scheduled Trial for Dec. 15, 2015 both by Letter of Attorney Candice Schwager filing a Notice of Abatement and seeking a Continuance to enter the case Pro Hac Vice⁵ that Attorney Alan B. Rose should be Disqualified under the Witness Advocate Rule of Florida as Alan B. Rose is a material fact Witness in the chain of custody of various “original” Instruments, Trusts, documents who should have Disqualified before and during Trial.
18. Judge Phillips received similar information by a Motion filed by Petitioner to seek a Continuance and Stay⁶ on similar grounds that the attorney sought to enter the case pro hac vice and that Alan Rose was a material fact witness in the chain of custody and possession of critical original

⁵ Attorney Pro Hac Vice Filing

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20ECF%20Filing%20Stamped%20Copy.pdf>

⁶ December 15, 2015 Motion to Stay and Continue Judge Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20ESIGNED%20Phillips%20Trial%20Stay%20ECF%20STAMPED%20COPY.pdf>

documents and instruments relating to the Trial and overall case. Judge Phillips knew and should have known Disqualification of attorney Rose was necessary but disregarded all these matters on Dec. 15, 2015 despite himself who should have already mandatorily disqualified.

19. As shown in the prior Disqualification motion, Judge Phillips knew and should have known from information in hearings and in the case pleadings that another Attorney at Law and new Personal Representative of the Estate of Simon Bernstein made pleadings to the Court that Ted Bernstein, counseled by Alan B. Rose, Esq. is acting as a fiduciary when he is not qualified under the terms of the trust he is operating under and therefore is not a “valid” trustee⁷. The terms of the trust preclude a successor that is related to the issuer of the trust, Simon Bernstein and Ted is also considered predeceased in the dispositive documents for all purposes of the trust and dispositions made thereunder, yet despite knowing this, Alan B. Rose, Esq. continues to file pleadings on behalf of a client he knows is not valid and Judge Phillips refuses to address the issue of Alan Rose’s client’s validity as Trustee first and foremost. Despite this claim coming from a Florida Bar attorney, Brian O’Connell, Esq., Judge Phillips has chosen to allow Rose and Ted Bernstein to continue to plead fraudulently to the Court without first determining the veracity of O’Connell’s claims and Judge Phillips further acted on Dec. 15, 2015 continuing the frauds in the court and knowingly and intentionally disregarding judicial obligations.

20. That Judge Phillips has information that Alan B. Rose, Esq. showing a substantial likelihood that he is acting improperly in violation of the Rules Regulating the Florida Bar with his client Ted Bernstein in an Illinois District Court case, acting in conflict and with adverse interest to parties in these matters and where this information of the improper conduct was identified by Attorney

⁷ O’Connell Pleading Affirmative Defense 1 - Page 7

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

at Law Peter Feaman in a letter to the PR O'Connell⁸ and submitted to the Colin Court by Eliot Bernstein. Yet, without first determining these matters first Judge Phillips has ignored this information and moved forward with Alan B. Rose and Ted Bernstein as fiduciaries and counsel without questioning the merits of the claims by licensed Florida Bar members O'Connell or Feaman.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

21. Judge Phillips impartiality is reasonably questioned as set forth herein.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding

22. Judge Phillips showed continuing improper bias and prejudice on Dec. 15, 2015 by continuing to act outside and in the clear absence of jurisdiction knowing he was mandatorily disqualified yet continued to act on Dec. 15, 2015 showing further bias and prejudice.

23. Judge Phillips showed continuing improper bias and prejudice on Dec. 15, 2015 by knowingly and intentionally mis-stating the applicable law on Dec. 15, 2015 in court to a pro se party by declaring a Motion filed by Petitioner as untimely which was seeking a Continuance of the Trial so an attorney Candice Schwager could be admitted pro hac vice and represent three minor children and to the extent not conflicted, my interests before the Court and at a properly scheduled trial as well. Judge Phillips actually knew that Florida Rules of Civil Procedure

⁸ August 29, 2014 Letter Feaman to O'Connell

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>

and

December 16, 2014 Feaman to O'Connell Letter

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>

RULE 1.460 CONTINUANCES allows said motion to be made at Trial and Petitioner's motion was filed before the Trial. Thus, Judge Phillips intentionally and actually knew he was clearly misstating and misapplying the law showing further bias and prejudice against the Petitioner.

24. Judge Phillips showed further actual bias and prejudice on Dec. 15, 2015 knowing he was already mandatorily Disqualified from conducting the trial and acting in these cases by denying proper time for proper witnesses at the trial, Traci Kratish, Kimberly Moran, Donald Tescher (who was seen outside the Courthouse but did not testify despite being one of the Estate Planners,) and other witnesses to the alleged documents and signatures by not permitting Petitioner to adequately review the alleged Exhibits Evidence being placed into the trial or having a proper time to object and by providing Petitioner a mere five minutes to "write down" a Disqualification at the end of the alleged "trial" and further denying Petitioner an opportunity to inspect a proposed "Order" submitted by Alan Rose and denying proper inspection of original instruments, denying the ability to even see a "flow chart" being used by Alan Rose, denying a continuance and counsel to minor children, and continuing knowing the trial was improperly scheduled in a case Not noticed to be heard on Sept. 15, 2015 and denying Petitioner a fair opportunity to be heard before the trial or during the alleged trial.
25. Phillips then scheduled and held a validity hearing where the star witness was a FELON, Spallina⁹ and he was attesting to signatures of another FELON Moran on the dispositive

⁹ See, SEC Complaint and "SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant"

<http://www.sec.gov/news/pressrelease/2015-213.html>

and Government Complaint @ <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

and Consent Orders

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tescher%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

and



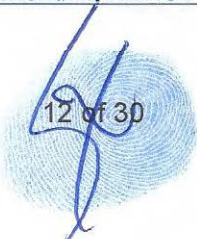
documents and where both have unclean hands in these matters admitting they committed Fraud, Fraud on the Court and Fraud on the Beneficiaries in the Simon and Shirley Bernstein Estates and Trusts and yet Phillips rules to validate the documents based on Spallina's testimony alone and cuts Eliot off repeatedly, sustaining him when asking questions to probe the crimes of Spallina claiming they are not relevant, despite relevance to his character and testimony¹⁰.

26. At the hearing Spallina admitted he was under a consent order with the SEC for insider trading and had pled guilty to a felony in an unrelated matter. Spallina further admitted that he had committed a Fraud Upon the Court when he closed the Estate of Shirley with a dead Personal Representative her deceased husband Simon, submitting fraudulent documents to close the estate. Spallina further admitted that he had fraudulently created a Shirley Trust document and then mailed it to an attorney at law, Christine Yates, Esq. who was representing Eliot's minor children, as part of a fraud that benefited his client Ted Bernstein at the expense of his other client, the Estate of Simon and the beneficiaries thereunder.

27. While "doodling" through the Validity hearing, Phillips ignored the confessions to felony crimes in the matter by Spallina, who he refers to as "Bob" and his partner Tescher, who he calls "Don" and instead focused on attacking Candice Bernstein, who was served as a party in the Validity hearing service list prepared by Rose for her handing a document to Eliot and asking that Rose turn a display graphic so everyone could see, for this she was sent out of the hearing area and into the gallery where she was threatened with contempt if she made a sound. Candice Bernstein

Bernstein Emergency Petition before in Florida Probate May 2013 @
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Original%20Large.pdf>

¹⁰ Article Regarding Unclean Hands and Fraud on the Court
[@http://www.schnader.com/files/publication/e3f5e3d7-1f77-450d-80ff-26866b4aa2c4/preview/publicationattachment/514594c4-8f88-475a-b1d9-1517f201b542/ftd-stern.pdf](http://www.schnader.com/files/publication/e3f5e3d7-1f77-450d-80ff-26866b4aa2c4/preview/publicationattachment/514594c4-8f88-475a-b1d9-1517f201b542/ftd-stern.pdf)



being the guardian of her minor children aids Eliot with his exhibits and witness questions and without her Eliot was lost at the Trial and could not find exhibits, etc. timely, as the record reflects.

28. That despite learning that an Officer of the Court had committed frauds upon the court and the beneficiaries and having admission at the trial, Judge Phillips has done nothing to notify the proper authorities as required by his Judicial Cannons and law or taken any actions to remedy the crimes. For instance, the Court, having learned of the Fraud on the Court should have then ordered all records submitted by those committing Fraud on the Court to be forensically analyzed by an expert to make sure that the documents and records in the Court are not further fraudulent and instead allowed the trustee Ted to shift the burden of investigating and forensically examining the documents to Eliot. The Court should also have ordered all parties to turn over their records, assets, etc. to the Court and provided all records of those parties and the Court to the aggrieved beneficiaries for inspection and transparency. Judge Phillips thus continued to act on Dec. 15, 2015 in the prejudicial, biased, lack of impartiality style that he had on Sept. 15, 2015 the date the “trial” was illegally scheduled and thus mandatorily must be disqualified at this time.

29. One of the facts from the prior Disqualification motion which Judge Phillips knew and knows was legally sufficient and mandatorily disqualified him from acting is contained in an All Writs Petition filed with the Florida Supreme Court and then transferred to the 4th DCA, is if Judge Martin Colin improperly steered the case POST recusal by Judge Shopping the Case and interfering with the transfer first to Judge Coates (who Sua Sponte recused after admitting conflict that should have been cleared prior to even taking the case as his former law firm is a Counter Defendant in these matters and Judge Coates had an office as a Partner in the Proskauer

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Rose law firm in the same Boca Raton, Fl location where fraud by his former law firm occurred against Petitioner) and with the intended ultimate steer to Judge Phillips after reasonably knowing Coates would either be disqualified by parties involved or recuse voluntarily, after gaining access and control to the prior Colin courts documents. Therefore, it will be instrumental for Petitioner to receive the Court files regarding the matters as requested in the All Writs to then question both Coates and Phillips as material witnesses about these disputed evidentiary facts regarding their interactions with Colin prior to transfer.

30. Until Phillips knew what the decision from the Florida Supreme Court would be regarding the voiding of the transfer due to the factual interference by Colin in moving the case as a necessary and material fact witness who should have been Disqualified, Judge Phillips only action as a knowing material and fact witness to the events surrounding the improper transfer was to wait the Florida Supreme Court Ruling.
31. Yet, without regard to the All Writs pending and the answer to the improper transfer resolved, he began to deliberate on the matters, acting as he claimed in hearings to be “stupid.” In fact, if it is found that the transfer was improper, despite if he was knowledgeable or not of the impropriety by Colin or involved in such act, he would still have had to disqualify because it would lead to an inescapable APPEARANCE OF IMPROPRIETY that could only be resolved by his becoming a witness and being questioned as such since due to the reasonable appearance and chance that the improper transfer by Colin to the North Branch was with criminal intent, Phillips certainly will be a suspect in criminal complaints filed against Colin and others.
32. Judge Phillips has expressed personal bias for a party to the proceeding in professing his love for Judge Martin Colin who is alleged to have participated in a fraud in and on the court when he stated on the record:


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THE COURT: Okay. Great. This is the way
15 I intend to proceed -- I love Marty Colin.
16 This guy is a judge that's been around a long
17 time. I know him. He's an entirely different
18 guy than me.

33. Judge Phillips professed “love” for Judge Martin Colin on the Record who is a necessary and material fact witness before the Court creates substantial bias, prejudice and reasonable fear that Petitioner can not get a fair trial before Judge Phillips as further set forth herein and Judge Phillips must now be mandatorily disqualified as Judge Phillips further knew Judge Colin’s Orders all should have been voided or at least should have been a material fact witness subject to discovery and deposition before any such “trial” on Dec. 15, 2015 yet Judge Phillips continued to act on Dec. 15, 2015 knowing he should be mandatorily disqualified and thus must now be disqualified.
34. The bias, prejudice, appearance of impropriety and reasonable fear that Petitioner can not receive a fair trial before Judge Phillips is particularly egregious in light of the fact that Judge Phillips never even permitted Petitioner to be heard about this pending Petition for All Writs and Stay and Injunctive relief despite 2 assurances at the prior conference that this would occur and further egregious as the Record shows each time Petitioner did attempt to be heard he was cut-off by Judge Phillips without being fully or fairly heard.
35. Judge Phillips also spoke to his personal knowledge of the attorneys at law involved and how he knew them well and did not know Petitioner Eliot Bernstein and this also seemed prejudicial, since attorneys at law in the cases have already committed fraudulent acts, including fraud on the court.

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:


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(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

36. Judge Phillips is a material witness in the proceeding as it is already alleged that he was a participant in the improper steering of the case, knowingly or unknowingly his involvement must be questioned to determine if Ex Parte conversations took place with Judge Colin prior to the transfer as further defined herein. Judge Phillips continues to know he is a material fact witness and was on Dec. 15, 2015 and remains as such and thus must be mandatorily disqualified.

**Rule 2.330 (c) Motion.
A motion to disqualify shall:
(1) be in writing.**

37. This Motion is in writing.

**Rule 2.330 (c) Motion
(2) allege specifically the facts and reasons upon which the movant relies as the grounds for disqualification.**

38. This Motion specifically alleges specific facts and reasons upon which the movant relies as the grounds for disqualification.

**Rule 2.330 (c) Motion
(3) be sworn to by the party by signing the motion under oath or by a separate affidavit.**

39. Petitioner is acting Pro Se and has no attorney and therefore Petitioner has sworn to and signed this Motion for Disqualification under oath and before a notary as required by Rule 2.330 (c)

**Rule 2.330 (c) Motion
(4) include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions.**

40. There has been no previously granted motions to disqualify in this case filed under Rule 2.330

**Rule 2.330 (c) Motion
(4) The attorney for the party shall also separately certify that the motion and the client's statements are made in good faith. In addition to filing with the clerk, the movant shall immediately**

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serve a copy of the motion on the subject judge as set forth in
Florida Rule of Florida Rule of Civil Procedure 1.080.

41. Petitioner movant is acting Pro Se and thus has no attorney at law representing him and Pro Se
Petitioner has certified that the motion and the statements made herein are made in good faith.
That Service is proper to Judge Phillips under Rule 1.080.

Rule 2.330 (d) Grounds.

A motion to disqualify shall show:

**(1) that the party fears that he or she will not receive a fair trial
or hearing because of specifically described prejudice or bias of
the judge.**

42. That Petitioner asserts for all the reasons and facts alleged herein and as set out below and
further in the entirety of the document incorporated herein that he will not and has not already
received a fair trial or hearing and that Judge Phillips because of the following specifically
described prejudices and biases under Rule 2.330 (d) should be mandatorily disqualified for the
reasons that follow:

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office
Impartially and Diligently.**

B. Adjudicative Responsibilities.

**(1) A judge shall hear and decide matters assigned to the judge
except those in which disqualification is required.**

E. Disqualification.

**(1) A judge shall disqualify himself or herself in a proceeding in
which the judge's impartiality might reasonably be questioned,
including but not limited to instances where:**

**(a) the judge has a personal bias or prejudice concerning a party
or a party's lawyer, or personal knowledge of disputed
evidentiary facts concerning the proceeding**

**(d) the judge or the judge's spouse, or a person within the third
degree of relationship to either of them, or the spouse of such a
person:**

**(iv) is to the judge's knowledge likely to be a material witness in
the proceeding;**

**CANON 3B(1) - ...A judge shall hear and decide matters assigned to the judge except those
in which disqualification is required.**

43. Judge Phillips knew and actually knows he was acting outside his jurisdiction on Dec. 15, 2015 as he knew a legally sufficient mandatory disqualification motion was filed in writing before Trial and he should have disqualified.
44. Judge Phillips knows he was intentionally misstating and improperly applying the law on Motions for Continuance which are allowed to be made at trial and yet Judge Phillips denied as untimely.
45. Judge Phillips knows this is a “complex” case and should have been treated as a complex case under the Case Management rules but instead illegally scheduled a trial in a case not noticed for Trial and then carried on with an illegal trial on Dec. 15, 2015.
46. Judge Phillips knew on Dec. 15, 2015 that not only was an improper trial scheduled and he should be mandatorily disqualified, but further knew no possible fair trial could have been conducted in a day, without determination of proper discovery in advance and without expert witnesses and without counsel for my minor children all being matters which Judge Phillips actually knows he illegally and improperly denied being heard by Petitioner on Sept. 15, 2015, thus Phillips actually knowing he was denying Petitioner due process in violation of the US Constitution and Florida State Constitution and violation of his role and functions as a Judge.
47. In all of these manners, Judge Phillips acted with partiality, prejudice and bias creating a reasonable fear that I would not receive a fair trial and did not and that the trial itself was a sham and fraud.
48. Judge Phillips knew that he, himself is and was a material witness since it is alleged in the All Writ Petition in these matters currently before the Supreme Court of Florida that Judge Coates was never the intended party Judge Colin interfered post recusal to steer the case to, allegedly knowing of Conflict with Coates due to his being a former Proskauer Rose partner and that

Proskauer was a counter defendant in these matters and knowing the case would be moved to a new Judge who was unknown at the time. After Coates first hearing where he Sua Sponte recused himself on record, the case was transferred to Judge Phillips.

49. Where it is alleged based on information and belief that the interference by Colin was to move the case to Phillips, despite whether it is true, it can only be proven after Petitioner has access to the Court record from Colin, Coates and Phillips and Petitioner has the right to question each party under deposition or otherwise to ascertain their involvement, Judge Phillips new becomes a material and fact witness to a major allegation of fraud on the court in the transfer by Colin and to answer if he had any Ex Parte communications with Judge Coates or Judges Colin or any other party prior to taking the cases that Colin is alleged to have improperly steered to the North District.

In the fact that this question can be reasonably asked of Judge Phillips due to the improper post recusal steering of the case by Colin, Judge Phillips should on his own initiative have then disqualified himself as a witness, allowed a completely independent judge to be picked properly and thus from the start Judge Phillips could not hear the matters further without first addressing this most serious issue of the transfer.

50. That even if the Supreme Court of Florida or Appellate Court were to now attempt to permit such transfer, the fact that Phillips acted first, prior to any rulings, remains cause for his disqualification.

CANON 3E(1) - ...A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.

51. Judge Phillips must mandatorily be disqualified as his impartiality is reasonably questioned on multiple grounds as further set forth herein throughout this document including but not limited to his "pre-judging" and "pre-determination" in the case that he would not do anything to find

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Judge Colin “wrong” prior to Petitioner even being heard on Sept. 15, 2015, further based upon Judge Phillips professed “love” for Judge Colin who is a necessary and material fact witness, for his due process violations in Ordering a Trial in Shirley Bernstein’s Estate when the Conference was only “Noticed” for Simon Bernstein’s Estate and for other grounds as set forth herein and then continuing to act in fraud and further aid and abet the fraudulent criminal scheme herein using the machinery of the Florida Courts in the North Branch of Palm Beach County on Dec. 15, 2015 and by an illegal Order Dec. 16, 2015.

52. Judge Phillips impartiality is challenged as despite now being a material and fact witness in the matter, he did not clarify or rectify this matter first before determining if he could adjudicate, or allow the Florida Supreme Court to determine if the Colin transfer was improper, before taking ANY judicial action in the matters or even minimally afford Petitioner Due Process to be heard before Judge Phillips on the best procedural manner to bring the issues of the All Writs¹¹ before the Phillips court.

¹¹ See Petition for All Writs by Eliot I. Bernstein @ See All Writ Filed with the Florida Supreme Court @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>
and
See Amended All Writ Filed with the Florida Supreme Court @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>
and
See VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin>
and
Colin Order Denying Disqualification @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>
and
See Colin Sua Sponte Recusals @ <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519%20Colin%20Recusals%20Clerk%20Reassigns.pdf>

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53. Instead, Judge John L. Phillips began acting in the matters and in fact held two hearings, including issuing an Order on Sept. 24, 2015 thereby scheduling a Trial date of December 15, 2015 on a claim for construction filed by Attorney Alan B. Rose, Esq. on behalf of an alleged trustee Ted Bernstein and further enforcing a prior Stay Order of Judge Martin Colin who was petitioned for mandatory Disqualification by Eliot I. Bernstein as a material and fact witness to fraud in the Court, upon the Court and potentially by the Court and further that this Order by Judge John L. Phillips was issued despite the pendency of a Petition for All Writs at the Supreme Court of Florida seeking Mandamus and Prohibition in relation to the conduct of Judge Martin Colin and further seeking injunctive relief and other redress Judge John L. Phillips, both by express words, conduct and by omission has committed acts that mandate Disqualification since the judge's impartiality might reasonably be questioned in this proceeding as defined herein and as set out herein throughout this filing specifically referencing ongoing continuing conduct on Dec. 15, 2015. .

CANON 3E(1)(a) - ...the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.

54. Judge John L. Phillips is further mandated to be Disqualified again both by express words, conduct and by omissions demonstrating bias and prejudice against Eliot I. Bernstein, a party in this proceeding as defined herein and as set out by the entirety of this document and filing herein.

CANON 3E(1)(d)(iv) - ...the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding;

55. As already stated above Judge Phillips has knowledge that he is a material and fact witness in the proceedings to highly relevant information regarding the cases at this time.

Rule 2.330 Grounds.



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(e) Time. A motion to disqualify shall be filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c) and promptly filed. A motion made during hearing or trial shall be ruled on immediately.

56. Until such time as the frauds upon the court is corrected, the cases reset with new fiduciaries and counsel and due process restored, any such motion presently is timely herein. This motion is otherwise timely being filed on the first day the Courts were open after the Dec. 25th Holiday also closing the Courts on Dec. 26th, 2015.

Rule 2.330 Grounds.

(f) Determination - Initial Motion.

The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.

57. Petitioner states that the Motion is legally sufficient under Rule 2.330 as it fully complies with this code and whether Petitioner has filed a legally sufficient pleading would not negate the fact that Judge Phillips has to voluntarily and mandatorily disqualify under Judicial Canons, Attorney Conduct Codes and Law as stated herein.

Rule 2.330 Grounds.

(g) Determination - Successive Motions.

If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion.

58. Petitioner states there have been no Successive Motions.

Rule 2.330 Grounds.

(h) Prior Rulings.

Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.

59. Petitioner seeks that upon disqualification of Judge Phillips, that all prior factual or legal rulings be vacated by the successor judge due to the alleged continued civil torts against Petitioner by Judge Colin and his successors.

60. That further, Petitioner seeks a replacement Judge, who is not a member of the same jurisdiction as Judge Colin or Phillips and who is not a member of the Florida Bar to preside over the cases of Judge Colin/Coates/Phillips involving the Estates and Trusts of Simon and Shirley Bernstein and the case involving the Trusts of Petitioner's minor children. This request due to the fact that Petitioner does not feel he can get a fair and impartial hearing in the State of Florida and certainly not by the 15th Judicial, perhaps the conflicts now include any members of the Florida Bar for reasons cited herein and in the All Writ and therefore Petitioner is seeking this Court to move the matters to a Federal Court or find other suitable remedy in such serious case where the Court is alleged part of the frauds and adhering to rules and regulations is of primary concern due to the past three years of alleged fraud.

61. The following cases that Judge Phillips now presides over are all tainted for the same reasons as stated herein and Judge Phillips should immediately voluntarily disqualify himself from these cases as well, voiding any/all orders, etc. and turning over the court records to Petitioner for review and save Petitioner the expense and aggravation of having to file Disqualification

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pleadings and subpoenas in each case to force his mandated disqualification and release of critical to the case court records already requested in the All Writs Petition pending:

a.	Case#	502012CP004391XXXXSB	-
Simon Bernstein Estate			
b.	Case#	502011CP000653XXXXSB	-
Shirley Bernstein Estate			
c.	Case#	502014CP002815XXXXSB	-
Oppenheimer v. Bernstein Minor Children			
d.	Case#	502014CP003698XXXXSB	-
Shirley Trust Construction			
e.	Case#	502015CP001162XXXXSB	-
Eliot Bernstein v. Trustee Simon Trust Case	OLD Case#	502014CA014637XXXXMB	

Rule 2.330 Grounds.

(i) Judge's Initiative.

Nothing in this rule limits the judge's authority to enter an order of disqualification on the judge's own initiative.

62. Petitioner states that Judge Phillips should have already entered an order of disqualification on his own initiative according to Judicial Canons, Statutes and Rules when he became aware that disqualification was mandated of him as a potential witness regarding the alleged improper post recusal steering of the cases by Colin but has thus far failed to do so and instead rushed into hearings without first addressing these fundamental issues of fair and impartial due process. If for any reason Judge Phillips finds this Motion legally insufficient, Judge Phillips must disqualify himself on his own initiative as set forth under this rule 2.330 (i) and Judicial Canon, Attorney Conduct Codes, Probate Rules and Statutes and Law for the reasons stated herein, whether pled sufficiently or not by Pro Se Eliot Bernstein.

Rule 2.330 Grounds.

(j) Time for Determination.

The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.

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63. Petitioner demands due to the EMERGENCY NATURE of this case where claims have been made that Petitioner's children are in life threatening dangers due to the abusive and fraudulent Probate rulings and proceedings for the last three year which have directly and intentionally interfered with inheritances/expectancies causing massive harms to them caused directly by the Fraud on the Court by the Court Appointed Attorneys at Law and Fiduciaries and potentially the Court itself and this requires that this Disqualification be made instantly. Delays cause further ongoing harms and damages of Petitioner's minor children and Petitioner's family which results in additional liabilities to those parties ultimately held accountable for the criminal acts, civil torts and frauds that occurred in Judge Colin and Judge French's courts.
64. That PRIOR to any other actions by Judge Phillips, this Disqualification must first be ruled on.

Florida Statutes 38.10

**Disqualification of judge for prejudice; application; affidavits;
etc.—**

Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

65. Petitioner has supplied a legally sufficient Affidavit herein.
66. Judge John L. Phillips is again mandated to be Disqualified under the Rules by both express words, conduct and by omissions by creating a reasonable fear by the party Eliot I. Bernstein that he will not receive a fair trial as defined herein and as demonstrated and plead throughout the entirety of the document and filing herein.

WHEREFORE, the PRO SE Petitioner requests that Judge Phillips immediately mandatorily disqualify as this is a legally sufficient pleading. In the alternative if it is determined by Judge Phillips that this Pro Se pleading is legally insufficient then he must on his own motion and initiative disqualify himself as required by Judicial Cannons, Attorney Conduct Codes and Law. Further, all Orders of Judge Phillips should be voided including the Mediation scheduled for Dec. 4th, 2015 at 10 am EST and Trial Scheduled for Dec. 15th, 2015. Finally, as Eliot has filed a previous disqualification of Judge Phillips that was denied as “legally insufficient” alone with no explanation and where “legally insufficient” is a legally insufficient phrase as it has not a legal definition, Eliot asks this Court to fully explain what is legally insufficient with the pleading so corrections can be made if necessary and to explain why the previous filing did not meet a “sufficiency” standard.

Under Penalties of perjury, I, Eliot Ivan Bernstein, swear under oath and affirm that I



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have read the foregoing and the facts alleged are made in good faith and are true to the best of my knowledge and belief.

Dated this 28th day of December, 2015

Respectfully Submitted,

Eliot Ivan Bernstein

2753 NW 34th ST
Boca Raton, FL 33434
Telephone, 561-245-8588
iviewit@iviewit.tv

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein

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 28th day of December, 2015.

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein

STATE OF FLORIDA

COUNTY OF PALM BEACH COUNTY

Sworn to or affirmed and subscribed before me this 28th day of December,
2015 by Eliot Bernstein who is known to me or produced the following
identification. Driver License - CA

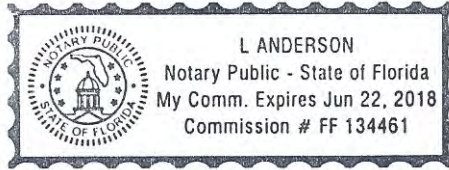
NOTARY PUBLIC

Print name of Notary:

L ANDERSON

Notary Signature:

X L Anderson



Stamp

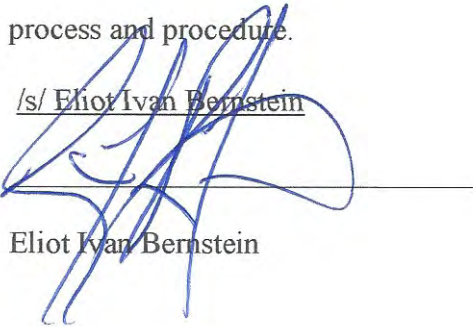
My commission expires: 6/22/2018

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AFFIDAVIT

Affiant, Eliot Bernstein hereby states under oath that the attached Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge John L. Phillips is true and correct to the best of his knowledge and belief and that he fears that for all the reasons herein he and his minor children will not and have not thus far received a fair and impartial trial with due process and procedure.

/s/ Eliot Ivan Bernstein



Eliot Ivan Bernstein

December 28, 2015

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed before me this 4th day of December, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification

Driver License - CA

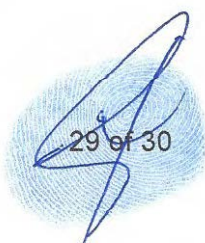
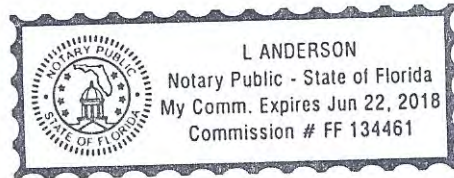
Notary Public

Print name: L Anderson

Notary Signature: L Anderson

Stamp

My commission expires: 6/22/2018



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

TED BERNSTEIN, AS TRUSTEE
OF THE SHIRLEY BERNSTEIN TRUST
AGREEMENT DATED MAY 20, 2008,
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

_____/

Other Applicable Related Cases this Disqualification of 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

_____/

**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.

1. Judge John Phillips is a circuit judge in the 15th Judicial Circuit Probate Division and therefore this rule applies.

Rule 2.330 (b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.

2. Petitioner, a party to the case moves for mandatory disqualification and to otherwise disqualify trial Judge Phillips provided by rules, statute and by the Code of Judicial Conduct.
3. Judge Phillips is alleged to have violated Statutes and Court and Judicial Rules related to, including but not limited to;

- a. Fraud on the Court and by the Court – This Disqualification shall Reset the case, render void all relevant Orders and Decisions which shall be vacated, all OFFICERS and FIDUCIARIES presently appointed by such Judge shall be replaced and other relief as is just and proper;

- b. Continued Fraud in the Court;

- c. Continued Fraud by the Court;

- d. Continued Obstruction of Justice through Denial of Due Process;

- e. Aiding and Abetting;

- f. Violations of Probate Statutes and Rules ;

- g. Violations of Judicial Cannons - Judge Phillips has violated the following

Judicial Canons, including but not limited to:

Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary

4. Judge Phillips has failed to Uphold the Integrity and Independence of the Judiciary as further set forth herein.

Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities

5. Judge Phillips express and direct conduct, statement and activities in the case have created the Appearance of Impropriety in violation of this Canon as set further set forth herein.

Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

6. Judge Phillips was required to disqualify as it has already been alleged by Petitioner and others that the transfer of the cases to his Court was improperly interfered with post recusal by the former Judge Martin Colin as further set forth herein and set forth in the All Writs Petition filed with the Florida Supreme Court in these cases and then Transferred to the 4th DCA.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

7. Judge Phillips has not maintained professional competence in hearing the Estate and Trust matters of Simon and Shirley Bernstein as further set forth herein.

D. Disciplinary Responsibilities.

(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.

8. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another judge, Martin Colin, has committed a violation of the Judicial Cannons and has failed to take appropriate action in regards to the fraud in and on his court that has already been

proven, committed by Fiduciaries and Attorneys at Law involved in these matters, which has material impact on these matters before Judge Phillips now. Further, Judge Phillips ability to hear the case forward is now precluded for all these reasons and due to improper transfer of the case post recusal by Judge Colin through interference in the transfer process as petitioned in the All Writs Petition pending before the Florida Supreme Court.

(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.

9. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another lawyer, Alan B. Rose, Esq. has committed a violation of the Rules Regulating the Florida Bar and has failed to take appropriate action. Judge Phillips was made aware in hearings and in the case pleadings that another Attorney at Law and new Personal Representative of the Estate of Simon Bernstein made pleadings to the Court that Ted Bernstein, counseled by Alan B. Rose, Esq. is acting as a fiduciary when he is not qualified under the terms of the trust he is operating under. The terms of the trust preclude a successor that is related to the issuer of the trust, Simon Bernstein and is also considered predeceased in the dispositive documents for all purposes of the trust and dispositions made thereunder, yet despite knowing this, Alan B. Rose, Esq. continues to file pleadings on behalf of a client he knows is not valid and Judge Phillips refuses to address the issue of Alan Rose's client's validity as Trustee first and foremost. Despite this claim coming from a Florida Bar attorney, Judge Phillips has chosen to allow Rose and Ted Bernstein to continue to plead fraudulently to the Court without first determining the veracity of O'Connell's claims.

10. That Judge Phillips has information that Alan B. Rose, Esq. showing a substantial likelihood that he is acting improperly in violation of the Rules Regulating the Florida Bar with his client Ted Bernstein in an Illinois District Court case, acting in conflict and with adverse interest to parties in these matters and where this information of the improper conduct was identified by Attorney at Law Peter Feaman in a letter to the PR O'Connell and submitted to the Colin Court by Eliot Bernstein. Yet, without first determining these matters first Judge Phillips has ignored this information and moved forward with Alan B. Rose and Ted Bernstein as fiduciaries and counsel without questioning the merits of the claims by licensed Florida Bar members O'Connell or Feaman.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

11. Judge Phillips impartiality is reasonably questioned as set forth herein.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding

12. One of the facts concerning the proceeding and contained in an All Writs Petition filed with the Florida Supreme Court and then transferred to the 4th DCA, is if Judge Martin Colin improperly steered the case POST recusal by Judge Shopping the Case and interfering with the transfer first to Judge Coates (who Sua Sponte recused after admitting conflict that should have been cleared prior to even taking the case as his former law firm is a Counter Defendant in these matters and Judge Coates had an office as a Partner in the Proskauer Rose law firm in the same Boca Raton, FL location where fraud by his former law firm occurred against Petitioner) and with the intended

ultimate steer to Judge Phillips after reasonably knowing Coates would either be disqualified by parties involved or recuse voluntarily. Therefore, it will be instrumental for Petitioner to receive the Court files regarding the matters as requested in the All Writs to then question both Coates and Phillips about these disputed evidentiary facts regarding their interactions with Colin prior to transfer.

13. Until Phillips knew what the decision from the Florida Supreme Court would be regarding the voiding of the transfer due to the factual interference by Colin in moving the case as a necessary and material fact witness who should have been Disqualified, Judge Phillips only action as a knowing material and fact witness to the events surrounding the improper transfer was to wait the Florida Supreme Court Ruling.
14. Yet, without regard to the All Writs pending and the answer to the improper transfer resolved, he began to deliberate on the matters, acting as he claimed in hearings to be "stupid." In fact, if it is found that the transfer was improper, despite if he was knowledgeable or not of the impropriety by Colin or involved in such act, he would still have had to disqualify because it would lead to an inescapable APPEARANCE OF IMPROPRIETY that could only be resolved by his becoming a witness and being questioned as such since due to the reasonable appearance and chance that the improper transfer by Colin to the North Branch was with criminal intent, Phillips certainly will be a suspect in criminal complaints filed against Colin and others.
15. Judge Phillips has expressed personal bias for a party to the proceeding in professing his love for Judge Martin Colin who is alleged to have participated in a fraud in and on the court when he stated on the record:

THE COURT: Okay. Great. This is the way
15 I intend to proceed -- **I love Marty Colin.**
16 This guy is a judge that's been around a long

17 time. I know him. He's an entirely different
18 guy than me.

16. Judge Phillips professed "love" for Judge Martin Colin on the Record who is a necessary and material fact witness before the Court creates substantial bias, prejudice and reasonable fear that Petitioner can not get a fair trial before Judge Phillips as further set forth herein and Judge Phillips must now be mandatorily disqualified.
17. The bias, prejudice, appearance of impropriety and reasonable fear that Petitioner can not receive a fair trial before Judge Phillips is particularly egregious in light of the fact that Judge Phillips never even permitted Petitioner to be heard about this pending Petition for All Writs and Stay and Injunctive relief despite 2 assurances at the prior conference that this would occur and further egregious as the Record shows each time Petitioner did attempt to be heard he was cut-off by Judge Phillips without being fully or fairly heard.
18. Judge Phillips also spoke to his personal knowledge of the attorneys at law involved and how he knew them well and did not know Petitioner Eliot Bernstein and this also seemed prejudicial, since attorneys at law in the cases have already committed fraudulent acts, including fraud on the court.

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

19. Judge Phillips is a material witness in the proceeding as it is already alleged that he was a participant in the improper steering of the case, knowingly or unknowingly his involvement must

be questioned to determine if Ex Parte conversations took place with Judge Colin prior to the transfer as further defined herein.

Rule 2.330 (c) Motion.
A motion to disqualify shall:
(1) be in writing.

20. This Motion is in writing.

Rule 2.330 (c) Motion
(2) allege specifically the facts and reasons upon which the movant relies as the grounds for disqualification.

21. This Motion specifically alleges specific facts and reasons upon which the movant relies as the grounds for disqualification.

Rule 2.330 (c) Motion
(3) be sworn to by the party by signing the motion under oath or by a separate affidavit.

22. Petitioner is acting Pro Se and has no attorney and therefore Petitioner has sworn to and signed this Motion for Disqualification under oath and before a notary as required by Rule 2.330 (c)

Rule 2.330 (c) Motion
(4) include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions.

23. There has been no previously granted motions to disqualify in this case filed under Rule 2.330

Rule 2.330 (c) Motion
(4) The attorney for the party shall also separately certify that the motion and the client's statements are made in good faith. In addition to filing with the clerk, the movant shall immediately serve a copy of the motion on the subject judge as set forth in Florida Rule of Florida Rule of Civil Procedure 1.080.

24. Petitioner movant is acting Pro Se and thus has no attorney at law representing him and Pro Se Petitioner has certified that the motion and the statements made herein are made in good faith. That Service is proper to Judge Phillips under Rule 1.080.

Rule 2.330 (d) Grounds.

A motion to disqualify shall show:

(1) that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.

25. That Petitioner asserts as set out below and further herein that he will not and has not already received a fair trial or hearing and that Judge Phillips because of the following specifically described prejudices and biases under Rule 2.330 (d) should be mandatorily disqualified for the reasons that follow:

Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

CANON 3B(1) - ...A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

26. That it is is alleged in the All Writ Petition in these matters currently before the Supreme Court of Florida that Judge Coates was never the intended party Judge Colin interfered post recusal to

steer the case to, allegedly knowing of Conflict with Coates due to his being a former Proskauer Rose partner and that Proskauer was a counter defendant in these matters and knowing the case would be moved to a new Judge who was unknown at the time. After Coates first hearing where he Sua Sponte recused himself on record, the case was transferred to Judge Phillips.

27. Where it is alleged based on information and belief that the interference by Colin was to move the case to Phillips, despite whether it is true, it can only be proven after Petitioner has access to the Court record from Colin, Coates and Phillips and Petitioner has the right to question each party under deposition or otherwise to ascertain their involvement, Judge Phillips new becomes a material and fact witness to a major allegation of fraud on the court in the transfer by Colin and to answer if he had any Ex Parte communications with Judge Coates or Judges Colin or any other party prior to taking the cases that Colin is alleged to have improperly steered to the North District.

In the fact that this question can be reasonably asked of Judge Phillips due to the improper post recusal steering of the case by Colin, Judge Phillips should on his own initiative have then disqualified himself as a witness, allowed a completely independent judge to be picked properly and thus from the start Judge Phillips could not hear the matters further without first addressing this most serious issue of the transfer.

28. That even if the Supreme Court of Florida or Appellate Court were to now attempt to permit such transfer, the fact that Phillips acted first, prior to any rulings, remains cause for his disqualification.

CANON 3E(1) - ...A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.

29. Judge Phillips must mandatorily be disqualified as his impartiality is reasonably questioned on multiple grounds as further set forth herein including but not limited to his “pre-judging” and “pre-determination” in the case that he would not do anything to find Judge Colin “wrong” prior to Petitioner even being heard on Sept. 15, 2015, further based upon Judge Phillips professed “love” for Judge Colin who is a necessary and material fact witness, for his due process violations in Ordering a Trial in Shirley Bernstein’s Estate when the Conference was only “Noticed” for Simon Bernstein’s Estate and for other grounds as set forth herein.
30. Judge Phillips impartiality is challenged as despite now being a material and fact witness in the matter, he did not clarify or rectify this matter first before determining if he could adjudicate, or allow the Florida Supreme Court to determine if the Colin transfer was improper, before taking ANY judicial action in the matters.
31. Instead, Judge John L. Phillips began acting in the matters and in fact held two hearings, including issuing an Order on Sept. 24, 2015 thereby scheduling a Trial date of December 15, 2015 on a claim for construction filed by Attorney Alan B. Rose, Esq. on behalf of an alleged trustee Ted Bernstein and further enforcing a prior Stay Order of Judge Martin Colin who was petitioned for mandatory Disqualification by Eliot I. Bernstein as a material and fact witness to fraud in the Court, upon the Court and potentially by the Court and further that this Order by Judge John L. Phillips was issued despite the pendency of a Petition for All Writs at the Supreme Court of Florida seeking Mandamus and Prohibition in relation to the conduct of Judge Martin Colin and further seeking injunctive relief and other redress.¹

¹ See Petition for All Writs by Eliot I. Bernstein @ See All Writ Filed with the Florida Supreme Court @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20DisqualificationECF%20STAMPED%20COPY.pdf>

32. Judge John L. Phillips, both by express words, conduct and by omission has committed acts that mandate Disqualification since the judge's impartiality might reasonably be questioned in this proceeding as defined herein.

CANON 3E(1)(a) - ...the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.

33. Judge John L. Phillips is further mandated to be Disqualified again both by express words, conduct and by omissions demonstrating bias and prejudice against Eliot I. Bernstein, a party in this proceeding as defined herein.

CANON 3E(1)(d)(iv) - ...the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding;

34. As already stated above Judge Phillips has knowledge that he is likely to be a material and fact witness in the proceedings.

OTHER ISSUES AND FACTS REQUIRING DISQUALIFICATION UNDER CANON 3

and

See Amended All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin>

and

Colin Order Denying Disqualification @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

and

See Colin Sua Sponte Recusals @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519%20Colin%20Recusals%20Clerk%20Reassigns.pdf>

**AND OTHER JUDICIAL CANONS AND LAWS AND US AND STATE
CONSTITUTION**

35. For the reasons set forth herein, Florida Probate Judge John L. Phillips must be mandatorily disqualified from this case and all related cases under the US and State Constitution of Florida, Florida Statutes and Rules, Florida Judicial Canons, applicable Florida laws and for ongoing and continuing fraud upon the Court and fraud by the Court.
36. This written, signed motion for mandatory Disqualification is legally sufficient and timely.
37. It was just discovered by myself and my wife Candice Bernstein yesterday, Thursday Dec. 3, 2015, through a series of phone calls by my wife and myself to the Court of Judge John Phillips and related referred calls to Florida Court Administrative offices that I am not eligible to receive “Original” Certified (“Trial Admissible”) Transcripts of proceedings in this case despite our indigency “in pauperis” status which has been forced upon us by a series of continuing frauds upon this Court and by this Court.
38. It was further discovered yesterday, Dec. 3, 2015 through these calls that an “Original” Certified Transcript of proceedings (“Trial Admissible”) shall be Signed by the involved Stenographer.
39. It was also discovered just yesterday, Dec. 3, 2015, through these calls that there apparently is no Audio Recordings by the Court in this case for appearances before current Judge John Phillips who must now be mandatorily Disqualified.
40. This recent discovery occurred just yesterday, Dec. 3, 2015 despite diligent efforts by myself and wife to ascertain these facts on September 16, 2015 which was the day after a “Case-Management Conference” held in the North Branch by Judge John L. Phillips who must now be mandatorily Disqualified.

41. On Sept. 16, 2015, my wife Candice Bernstein and I called The Honorable John L. Phillips, Judicial Assistant: Alejandra Stelicha or “Alex” at (561) 624-6593 and left a message on her voicemail that I was calling to ask her a question regarding a hearing that had occurred the day before on Sept. 15, 2015 for case # 502012CP004391 and for her to call be back as soon as possible.
42. At no time since that diligent call on Sept. 16, 2015, has the Judicial Assistant to Judge John L. Phillips or any other Court member of the North Branch returned our call creating further Bias and Prejudice supporting the instant motion for mandatory Disqualification by Judge John L. Phillips at this time since Petitioner can reasonably fear and believe that Judge Phillips has pre-determined all matters against Petitioner and not even being responsive to basic calls on matters of procedure.
43. Still, it was also just discovered and confirmed just yesterday, Thursday Dec. 3, 2015 in a conference call with Florida Licensed attorney Peter Feaman, representing the “Creditor” William Stansbury herein, that Florida does in fact have statutory and Rules which permit a Trial Judge such as Judge John L. Phillips to void and vacate Judgments, Orders and Decrees of other Judges such as those of Necessary and Material Fact Witness Judge Martin Colin which is precisely the relief that I Petitioned the Florida Supreme Court to issue on July 30, 2015.
44. “But for” the ongoing and continuing frauds upon the Court and by the Court and illegal, tortious, extortive and criminal actions against myself and family and in the Estates and Trusts of Simon and Shirley Bernstein, I would have adequate funds and resources to obtain proper Florida licensed counsel throughout all of these proceedings herein and would not be in indigent “in pauperis” status at this time.

45. I have Petitioned Florida Judge Martin Colin on multiple occasions who is and has been a Necessary and Material fact witness since May 6, 2013 for Emergency Relief and to halt and stay these proceedings, address the frauds upon the Court as well as for financial relief in the Estates and Trust cases to have adequate funds to retain counsel of my own choosing for myself and minor children and provide for our family home which was the intent and purpose of significant Estate and Trust planning and business actions by Simon and Shirley Bernstein.
46. These frauds include but are not limited to direct frauds upon the Court by the filing of false and fraudulent instruments in the Estate of Shirley Bernstein such as 6 illegally and criminally fraudulent Notaries placed on Estate documents by a Paralegal Notary Kimberly Moran who worked for Tescher and Spallina and other documents such as an April 9, 2012 document "Witnessed" by Robert Spallina and allegedly signed by Simon Bernstein relating to the Estate of Shirley Bernstein but not filed with the Court until Oct. 2012 post-mortem and after his death.
47. A close and careful review of the Transcript of Proceedings from Sept. 13, 2013 before Judge Martin Colin who is a Necessary and Material fact witness which came up after Kimberly Moran Admitted to Florida Governor's Office the fraudulent Notaries filed in Judge Colin's Court will show that, despite Judge Colin saying on the Record he had sufficient information to read Miranda Warnings to Tescher & Spallina, Judge Colin raises but "skips by" who actually filed these documents in his Court and how these documents were filed in his Court leaving these as open questions of material fact necessary to determine the full frauds herein and for the integrity of the court and court system itself.
48. As set forth in a further mandatory Disqualification filed with Judge Colin, instead of issuing a Show Cause Order to Tescher & Spallina as Licensed Florida attorneys at that time in Sept. 2013

and issuing Emergency stay relief as I repeatedly petitioned and instead of calling Kimberly Moran to the stand at subsequent hearings in October of 2013, Judge Colin proceeded in the case for another 19 plus months permitting Ted Bernstein to act as Trustee and Fiduciary despite the fact that Tescher & Spallina were involved with Ted Bernstein as business partners, were his counsel as alleged fiduciary and were the ones to fraudulently place Ted Bernstein into this position which was approved and upheld by Colin.

49. Still further, Judge Colin even goes further as to permit Ted Bernstein to sell off and dispose of substantial assets of the Shirley Estate and Trust and was proceeding to permit Ted Bernstein to sell off Simon's multi-million dollar home from the Simon Estate without ever holding a hearing to determine the construction and validity of the Shirley and Simon Bernstein Trusts and Wills nor the validity of Ted Bernstein as a Fiduciary and Trustee and in fact was proceeding to allow Ted to fraudulently sell this multi-million dollar home to an "undisclosed" buyer while falsely claiming this as an "arms length" transaction.

Washington DC Public Integrity Unit Prosecution of NY Judge who was involved in the Florida Election Re-count of 2000; Bush v Gore

50. Judicial fraud and bribery are serious crimes which fundamentally undermine the integrity of our system of justice and laws.

51. From the Dept. of Justice Website:

"FOR IMMEDIATE RELEASE

Thursday, August 27, 2009

Former New York State Supreme Court Justice Thomas J. Spargo Convicted of Attempted Extortion and Bribery

Former New York State Supreme Court Justice Thomas J. Spargo was convicted today by a federal jury in Albany, N.Y., of attempted extortion and soliciting a bribe.

Spargo, 66, was convicted following a three-day jury trial. Evidence introduced at trial showed that on Nov. 13, 2003, Spargo solicited a \$10,000 payment from an attorney with cases pending before him in Ulster County, while Spargo was serving as a state supreme court justice. The trial evidence showed that when the attorney declined to pay the money, Spargo increased the pressure by a second solicitation communicated through an associate. According to evidence presented at trial, on Dec. 19, 2003, Spargo directly told the attorney in a telephone conversation that he and another judge close to him had been assigned to handle cases in Ulster County, including the attorney's personal divorce case. According to the evidence at trial, the attorney felt that if he did not pay the money, both the cases handled by his law firm and his personal divorce proceeding would be in jeopardy.

"It is a sad day indeed when a judge breaks the laws that he is sworn to enforce," said Assistant Attorney General Lanny A. Breuer. "The Criminal Division's Public Integrity Section will continue in its singular mission to hold accountable wayward public officials who violate the law and the trust that has been placed in them."

"Judges are supposed to serve the people who elected them, not their own self-interests. What Mr. Spargo did is nothing more than old fashioned extortion," said FBI Special Agent in Charge John F. Pikus.

The maximum statutory penalty for the charge of soliciting a bribe is 10 years in prison and the maximum penalty for the charge of attempted extortion is 20 years. Spargo also faces a maximum fine of \$250,000 for each count on which he was convicted.

This case is being prosecuted by Senior Trial Attorney Richard C. Pilger and Trial Attorney M. Kendall Day of the Public Integrity Section, which is headed by Chief William M. Welch II. The case was investigated by the FBI's Albany Division."²

52. From the Troy Record,

"At the time, it was suggested that Spargo was seeking the funds to help defray his legal costs as he was battling the state Commission on Judicial Conduct.
Spargo traveled to Florida during the 2000 election vote recount on

² See, <http://www.justice.gov/opa/pr/former-new-york-state-supreme-court-justice-thomas-j-spargo-convicted-attempted-extortion-and>

behalf of George W. Bush and is considered an experienced election lawyer. (emphasis added).

John F. Pikus, Special Agent in Charge of the FBI's Albany division, said in a statement that the case "should demonstrate that the FBI will pursue all allegations of judicial corruption vigorously, as public corruption violations are among the most serious of all criminal conduct and can tear at the fabric of a democratic society."³

53. As set out in the Petition for All Writs which also includes a request for a Stay and Injunctive Relief, Petitioner has reported criminal and fraudulent actions relevant herein to the US Dept of Justice and related federal and state authorities.
54. This includes conduct of now Chief Judge Jorge Labarga who, like Spargo, was also involved in the Florida Re-Count of 2000, Bush v. Gore, as a Circuit Judge and who was intimately involved with the original frauds upon the Florida courts in the underlying Proskauer Rose "Billing Lawsuit" related to the Iviewit Technologies including but not limited to orchestrated fraudulent actions by Labarga to deny counsel and resources for counsel to Petitioner Eliot Bernstein in 2003.
55. These actions and the Iviewit matters were brought up before Judge Colin in a May 6, 2013 Emergency Petition after further frauds upon the Court in Florida were discovered now in the Shirley Bernstein case and Simon Bernstein case.
56. Like Spargo, a formal complaint was made by Petitioner against Judge Jorge Labarga at the Florida State Judicial Qualifications Commission.

³ See, <http://www.troyrecord.com/general-news/20081210/ex-judge-tom-spargo-indicted-by-feds-for-corruption>

57. Complaints against the involved licensed attorneys in the Proskauer Billing lawsuit heard by Labarga were filed in both the respective New York, Virginia and Florida State Bar Associations and - or appropriate State Attorney Discipline bodies.
58. Fraud by the Florida Bar in the handling of formal complaints was clearly present in the underlying Proskauer Rose Billing Lawsuit specifically involving Proskauer Rose Partner Chris Wheeler wherein the Florida Bar falsely and fraudulently determined that Proskauer was not responsible for Intellectual Property and Patent work at the USPTO despite the fact that the Florida Bar was clearly presented with a Private Placement Memorandum involving Wachovia on behalf of Iviewit that specifically referenced in the Private Placement that Proskauer Rose Partner Ken Rubenstein was Patent Counsel in the Iviewit matters and that Proskauer Partner Wheeler was listed as an Advisor to Iviewit on the Wachovia Private Placement.⁴
59. Upon information and belief, these fraudulent actions by Proskauer Rose and related parties in the fraudulent Wachovia Private Placement Memorandum constituted Securities Fraud in violation of SEC laws and rules.
60. Upon information and belief, attorneys Tescher and Spallina, centrally involved in the Simon and Shirley Bernstein Estates and Trusts herein have recently been charged and convicted in SEC violations and Insider Trading in another case where their roles as Fiduciaries were violated and where attorney Spallina pleaded guilty to a Felony and has now lost his Florida law license⁵.

⁴ See, Wachovia PPM

<http://www.iviewit.tv/CompanyDocs/Wachovia%20Private%20Placement%20Memorandum%20Bookmarked.pdf>;

Further, see Evidence provided to the Florida Bar.

<http://www.iviewit.tv/CompanyDocs/2003%2004%2030%20Bernstein%20response%20Florida%20Bar%20Wheeler%20BOOKMARKED.pdf>

⁵ See, SEC Complaint and “SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant”

<http://www.sec.gov/news/pressrelease/2015-213.html>

61. This fraudulent determination by the Florida Bar was further fraudulently supported by Partner Jerald Beer of the Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell law firm during that time⁶.
62. The Ciklin law firm is now the current PR of the Simon Bernstein Estate brought in by Florida Licensed attorney Peter Feaman before Judge Martin Colin.
63. Upon information and belief, Florida Licensed attorney Peter Feaman, in addition to representing "Creditor" William Stansbury, is also Chief Counsel for the State Republican Party.
64. Upon information and belief, the Ciklin Managing Partner Alan Ciklin is the brother of the current Chief Judge Cory Ciklin of the 4th DCA who married a Paralegal to another Ciklin partner Martens and further that Ciklin and Labarga were both appointed to the 4th DCA at the same time by former Governor Crist⁷.
65. The Ciklin law firm has previously been publicly accused by a sitting Judge of maintaining 2 sets of "books" at the firm as follows:

and Government Complaint @

<http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

and Consent Orders

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tesch%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

and

Bernstein Emergency Petition before in Florida Probate May 2013 @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>.

⁶ See,

<http://iviewit.tv/CompanyDocs/2004%2010%2022%20Florida%20Bar%20Response%20to%20Petition%20to%20Supreme%20Court.pdf>

⁷ See, <http://www.palmbeachbar.org/judicial-profiles/2002/>; Further see

<http://www.4dca.org/judges/ciklin.shtml>;

See further;

http://weblogs.sun-sentinel.com/news/politics/palm/blog/2008/12/crist_puts_labarga_ciklin_on_4.html

“Evidence obtained during the case provided an inside look into the inner workings of one of Palm Beach County’s most influential real estate, land use and commercial litigation firms.

Chernow-Brown noted the evidence presented at trial showed the firm maintained at least two separate balance sheets, both dated Oct. 31, 2012. Accounts receivable listed on one were omitted on the other, Chernow-Brown wrote.

“Importantly, unbilled time, life insurance proceeds receivables and over \$1 million in cash value of life insurance policies were completely missing from both balance sheets,” Chernow-Brown wrote.”

She concluded the firm was obligated to keep books for all the property of the firm, under the firm’s partnership agreement.”

66. The Judge further went on to note about the Ciklin firm:

“The evidence on this factual issue raises a real possibility of a charade being played out in order to manipulate a matter pending in the Family Division of this Court.”⁸

67. Nearly a year and a half ago in August 2014, “Creditor” Stansbury’s attorney Peter Feaman went as far as demanding that the current PR Brian O’Connell of the Ciklin law firm in the Simon Bernstein case “pick up the baton” in the efforts to remove Ted Bernstein as Trustee noting both that not only have Accountings not been performed for the Trusts and Estates but also that Ted Bernstein was not a valid Trustee by the express terms of the Trust.⁹

68. This request by Feaman of Simon Bernstein PR O’Connell went as far as requesting that O’Connell file his own Petition to remove Ted Bernstein, yet, to this date nearly a year and a half later, Brian O’Connell of the Ciklin law firm has never done so despite the fact that Ted

⁸ See, <http://insurancenewsnet.com/oarticle/2014/09/19/Powerful-WPB-law-firm-ordered-to-pay-22-million-to-retired-partner-a-557684.html> .

⁹ See, <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>

Bernstein has been proven to be intimately involved and central to the actions of Tescher and Spallina where Trusts are lost, documents are lost and no proper accounting occurs.

The Instant Case Before Judge John L. Phillips

Fundamental Denial of Due Process, Bias, Prejudice, Appearance of Impropriety, Reasonable Fear that a Fair Trial Can Not be Obtained, Competency of Judge to Act

69. Upon information and belief, Judge John L. Phillips is a Palm Beach County Judge sitting in the North Branch acting as a Probate Judge herein.
70. As such, Judge John L. Phillips actually knows and should know he has an Oath to uphold the US Constitution and State Constitution of Florida.
71. As such, at all times relevant herein, Judge John L. Phillips actually knows and should know that fundamental US Constitutional Due Process requires fair Notice and an Opportunity to be Heard at a meaningful time and in a meaningful manner.
72. During the pendency of a Petition for All Writs filed by Petitioner Eliot I. Bernstein at the Florida Supreme Court including Writs of Prohibition and Mandamus with respect to Judge Martin Colin, current PR of the Simon Bernstein Estate Brian O'Connell of the Ciklin law firm brought into the Estate by Creditor Stansbury attorney Peter Feaman filed for a Status Conference after the case was transferred to Judge Phillips.
73. It is expressly noted that the re-filed Petition for All Writs with the Florida Supreme Court on June 30, 2015 expressly included a request for a Stay and Injunctive and other relief by the Florida Supreme Court further raising the novel and important Statewide issue of whether the Florida Courts themselves could be a proper forum consistent with due process to even hear the Bernstein matters herein for a variety of reasons including but not limited to current Chief Judge Labarga's involvement the frauds upon the Florida Courts in the Proskauer Billing lawsuit.

74. It was expressly noted that the Proskauer Rose firm had “billed” for Estate Planning work involving Simon Bernstein and Bernstein family matters.
75. A status conference was scheduled by the PR O’Connell firm and held before Judge John L. Phillips at the North Branch on July 30, 2015.
76. During this Status Conference, Petitioner Bernstein attempted to Object before Judge Phillips to raise the issues of the pending Petition for All Writs and related relief and Judge Phillips, upon information and belief being words heard by Petitioner, Judge Phillips indicated this Petition could be discussed at a Case Management Conference that was being scheduled.
77. Again on July 30, 2015 at the Status Conference, Judge Phillips indicated at or near the close the issue of the Petition for All Writs filed by Petitioner Eliot Bernstein would be addressed at the Case Management Conference.
78. Petitioner Bernstein was acting Pro Se and without Florida Licensed counsel at this time.
79. On several occasions during the pendency of the Petition for All Writs and at all relevant times herein, Petitioner Bernstein sought support from Creditor Stansbury and his licensed attorney Peter Feaman for his Petition for All Writs and other relief making similar requests of the PR Brian O’Connell at the Ciklin law firm.
80. Prior to a Case Management Conference held by Judge Phillips at the North Branch on Sept. 15, 2015, Petitioner Bernstein specifically sought determination from the PR O’Connell firm on the Plan and Scheduling of issues to be heard and to further avoid delay and cost having been rendered indigent status by the continuing frauds herein.

81. Judge Phillips had actual knowledge and knew and at all times should have known that the Case Management Conference was Noticed and Scheduled for the Simon Bernstein case, not the Shirley Bernstein or other related cases.
82. After close of business hours on the eve of the Case Management Conference scheduled with Judge Phillips for Sept. 15, 2015, Petitioner Bernstein received a Filing by attorney Alan Rose on behalf of Ted Bernstein, still acting as Trustee despite licensed attorney Peter Feaman urged PR O'Connell in August of 2014 to file his own Petition to remove Ted Bernstein including but not limited to on grounds of the express language which Disqualified Ted and failures to account and waste of assets in the case as neither PR O'Connell nor Creditor attorney Peter Feaman took subsequent action to Remove Ted Bernstein despite the fact that Judge Colin who had denied Creditor Stansbury standing had now been suspiciously "Recused" within 24 hours of denying a subsequent mandatory Disqualification as a necessary and material fact witness to the fraud upon the Court by Ted's attorneys Tescher and Spallina before Colin while also acting as Fiduciaries.
83. Creditor Stansbury attorney had previously written to Alan Rose about his own "conflicts of interest" in representing Ted Bernstein yet had taken no further action by the time the Case Management Conference was held by Judge Phillips on Sept. 15, 2015.

Judge Phillips Must be Mandatorily Disqualified for "Pre-Judging" the Case and for Bias, Prejudice and Reasonable Fear of Inability to Obtain a Fair Trial and Due Process

84. While never permitting Petitioner Bernstein to be Heard on his Petition for All Writs at the Case Management Conference on Sept. 15, 2015 despite 2 specific representations to the contrary on July 30, 2015 by Judge Phillips, Judge Phillips fundamentally prejudiced the case and created the reasonable fear that Petitioner would never receive fair trial right from the outset of the Case

Management Conference by claiming: “ I'm not here to question some other judge's order. You won't have me saying he was wrong. “

85. While this statement was in response to Creditor attorney Feaman questioning the Transfer to the North Branch, Judge Phillips determined from the outset and pre-judged Petitioner Bernstein's Petition for All Writs which sought to Void Judge Colin's Orders and declared him a necessary and material fact witness.

86. Judge Phillips must be mandatorily disqualified on these grounds alone.

87. Yet Judge Phillips pre-judging, bias, prejudice and knowing mis-statement of law and procedure in Florida went further saying

“ If somebody made a mistake and you all think there's relief that should be granted to correct his mistake that's what the 4th is for. Please have a seat.”

88. It was only confirmed and discovered by Petitioner on Dec. 3, 2015 by Licensed attorney Peter Feaman that, contrary to Judge Phillips gross misstatement, Florida has Rule 1.540 that permits a Trial Judge to in fact void such orders.¹⁰

89. Further, the Florida Supreme Court has confirmed that Trial Courts and Judges in Florida have inherent power and authority to correct frauds in the court and preserve the integrity of proceedings.¹¹ Judge Phillips thus not only falsely represented his powers to a Pro Se party but could have simply brought up in Case Management if he wanted Eliot Bernstein to file a separate Stay despite the Stay request and Writs pending that Phillips said would be discussed.

90. This Florida Supreme Court case makes it clear that “Finally, allegations of an attorney's filing of fraudulent documents in connection with his or her client's lawsuit would warrant a referral of

¹⁰ See, http://phonl.com/fl_law/rules/frcp/frcp1540.htm

¹¹ See, :Pino v the Bank of New York, Feb. 2013, <http://www.floridasupremecourt.org/decisions/2013/sc11-697.pdf>

that attorney to The Florida Bar for a possible violation of the Code of Professional Responsibility. See id. at 954 & n.2.” (emphasis added).¹²

91. The failure to take appropriate action as required by the Judicial Canons and Rules against attorneys Tescher & Spallina by Judge Colin is precisely one of the grounds upon why his Orders should be voided and yet Judge Phillips made it crystal clear from the outset he would be taking no such action with Judge Colin and later goes on to compound the bias, prejudice and reasonable fear of not getting a fair trial when he professes his “love” for Judge Colin who is a material and fact witness as set forth above who should have his Orders voided.
92. The remainder of the Transcript makes it clear how Judge Phillips prejudged and pre-determined any claims of Petitioner Bernstein by cutting off and denying any fair opportunity to be heard on any issue.
93. This is further compounded and egregious where Pro se Petitioner Bernstein is having to be the on to try and step up and notify Judge Phillips that even licensed attorney PR O’Connell deemed Ted Bernstein to be invalid yet O’Connell failed to do so even though it was O’Connell that brought the matter on to be heard before Phillips in the first instance.
94. Instead, Judge Phillips commits even further egregious and knowing Due process violations by permitting Alan Rose who has been claimed by Feaman to have conflicts of interest (not raised before Phillips but raised during Colin days) and claimed by both Feaman and O’Connell to be representing a Trustee Ted Bernstein who isn’t valid and yet Phillips denies Eliot Bernstein to be heard there and instead allows Alan Rose to co-opt O’Connell’s Management Conference to Schedule a Trial in Shirley Bernstein’s case which was never Noticed to be Heard in the first

¹² See, <http://www.floridasupremecourt.org/decisions/2013/sc11-697.pdf>

instance denying due process both on the count of improper Notice and on Opportunity to be heard.

95. Judge Phillips clearly knew he was in the Simon Bernstein case and Petitioner Bernstein and Attorney at Law Peter Feaman attempted to clarify the matter and thus Phillips knew what he was doing when he improperly noticed a Trial to be scheduled in Shirley Bernstein when the case was noticed for Simon Bernstein and thus Judge Phillips failure to sua sponte correct the matter on his own motion is further proof of bias, prejudice and reasonable fear of the inability to obtain a fair trial all of which mandates that Judge Phillips must be mandatorily disqualified.
96. The net effect of the due process violations and knowingly improper conduct by Judge Phillips is to again Deny Petitioner Eliot Bernstein fair opportunity to be heard and have Trial Counsel similar to the fraud upon the Court committed by Labarga in the Proskauer Billing lawsuit where it is later shown to Judge Colin that Ted Bernstein's attorneys Tescher & Spallina involved in the fraud are intimately involved with the Proskauer firm in the Boca Raton, Florida community.
97. It is only recently discovered this week on or about Dec. 1, 2015 that the 4th DCA denied Petitioner's Writs as "moot" when no possible legal determination could be on "mootness" for the Mandamus petition and voiding of Judge Colin's Orders and determination of Colin as a necessary and material fact witness nor could the application for a Stay and Injunctive relief be determined as "moot" bringing the case back to that portion of the Writ and Petition that was filed in the Florida Supreme Court as to the novel and important statewide issue of whether the State of Florida and Florida Courts can provide due process in the Eliot Bernstein family matters..

98. Yet, despite the fact that the 4th DCA just ruled and a reasonable argument could be made that not only should Judge Colin's Order denying Creditor Stansbury out of the Shirley and Simon Estates and Trusts be "re-heard" filed by Feaman, Feaman could have reasonably determined that until the 4th DCA spoke on Petitioner Bernstein's Petitions, there was a reasonable basis to hold off before Phillips on a motion to Stay and Disqualify as unless someone had improper "inside" knowledge of what the 4th DCA was going to do, the 4th DCA could have issued a Show Cause Order for the Writs to be responded to thereby creating the Stay of the lower court rendering action before Phillips unnecessary and moot yet it was just discovered yesterday Dec. 3rd, 2015 that Feaman will not take any such action before Phillips leaving Eliot Bernstein standing alone pro se at an improperly scheduled trial before Phillips on Dec. 15th, 2015 even though Feaman's client Creditor Stansbury has sued Ted Bernstein and Tescher and Spallina in their fiduciary capacities both in the Civil court of Judge Kelley and the Estate cases all further calling into question the integrity of proceedings before Phillips as a further basis to disqualify.

99. The Petition for All Writs brings up very serious actions in the case including but not limited to proven fraud and fraud on the court, beneficiaries, including allegations of fraud against the original Personal Representatives and Trustees, the attorneys Tescher & Spallina¹³, who were directly involved in the drafting of specific Trust and Estate documents directly at issue before Judge Phillips.

100. The Petition for All Writs further brings up that, not only has one of the direct employees who was under the direction, control and management of Attorneys Tescher & Spallina, a

¹³ Tescher and Spallina have recently been charged by the Securities & Exchange Commission for charges of Insider Trading. See <http://www.wsj.com/articles/sec-charges-five-with-insider-trading-over-2011-gilead-deal-1443460420> and <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

Paralegal-Notary named Kimberly Moran, Admitted to Criminal charges in her acts of forging and fraud in preparation of FIVE Notarizations on dispositive documents of likely beneficiaries and a sixth POST MORTEM forgery for Simon Bernstein in the case in documents the law firm of Tescher & Spallina, P.A. **then fraudulently deposited** with the Palm Beach Court of Martin Colin and then later Attorney Spallina admitted to Palm Beach County Sheriff officers that he and his partner, Donald Tescher. Esq., further fraudulently altered a Shirley Bernstein trust document but also that Palm Beach County Probate Court Judge Martin Colin was a direct material and fact Witness to the fraud in and upon the Court and thus was mandated to Disqualify himself from the proceedings from the start and void his Orders, not simply issue a Recusal.

101. Colin's Recusal came a day after denying his own Disqualification Motion filed by Eliot Bernstein seeking to strike and void entirely all Colin's Orders for the proven and multiple Frauds on the Court that have occurred and reset the case and replace all parties involved in the Frauds, including but not limited to, counsel, courts officials and court appointed fiduciaries involved or potentially involved with the prior frauds and frauds on the court in the cases. As Colin interfered and steered the transfer of the cases to the North District and ultimately Phillips after his recusal, this would be cause to reset the whole jurisdiction and transfer.

102. In fact, the precise circumstances of the "Recusal" and Transfer of this case leading to Judge John L. Phillips presiding is brought up and pending before the Florida Supreme Court presently and has been pending at all times Judge John L. Phillips has presided in this case.

103. In fact, proceeding without determination of the transfer issues raised in the All Writ Petition further denies due process, allegedly continues a fraud on the court and continues to causes waste, fraud and abuse for all parties and for all of the following reasons:

a. As noted in the Petition for All Writs, not only is Mandamus sought to force Judge Colin to issue a mandatory Disqualification in this case, not a Recusal, but further seeks Prohibition as Judge Colin, upon receiving the last motion for Disqualification on or about May 14, 2015, initially Denies the motion as insufficient and then, within 24 hours or less Sua Sponte “recuses” himself and afterwards proceeds to have “conversations” with other Judges in the Palm Beach Court Southern District interfering with the transfer process, in a case where Colin was already Petitioned to be a Material Fact Witness in the Fraud upon his Court. Colin’s Order and actions steer the case to the North District where the cases first ended up before one Judge Coates who ultimately at the first hearing, after denying any conflict with Petitioner, he suddenly Sua Sponte recused himself for multiple conflicts that should have precluded his involvement and mandated his mandatory disqualification before a hearing was even scheduled (wasting more time and costs of 5-10 attorneys who attended) and sending the cases before Judge John L. Phillips.

b. That Eliot Petitioned in the All Writ that Colin in fact allegedly knowingly transferred the case to Coates to give Proskauer Rose the confidential court files for their use in the matters they are involved in and giving them unfair advantage and knowing after gaining access to the files Coates would be forced out by his conflicts with Eliot and Ivieuit. It should be noted that North District is the furthest courthouse approx 20-30

miles traveled for all parties involved, including 5-10 attorneys per hearing, fueling even more estate waste fraud and abuse as those attorney all have offices minutes away from the Palm Beach Main Courthouse.

i. Judge Coates also is alleged to maintain an interest in the Iviewit Companies as Proskauer Rose the law firm was a direct shareholder in the companies involved and where these companies and the Intellectual Properties which are suspended at the USPTO and are still under ongoing investigations and legal actions that directly implicate Proskauer and its partners, associates, of counsel et al.

ii. Ironically enough, the first Judge where this case was steered by Judge Martin Colin's direct involvement while he was knowingly claimed to be a material and fact witness happens to be Judge Coates who just happened to not only turn out to formerly be a Partner at Proskauer Rose but who was reminded at the only appearance of this case in his Court in July of 2015 that Judge Coates was personally known to Eliot I. Bernstein as having worked at a Proskauer office right "across the hall" from their client Eliot I. Bernstein and the Iviewit companies in Boca Raton, Florida where some of the original Thefts of the Technology rights and inventions were occurring at the time and that his former firm Proskauer was not only conflicted in these matters but also was a Counter Defendant in the very matters before him that he was adjudicating upon.

iii. Judge Coates ultimately recused himself on his own initiative from all of the cases herein although one case out of six, appears to have mistakenly not had a Recusal Order issued presently.

iv. That it is alleged that the intended party that Colin may have intended to steer the cases to all along was Judge Phillips, as it is suspected Colin knew that Judge Coates was a former Proskauer Rose partner and that Eliot had included Proskauer in the Estate Cases before him now as Counter Defendants in certain actions in these matters and that Eliot had sued Proskauer previously and was pursuing them currently in other federal civil and criminal actions ongoing.

c. Further, the Petition for All Writs brings up whether the State of Florida Courts, presently headed by Chief Judge Jorge Labarga, can even be a fair and proper jurisdiction to hear any of these matters for a variety of reasons including but not limited to Judge Labarga's direct involvement in a prior case involving False Billing and Fraudulent Patent Applications filed in part by the international law firm of Proskauer Rose (where Judge Coates worked) involving Eliot I. Bernstein and his father Simon's Intellectual Property rights valued by Leading Experts in the digital video and imaging fields as worth Billions.

d. Moreover, the Petition for All Writs brings up for review and petitions and pleads making it clear that Eliot I. Bernstein seeks as relief the Vacating and Voiding of All Orders of Judge Martin Colin certainly at least from the time when he became a material and fact witness to the fraudulent dispositive documents being filed by Officers

of the Court from the Tescher & Spallina law firm in Colin's court that were used to illegally seize dominion and control of the Estates and Trusts fiduciary capacities, illegally alter beneficiaries and loot the Estates and Trusts of Simon and Shirley Bernstein of millions of dollars and yet despite a mandatory disqualification on his own initiative as proscribed by judicial cannon and statute continued to adjudicate outside the color of law. Colin then denied motions to voluntarily disqualify himself filed by Eliot.

e. For Phillips to act on Colin's prior Orders, as he does, without first knowing if the Orders of Colin will be stricken, "putting the cart before the horse," again causes fraud, waste and abuse of the Court and all parties time and monies, especially if the Colin Orders are stricken and all actions must then be reversed.

f. The All Writs Petition makes it clear that under law Eliot I. Bernstein has the right to seek challenge, voiding and vacating of any such Orders in all jurisdictions where Fraud Upon the Court has occurred.

g. Yet, while the Petition for All Writs was first filed and pending (and remains pending) at the Florida Supreme Court, the current PR of Simon Bernstein's Estate Brian O'Connell's office filed prematurely to bring the cases onto the docket before Judge John L. Phillips for a Conference to set a schedule for other conferences and hearings to be held although PR O'Connell's office did not file or propose any Order for which motions and hearings should be held and this first appearance occurred before Judge John L. Phillips on or about July 30, 2015.

h. Approximately 7-8 lawyers for other parties appeared and Eliot I. Bernstein appeared in person at this first appearance before Judge John L. Phillips on

July 30, 2015 and while Judge Phillips himself took No Notice or Acknowledgement on his own action of the pending Petition for All Writs at the Florida Supreme Court in this case where millions of dollars and properties are alleged to have been looted and illegally distributed, where admissions of crimes have already occurred in the filings before the Court, where murder has been alleged by Ted Bernstein to state authorities, Judge John L. Phillips did at least say twice on the Record during this first appearance when Eliot I. Bernstein brought up the pending Petition for All Writs that this Petition would be addressed at the next Court appearance and ultimately the parties were directed to work amongst themselves to arrive at a proposed schedule to hear matters by the next appearance.

i. Despite this direction by the Court and despite the fact that it was the PR of Simon Bernstein's Estate Brian O'Connell's office who had called for the original conference before Judge Phillips, on the *eve of the night before the second appearance on September 15, 2015 and after close of business hours at 5:18pm* no proposed Schedule had been made by the PR Brian O'Connell but instead attorney Alan Rose, attorney for alleged successor Trustee Ted Bernstein who is a business partner with Attorneys Tescher & Spallina and Ted's prior counsel who are at the center of the fraud upon the Court, proceeded to file an *after hours after close of business filing* with Judge John L. Phillips seeking to completely re-do and change the Schedule for the next morning to now be a schedule to attack and attempt to neutralize Eliot and appoint Guardians for Eliot Bernstein's children and Eliot Bernstein where no pleading for such had been made.

j. The Exhibit has material misrepresentations of case information and attempts to shift the court's focus from rectifying and dealing with the fraud on the court and other frauds on beneficiaries to an assault of Slanderous and Defamatory information and case twisting to portray Petitioner Eliot as a cause of the problems in the matter and attempt to annihilate his and his children's rights and Judge Phillips held the hearing threatening contempt to Eliot and searching to see if there were guardianship pleadings regarding Eliot. Some of the key points of misrepresentation by Rose to Phillips are as follows:

i. The TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE starts as follows,

“The overarching issue in these cases is Eliot Bernstein. He is not named as a beneficiary of anything; yet he alone has derailed these proceedings for more than two years and has harassed and attacked the prior judges, fiduciaries and their counsel.”

That in fact, Ted Bernstein and his clients, business partners and Attorneys at Law, Tescher and Spallina and their co conspirators, Alan B. Rose, Esq. and approximately six other lawyers who have all resigned due to irreconcilable differences with Ted after the Law Firm Tescher & Spallina, PA was found to have COMMITTED A FRAUD ON THE COURT AND FRAUD ON THE BENEFICIARIES, which has derailed with intent the proceedings and inheritances and cost the injured parties millions more while the fraud was NOT LEGALLY remedied by Judge Colin but instead carefully and craftily continued. That the crimes were uncovered, prosecuted in part and led to arrest, all due to the efforts of Eliot Bernstein and where Alan Rose is a central suspect in the alleged crimes under ongoing investigations, has numerous conflicts and adverse

interests (also a counter defendant in the matters at hand) and so one can see how he tries to twist the truth to a new Judge Phillips.

ii. If Judge Phillips had reviewed the record and determined who and why the hearings were held and who caused problems with the Estates and Trusts by committing FELONY CRIMINAL ACTS, he would have noticed that Eliot only reported the crimes. The costs incurred by all Beneficiaries, Creditors, Interested Parties, the courts, etc. are wholly attributable to Ted Bernstein and his minion of attorneys at law who have tried to defend the criminal acts done, attorneys at law, Donald Tescher, Robert Spallina, Alan B. Rose, et al. This toxic pleading by Rose should have led to sanctions by Judge Phillips for wholly distorting the record.

iii. The second sentence of the TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE filing of Rose states,

“With regard to Judge Colin's final action before recusing himself, Eliot's delay of the Trust's sale of real estate is going on six months, and already his objections and "appeal" to the Florida Supreme Court have cost the Trust more than \$125,000. These sums are not insignificant in this case – these are relatively small trusts and estates which likely will have between \$1 million to \$2 million left to distribute in the end. Even less with every billable hour incurred, especially if things continue on their current path.”

Wherein the delay in sale of real property again stems from a court order whereby it was found that Alan Rose and Ted Bernstein had failed to notify beneficiaries and interested parties of the sale of Simon's home in an undisclosed transaction

with undisclosed terms and conditions of the sale and Judge Colin ceased the proposed sale. Again costs incurred by the failure of the fiduciary and his counsel to follow probate rules and statutes. Rose's estimation for a value of the Estates and Trusts years after the decedents deaths exhibits another glaring violation of probate rules and statutes by the alleged fiduciary Ted Bernstein and the former fiduciaries in that NO ACCOUNTINGS have been provided for Shirley's Trust and in Simon Trust, accounting does not start with an opening balance done after the decedent's death for over two years and the prior accountings by Tescher and Spallina that were required upon their removal for fraud and more were never done and never requested by Ted in violation of probate rules and statutes and accounting rules.

k. The next sentence is wholly false, whereby Rose states,

“For reasons which will become apparent to the Court, although these matters should be fully concluded by now – Shirley died first, nearly five years ago, and Simon followed nearly three years ago – it feels like we still are closer to the starting line than the finish line. **The sole reason [emphasis added]** for the lack of progress is their disinherited son, Eliot Bernstein.”

First off Eliot is not a disinherited son by Shirley Bernstein as when she died the Eliot Bernstein Family Trust was a one-third beneficiary of the Shirley Trust, which became irrevocable upon her death and only due to the frauds proven and alleged and through fraudulent documents submitted in the matters to the courts and others, the beneficiaries have come into question, the fiduciaries are in question, as well as the validity of the dispositive documents. Where the Governor Rick Scott has already found that documents attempting to disinherit

Eliot in Simon case, a Will and Amended Trust allegedly signed 48 days prior to Simon's death, are again improperly notarized and the Governor's office has taken action against another notary in these matters and the documents are still being investigated as wholly fraudulent. Alan Rose is knowledgeable of these crimes of his colleagues Tescher and Spallina and Ted who recruited him and yet attempts to spin the truth to the newly appointed Judge Phillips in efforts to hide and conceal the fraud and the true cause of why the matter is before him and Phillips claiming he is "stupid" in the hearing acts as if he has read nothing in the docket and goes along with Rose's story, precluding Eliot from responding to the wholly false claims.

1. The next statement in Rose's diatribe of lies reads,

"If the Court were to appoint a guardian ad litem ("Guardian") for Eliot's three kids, who are beneficiaries of both trusts, everything else could be resolved quickly and easily between the remaining parties. Instead, while Eliot continues to turn the courtroom into his private circus and continues his online attacks, the limited assets in these estates and trusts continue to dwindle. This has been going on far too long, and now that this Court is overseeing these matters, I Eliot must be stopped before it is too late to salvage anything for the beneficiaries."

Rose fails to mention to this Court and in fact lies at the second hearing and states there have been no guardianship pleadings in the Simon and Shirley cases for a Guardian, where he is fully cognizant he filed and had heard a guardianship hearing and was denied by Judge Colin as there was absolutely no basis for a guardian as already exhibited herein. From the hearing transcript Rose states,

10 THE COURT: Is there a motion for

11 appointment of a GAL? Has a motion been filed
12 by someone?
13 MR. ROSE: I think the -- my understanding
14 is the beneficiaries were about to file one. I
15 don't think they filed yet. There is a pending
16 motion to appoint an attorney for the children.
17 It's sort of a similar issue. Maybe
18 Mr. O'Connell can -- it's on one of his lists
19 of motions.

...
14 THE COURT: Okay. Great. This is the way
15 I intend to proceed -- I love Marty Colin.
16 This guy is a judge that's been around a long
17 time. I know him. He's an entirely different
18 guy than me. I expect that your experience
19 with Judge Colin has been different than
20 sitting here with me. Am I right? I never
21 appeared in front of him as a judge -- I never
22 appeared in front of him while he's a judge and
23 while I was a lawyer. He appeared in front of
24 me while he was a lawyer and I was a judge. I
25 don't know how he is as a judge but I am pretty

1 sure he's a different guy than me. Nice guy.
2 I like him. But we're different judges. Your
3 experiences with Judge Colin, put them aside.
4 You're having an experience with me now. We
5 have to do it the way I do it or else I'll mess
6 up.

7 The second thing I have on my list of
8 things to ask you about that I've been jotting
9 down here is this request for guardian ad
10 litem. I think I remember asking and being
11 told that no one has filed a formal request for
12 appointment of a guardian ad litem; is that
13 correct?

14 MR. O'CONNELL: Correct.

**15 MR. ROSE: In these four cases no one has
16 done that yet.**

One look at the docket and the court could see that multiple attempts have been made by
Rose et al. to try and gain guardianship and have failed repeatedly. Further, Eliot's

children are not beneficiaries under the Shirley Bernstein Trust as of the date December 08, 2010 when it became irrevocable with Ted Bernstein, Pamela Bernstein Simon and their lineal descendants considered predeceased for all purposes of the Shirley Trust. Per Robert Spallina who drafted the documents, when under interrogation by Palm Beach County Sheriff officers stated,

“SPALLINA REITERATED THAT HER DOCUMENTS READ THAT UPON SIMON'S DEATH, EVERYTHING (HER ASSETS) WENT TO JILL, LISA, AND ELIOT.” Further Spallina states, “HE SAID SIMON TOLD HIM THAT HE WANTED TO MAKE THE NECESSARY CHANGES TO HAVE BOTH TRUSTS READ THAT THE 10 GRANDCHILDREN WERE THE BENEFICIARIES. HE TOLD ME THAT HE TOLD SIMON (SI AS HE CALLS 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.”

Yet, Alan Rose continues to attempt to perpetrate this Fraud on the Court that Eliot is not a beneficiary in efforts to try and eliminate Eliot, the bane of his existence, in part why he can no longer represent parties other than himself as a Counter Defendant and also due to his direct involvement in continuing the fraud through toxic vexatious slanderous filings and continued fraud upon the court and beneficiaries.

m. That Eliot had tried at the first hearing and at the second hearing of Phillips to put forth an order for case management into the record but Judge Phillips repeatedly denied his efforts, chastising him for speaking, threatening contempt and other bantering of Eliot to deny his rights and precluding his statement from the record. The statement was as follows:

PETITIONER'S STATEMENT ABOUT WHAT SHOULD HAVE HAPPENED AT

STATUS CONFERENCE - ORDER FOR HEARINGS IF DUE PROCESS WAS

AFFORDED

1. Determine Non Conflicted Venue -- Federal/State, if Federal transfer cases to Federal Court, all of them, Simon Estate has already intervened and been accepted in the Federal Court under Judge Robert Blakey, if State with Federal Monitor oversight to restrict further state run fraud on the court.
2. Reset all probate/trust cases due to Fraud on the Court and Fraud by the Court as prescribed by law and strike all previous orders, remove invalid pleadings filed by parties involved in the fraud on the court and fraud on the beneficiaries et al.
3. Remove all parties involved directly or retained by any party involved in the prior fraud on the court, including but not limited to Alan B. Rose, Esq. and Ted S. Bernstein both directly involved and benefiting from the prior fraud on the court and both involved directly with the fraud perpetrated by Tescher and Spallina et al.
4. Remove all cases out of Palm Beach county, possibly state, perhaps have judge from other state or fed monitor of state court hear proceedings to parse the multiple conflicts.
5. Return ALL assets and personal properties of Simon and Shirley Bernstein to the court, including home and condo sold and any other tangible personal property or distributions made.
6. Have Spallina Tescher et al. involved in the fraud return all fees and put up bonding or other sources of funding for Court costs, attorney fees for innocent injured parties from the fraud now necessitating these legal costs and to fund for independent forensic document examination and forensic accountings caused by their intentional interference with expectancies and causing adversity and turmoil between parties.
7. Immediate court ordered production of all parties involved in the fraud of all documents, accounts, records of any sort, including the courts records, all certified, including but not limited to:
 - a. Depositions, Interrogatories, etc. paid for by bad actors
 - b. As Tescher and Spallina have provide upon their COURT ORDERED production of records after the court learned of their admitted fraudulent alteration of a Shirley Trust document to Palm Beach County Sheriff investigators, NO original documents, including but not limited to, all the Dispositive Documents they alleged to have executed with Simon and Shirley, the court should immediately seize all of their records and demand the original documents. It is alleged that virtually all of the records (approximately 9000 pages) of production produced by Tescher and Spallina are fraudulent and were carefully crafted for months after

their law firm was found committing fraud on the court and fraud on the beneficiaries to try and cover up their crimes further. It should be noted in the first hearing before Judge Colin, when he infamously stated that he had enough evidence at that time to read attorneys at law and fiduciaries Tescher and Spallina and their client, alleged fiduciary Ted Bernstein, their Miranda warnings, that attorney Spallina stated after admitting that documents had been submitted to the Court and others that were fraudulently notarized, including Post Mortem for Simon, that he knew of nothing else in the cases wrong at the time or done fraudulently. Yet several months later, while being investigated by Palm Beach County Sheriff investigators admitted to fraudulently altering himself, after discussions with his partner Donald R. Tescher, Esq, a Shirley Trust document. This concealment of the truth, along with Colin's allowing attorneys and fiduciaries involved in the original fraudulent activity to continue, turned into almost two years of proceedings attempting to demonize Eliot Bernstein as the cause and seek guardians and contempt proceedings and more, all bleeding the Estates and Trusts in court costs and attorney fees with scienter.

- c. All of Simon Bernstein's business records and properties remain missing and unaccounted for and must be returned to the Court and distributed to the beneficiaries, fiduciaries and interested parties for examination
 - d. Parties needing to produce all records and assets at this time, include but are not limited to, Alan B. Rose, Ted Bernstein, Gerald Lewin, Proskauer Rose LLP, Foley & Lardner LLP (including Hopkins Sutter documents acquired by Foley & Lardner) Steven Lessne, Esq., Brian O'Connell, Esq., Judge Martin Colin, Judge David French, Judge Howard Coates, Judge John Phillips, Steven Greenwald, Esq., Traci Kratish, Esq., Oppenheimer Trust Company of New Jersey, Oppenheimer Trust Company of Delaware, JP Morgan, Heritage Union Life Insurance Company and all successors, LaSalle National Trust Company and others.
8. The Court must demand untampered with, signed and verified IRS certified tax returns for Simon and Shirley including for all companies owned, trusts, etc.
 9. Distribute immediate Emergency funds to Eliot and his family who have been harmed for three years with no caveats attached to the funds other than to be reduced fairly when beneficiaries are determined and construction hearings completed.
 10. Hold hearings to remove Ted Bernstein, Alan Rose, Esq. and John Morrissey, Esq. as Fiduciaries and/or Counsel
 11. Hold Will and Trust Construction hearings after hearings to remove Ted, as it would be wasteful to everyone to hold construction hearings where fiduciaries with adverse interests and conflicts are allowed to argue before the court and pervert the record and then have to overturn such rulings and proceedings conducted with fraudulent fiduciaries and counsel acting in violation of law and ethics rules.

- a. Have hearings to determine new successor trustees. Corporate Trustee with Eliot as a Co-trustee to save legal costs by accessing records that have been suppressed and insure no further fraud occurs)
 - b. Determine Authenticity
 - c. Determine Beneficiaries
12. Start with Eliot first Petition, since default by all parties, all reliefs granted.

n. That Alan Rose, Esq. denied to Judge Phillips that guardian pleadings for Eliot and his children were filed in the Court when it was approximately year earlier where Alan Rose argued his own pleading for guardianship which was denied by the Court on August 20, 2014, with the court claiming, "In addition, to the extent that it would be necessary, the Court waives any requirement for the appointment of a guardian ad litem and further finds that, in respect to the Agreement and this Order, the Agreement is in the best interests of the minor children and that Eliot and Candice Bernstein adequately represent the interests of their minor children." It should be noted that Alan Rose and Ted Bernstein then went on to violate this Court order to pay for three minor children's school tuition that was court ordered and all three children were without notice removed from school after the second day when the Trustee Ted and his counsel Alan Rose failed to comply with the Order leading to massive damages to the children in their school futures.

o. This second appearance before Judge Phillips also generating fees for approximately 5-7 attorneys, all having to drive over 40 miles and all wasting time and money for a third hearing in approximately four months to achieve nothing but churning of legal bills and scheduling a hearing in a different case than was scheduled for hearing.

p. Sure enough, the next morning before Judge John L. Phillips, Judge Phillips proceeds to allow attorney Alan Rose to take over the schedule and course of proceedings despite the fact that not only did his filing come after close of business hours the night before but also despite the fact that 2 other Florida licensed attorneys, the PR Brian O'Connell of the Estate of Simon Bernstein and attorney Peter Feaman for a Creditor William Stansbury who is suing Ted Bernstein and the Estate both agreed that the first Order of business should be a hearing to remove Ted Bernstein as an alleged Trustee and both had already filed motions before Judge Colin showing that Ted Bernstein is not properly acting as a Trustee and that he and his counsel Rose were alleged to be violating ethical cannons and fiduciary duties, yet Phillips ignored this information and moved in favor of Rose's request.

q. This last minute after close of business hours filing by Alan Rose and Judge Phillips conduct in permitting this after hours business filing to take over the case that day on September 15, 2015 under the circumstances and history of this case is sufficient to demonstrate lack of impartiality, bias and prejudice against Eliot I. Bernstein and a reasonable fear that he will not receive a fair trial before Judge Phillips sufficient to mandate Disqualification by Judge Phillips itself.

r. Still, the express words and conduct of Judge Phillips itself during this appearance culminating in the Order issued September 24, 2015 further provide the factual basis to mandate the Disqualification of Judge John L. Phillips since a careful and proper review of said Audio transcripts of said proceeding (it is presumed that Judge Phillips recorded the hearings as is his typical practice) will demonstrate notable bias and

prejudice toward Eliot I. Bernstein creating the reasonable fear that he can not receive a fair trial before Judge Phillips.

s. It is noted that Candice Bernstein, wife of Eliot Bernstein, contacted the Court of Judge John L. Phillips the day after this appearance on or about Sept. 16_, 2015 to determine how to obtain an audio transcript and yet over 10 days later, neither Candice nor Eliot Bernstein have heard back from the Court of Judge Phillips in this request further demonstrating bias, prejudice and lack of impartiality and creating the reasonable fear that a fair trial can not occur before Judge Phillips and thus mandating Disqualification.

t. At the time of this second appearance before Judge John L. Phillips on Sept. 15, 2015, at *no time anytime during this appearance did Judge Phillips even acknowledge* the pending Petition for All Writs at the Florida Supreme Court which brings up *very serious alleged criminal acts, fraudulent acts, acts showing Judge Colin as a material and fact witness*, acts implicating the validity of ALL orders of Judge Colin, acts calling into question Chief Judge LaBarga himself, acts calling into question the transfer of the cases to Judge Phillips himself as the intended receipt of the cases through Colin's direct interference Post Recusal and whether as a matter of fundamental US Constitutional Due Process the Florida Courts can even be a proper jurisdiction to hear these cases and yet not only does Judge John L. Phillips wholly disregard this petition as if it did not even exist, but further acts with express words and conduct to deny and cut off and deprive Eliot I. Bernstein's fair Opportunity to be heard due process rights throughout the proceeding this day.

u. That at the second hearing, while demanding the scheduling of a hearing in a different case, Phillips requested the parties to identify how much time a Shirley Trust construction would take. When Rose stated it would take a day, Eliot Bernstein objected and stated that additional time of a day or two would be required as it would have to first entail a hearing to remove Ted Bernstein as Trustee first, as is allowed under Florida Probate Statute for a Trust Construction but Phillips again rudely cut off Eliot's request and moved forward scheduling only a day for the Trust Construction to be heard. The problem for Ted and Rose, also ignored by Judge Phillips is that if Ted is not a valid Trustee as claimed by the PR and others how can he conduct further hearings and further, if the outcome of the Trust Construction does not come out as intended by Rose, Ted Bernstein and his lineal descendants will receive nothing and thus Ted cannot impartially represent the trust when his own pecuniary interest is at stake, creating an imparsable conflict of interest that makes him have adverse interests to certain alleged beneficiaries.

v. That at the second hearing scheduling conference Judge Phillips denied to hear a Petition for Attorney fees to be paid by the Estate for Eliot and his minor children beneficiaries, where the need for legal representation is a direct cause of proven frauds of on the court and the beneficiaries by the prior removed fiduciaries Tescher and Spallina and the current alleged fiduciary Ted Bernstein and then instead of providing payment for counsel, scheduled the trust construction hearing whereby Judge Phillips knew Eliot and his minor children would be deprived counsel at the hearing. Where Judge Phillips should have seen the need for counsel caused by the fraud which force trust construction and validity hearings on the victims and ordered those who directly caused the disputes

through fraudulently altering the dispositive documents in the matters and causing the need for counsel now to post bonding or other remedies to cover such costs and not order the Estate to pay them further harming the beneficiaries.

w. These actions here not only demonstrate the lack of impartiality of Judge Phillips but further the competency of this Judge, both which mandate Disqualification.

x. Judge Phillips knew and should have known that due process is a fundamental US Constitutional right and the fair Opportunity to be heard is a part of that right.

y. Judge Phillips knew and should have known that a Petition such as the Petition for All Writs which calls up for review the fundamental fairness of the Florida Courts to act in these cases is central to any ability to move the case forward in his Court.

z. Yet without deciding, determining, or even acknowledging these Petitions by Eliot I. Bernstein, and the seriousness of the claims made, Judge Phillips not only denies Eliot Bernstein the fair opportunity to be heard by cutting him off repeatedly and not providing a fair opportunity but instead Judge Phillips goes even further making the fatal error of proclaiming actual "Love" for Judge Martin Colin, such that Judge Phillips proclaims his "Love" for Judge Martin Colin twice on the record without ever acknowledging, hearing, deciding or determining whether Colin is a Material Fact Witness or a participant in the Fraud In his Court, without permitting Eliot Bernstein the fair opportunity to be heard to proclaim that Judge Colin is a material and fact witness and instead Judge Phillips permits the attorney for Ted Bernstein, Alan B. Rose, Esq. who is at the center of the fraud with Tescher & Spallina to take over the proceedings, not

even having the PR Brian O'Connell be heard who was the attorney who first Noticed the Conference that lead to this appearance in the first instance.

OTHER ISSUES REQUIRING DISQUALIFICATION

104. As pointed out in the Petition for All Writs pending with the Florida Supreme Court, Judge Martin Colin somehow had allowed attorneys Tescher & Spallina as well as alleged Trustee Ted Bernstein to Not provide any Accounting in the cases of the Simon and Shirley Bernstein Trusts for YEARS, violating Probate Rules and Statutes, despite being notified expressly by an Emergency filing made by Eliot I. Bernstein in May of 2015 detailing various acts of fraud and wrongdoing upon the court and before the Court in an Estate that should be worth in the millions, may in fact be worth be billions but somehow has been depleted to perhaps \$2 million or less at this time without Accountings or accountability by fiduciaries and attorneys at law moving in fraud.
105. Proskauer Rose also was involved in prior Estate Planning for Simon Bernstein who was a 30% shareholder in the Iviewit Technologies and now where current alleged Trustee Ted Bernstein alleged on the night of Simon Bernstein's passing that this may be "murder" and called with others for a Sheriff's investigation and Coroner's investigation claiming Simon's girlfriend may have poisoned him.
106. Estate Planning was done at great expense to Simon and Eliot by Proskauer in addition to the Intellectual Property work, as Proskauer felt it was best to distribute the stock of the Iviewit companies into irrevocable trusts created for their children while the stock was at a relatively low value after seed investments, including from Wayne Huizenga and other institutional investors, the company had a Private Placement Memo with Wachovia, contracts with Fortune 100

companies for licensing of the IP and had Goldman Sachs preparing to go IPO at the height of the internet boom before the controlled bust, where it was anticipated the stock price would skyrocket. The intellectual properties being backbone technologies now power over 90% of internet transmissions. With the stocks transferred pre-IPO the growth would grow in the children of Eliot and Simon and skip taxes on the growth and transfer of the stocks that occur if it was done post-IPO, therefore the estate plans were being rushed as things were moving light speed toward IPO and Simon prepared plans as did Eliot for his children. Further bias, prejudice, lack of impartiality and a reasonable fear that a fair trial can not be held is demonstrated by Judge Phillips issuing the Order for Construction the Shirley Bernstein Trust case, which case and pleadings were not Noticed to be Heard at the second hearing as it was a hearing in the Simon Bernstein Estate and when Eliot Bernstein attempted to clarify the matter and set straight the case being heard before the court that day the bias and prejudice was further exaggerated by Judge Phillips repeatedly denying Eliot I. Bernstein fair opportunity to be heard to even clarify on the Record which Case Judge Phillips was even discussing and issuing Orders under.

107. Due process requires fair notice and an opportunity to be heard. The Shirley Bernstein Trust case was not Noticed for hearing at the time of the appearance in Simon's Estate case noticed by the PR Brian O'Connell and the resulting VOID Order was issued on a pleading in the Shirley Trust case.

108. The Order issued by Judge Phillips in a case Not noticed to be heard and denying opportunity to even clarify on the record all the while disregarding any of the fundamental due process issues

raised in the Petition for All Writs embodies all the grounds that mandate disqualification at this time.

109. Attorney at Law and new PR O'Connell has already Petitioned the Court that Ted is invalid as Trustee under the terms of the Trust and Attorney at Law Peter Feaman for the creditor William Stansbury has made a written statement entered into the court record that Ted and Alan Rose should be removed and are acting improperly in the Federal Insurance Case under Judge John Robert Blakey involving the Estate of Simon and more and yet Phillips in the second hearing held by him allows Alan Rose to run the hearing scheduled by the PR O'Connell who virtually says nothing on the record and turn the hearing into a discussion about Shirley Bernstein's trust and schedule with Phillips a hearing for trust construction in Shirley's Trust which Rose was petitioning for without proper notice.

110. Rose also attempts to schedule a hearing to have a guardian placed on Eliot Bernstein and his children. where no motion was filed for such guardianship and no notice of hearing was scheduled for one and where Rose when asked by Phillips if a motion for guardianship had been filed, stated one had not been filed and factually failed to Disclose that in a prior Hearing for guardianship Rose was denied a Guardian motion for Eliot Bernstein and his children a year earlier on the same flawed logic he claimed to Phillips.

Rule 2.330 Grounds.

(e) Time. A motion to disqualify shall be filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c) and promptly filed. A motion made during hearing or trial shall be ruled on immediately.

111. This Motion is timely because all actions past and future of Judge Phillips are void as his mandatory disqualification from the matters should have occurred the instant he was aware that he was a material and fact witness in regard to the Colin alleged improper transfer to his Court and thus all judicial acts, present, past and future are all grounds for immediate investigation, disqualification and a voiding of any/all orders and sanctions for the attempt to continue the fraud on the court that started with Colin by violating Judicial Cannons, Probate Rules and Regulations and law and continuing the fraudulent acts without rectifying the past fraud first.
112. Said Orders of Judge John L. Phillips and other material information requiring Disqualification further defined herein embody the conduct which mandates Disqualification and thus this motion for Disqualification is therefore timely and appropriate.
113. Finally, since it was only learned yesterday that Petitioner Eliot Bernstein can not get an Original Certified Transcript of the Sept. 15, 2015 Case Management Conference before Phillips, the motion is further timely for that reason and all the reasons set out herein as the Un-certified and un-signed copy of the Transcript provided by Stansbury to Petitioner and cited herein not only potentially has errors but is filled with statements by Judge Phillips that he is “not smart”, “stupid”, talks about wrestling an octopus.
114. Until such time as the frauds upon the court is corrected and due process restored, any such motion presently is timely herein.

Rule 2.330 Grounds.

(f) Determination - Initial Motion.

The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other

reason for denial shall be stated, and an order of denial shall not take issue with the motion.

115. Petitioner states that the Motion is legally sufficient under Rule 2.330 as it fully complies with this code and whether Petitioner has filed a legally sufficient pleading would not negate the fact that Judge Phillips has to voluntarily and mandatorily disqualify under Judicial Canons, Attorney Conduct Codes and Law as stated herein.

Rule 2.330 Grounds.

(g) Determination - Successive Motions.

If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion.

116. Petitioner states there have been no Successive Motions.

Rule 2.330 Grounds.

(h) Prior Rulings.

Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.

117. Petitioner seeks that upon disqualification of Judge Phillips, that all prior factual or legal rulings be vacated by the successor judge due to the alleged continued civil torts against Petitioner by Judge Colin and his successors.

118. That further, Petitioner seeks a replacement Judge, who is not a member of the same jurisdiction as Judge Colin or Phillips and who is not a member of the Florida Bar to preside over the cases of Judge Colin/Coates/Phillips involving the Estates and Trusts of Simon and Shirley

Bernstein and the case involving the Trusts of Petitioner's minor children. This request due to the fact that Petitioner does not feel he can get a fair and impartial hearing in the State of Florida and certainly not by the 15th Judicial, perhaps the conflicts now include any members of the Florida Bar for reasons cited herein and in the All Writ and therefore Petitioner is seeking this Court to move the matters to a Federal Court or find other suitable remedy in such serious case where the Court is alleged part of the frauds and adhering to rules and regulations is of primary concern due to the past three years of alleged fraud.

119. The following cases that Judge Phillips now presides over are all tainted for the same reasons as stated herein and Judge Phillips should immediately voluntarily disqualify himself from these cases as well, voiding any/all orders, etc. and turning over the court records to Petitioner for review and save Petitioner the expense and aggravation of having to file Disqualification pleadings and subpoenas in each case to force his mandated disqualification and release of critical to the case court records already requested in the All Writs Petition pending:

- a. Case# 502012CP004391XXXXSB – Simon Bernstein Estate
- b. Case# 502011CP000653XXXXSB – Shirley Bernstein Estate
- c. Case# 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- d. Case# 502014CP003698XXXXSB – Shirley Trust Construction
- e. Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case
OLD Case# 502014CA014637XXXXMB

Rule 2.330 Grounds.

(i) Judge's Initiative.

Nothing in this rule limits the judge's authority to enter an order of disqualification on the judge's own initiative.

120. Petitioner states that Judge Phillips should have already entered an order of disqualification on his own initiative according to Judicial Canons, Statutes and Rules when he became aware that disqualification was mandated of him as a potential witness regarding the alleged improper

post recusal steering of the cases by Colin but has thus far failed to do so and instead rushed into hearings without first addressing these fundamental issues of fair and impartial due process. If for any reason Judge Phillips finds this Motion legally insufficient, Judge Phillips must disqualify himself on his own initiative as set forth under this rule 2.330 (i) and Judicial Canon, Attorney Conduct Codes, Probate Rules and Statutes and Law for the reasons stated herein, whether pled sufficiently or not by Pro Se Eliot Bernstein.

Rule 2.330 Grounds.

(j) Time for Determination.

The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.

121. Petitioner demands due to the EMERGENCY NATURE of this case where claims have been made that Petitioner's children are in life threatening dangers due to the abusive and fraudulent Probate rulings and proceedings for the last three year which have directly and intentionally interfered with inheritances/expectancies causing massive harms to them caused directly by the Fraud on the Court by the Court Appointed Attorneys at Law and Fiduciaries and potentially the Court itself and this requires that this Disqualification be made instantly. Delays cause further ongoing harms and damages of Petitioner's minor children and Petitioner's family which results in additional liabilities to those parties ultimately held accountable for the criminal acts, civil torts and frauds that occurred in Judge Colin and Judge French's courts.

122. That PRIOR to any other actions by Judge Phillips, this Disqualification must first be ruled on.

Florida Statutes 38.10

**Disqualification of judge for prejudice; application; affidavits;
etc.—**

Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

123. Petitioner has supplied a legally sufficient Affidavit herein.
124. Judge John L. Phillips is again mandated to be Disqualified under the Rules by both express words, conduct and by omissions by creating a reasonable fear by the party Eliot I. Bernstein that he will not receive a fair trial as defined herein.

WHEREFORE, the PRO SE Petitioner requests that Judge Phillips immediately mandatorily disqualify as this is a legally sufficient pleading. In the alternative if it is determined by Judge Phillips that this Pro Se pleading is legally insufficient then he must on his own motion and initiative disqualify himself as required by Judicial Cannons, Attorney Conduct Codes and Law. Further, all Orders of Judge Phillips should be voided including the Mediation scheduled for Dec. 4th, 2015 at 10 am EST and Trial Scheduled for Dec. 15th, 2015.

Under Penalties of perjury, I, Eliot Ivan Bernstein, swear under oath and affirm that I have read the foregoing and the facts alleged are made in good faith and are true to the best of my knowledge and belief.

Dated this 4th day of December, 2015

Respectfully Submitted,

Eliot Ivan Bernstein
2753 NW 34th ST
Boca Raton, FL 33434
Telephone: 561-245-8588
iviewit@iviewit.tv



Eliot Ivan Bernstein

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 4th day of December, 2015.



Eliot Ivan Bernstein

STATE OF FLORIDA

COUNTY OF PALM BEACH COUNTY

Sworn to or affirmed and subscribed before me this 4th day of December, 2015 by Eliot Bernstein who is known to me or produced the following identification. CALIFORNIA
FL DRIVER LICENCE
RBC

NOTARY PUBLIC

Print name of Notary:

LANCE A. CHANEY

Notary Signature:

X Lance A Chaney 

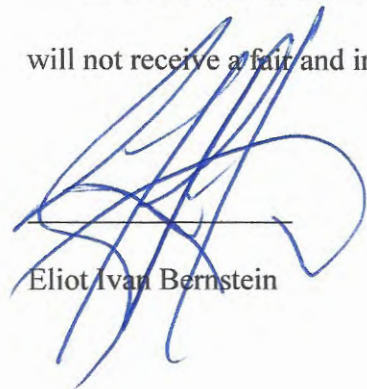
Stamp

Lance A. Chaney
Notary Public
State of Florida
My Commission Expires 04/06/2018
Commission No. FF 110089

My commission expires: 04/06/2018

AFFIDAVIT

Affiant, Eliot Bernstein hereby states under oath that the attached Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge John L. Phillips is true and correct to the best of his knowledge and belief and that he fears that for all the reasons herein he will not receive a fair and impartial trial with due process and procedure.


Eliot Ivan Bernstein

December 04, 2015

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed before me this 4th day of December, 2015 by

Eliot Ivan Bernstein who is known to me or produced the following identification

CALIFORNIA DRIVER LICENSE

Notary Public

Print name: LANCE A. CHANEY

Notary Signature: Lance A Chaney

Stamp



Lance A. Chaney
Notary Public
State of Florida

My Commission Expires 04/06/2018
Commission No. FF 110089

My commission expires: 04/06/2018

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.

**AMENDED¹ RENEWED PETITION TO RE-CLOSE ESTATE AND FOR
DISCHARGE OF SUCCESSOR PERSONAL REPRESENTATIVE**

Ted S. Bernstein, as Successor Personal Representative, petitions this Court for the entry of an order re-closing this Estate and discharging the Successor Personal Representative, and in support thereof states:

1. After trial held on December 15, 2015, this Court upheld Shirley's Will and determined that Eliot Bernstein is not a beneficiary of the Will and Trust of Shirley Bernstein, but Eliot's three sons were beneficiaries, among others.

2. On March 1, 2016, this Court appointed a guardian ad litem to represent Eliot's three son's interests in Shirley's Trust because², "there is a conflict of interest between [Eliot] and the children, and because Eliot Bernstein has proven to be an inadequate representative of the best interests of his children."

3. On September 2, 2014, Successor Personal Representative petitioned to Re-Close Shirley's estate based on signed waivers, which was denied solely because Eliot rescinded his waiver and challenged Shirley's inventory.

¹ Amended to add Exhibit A.

²All assets that the beneficiaries are entitled to from Shirley's Will has poured over into Shirley's Trust or Simon's Estate.

4. Eliot now lacks standing to challenge Shirley's inventory or challenge any aspect of Shirley's estate because he is not a beneficiary and is not a guardian for a beneficiary's interests.

5. The initial Personal Representative, Simon L. Bernstein, fully administered this estate and Petitioned for a discharge, with signed (but un-notarized) waivers by all interested persons. §731.301, Fla. Stat. (See Exhibit "A")

6. Under her Will, admitted to probate, Shirley left all of her personal effects, jewelry, collections, furnishings, automobiles and all non-business assets to her husband, Simon, if he survived her, which he did. Shirley's residences were to go to Simon, but she had no residences other than property already in her trust. The remainder of her estate was to pour-over into the Shirley Bernstein Trust Agreement dated May 20, 2008 (the "Shirley Trust"). Simon was the sole beneficiary of the Shirley Trust while he was alive.

7. Shirley died on December 8, 2010. Sometime thereafter, Simon directly took possession and control of all assets of her estate, and indirectly took control of the Shirley Bernstein Trust's assets as the initial Successor Trustee and sole beneficiary during his lifetime.

8. On April 9, 2012, Simon signed a Petition for Discharge and his own Waiver form. By that time, Simon had completed the administration of Shirley's Estate and he wanted the Estate to be closed. Because the five children – Ted, Pam, Eliot, Jill and Lisa – were interested parties, Simon also sought a waiver from each of them. Based upon the request of their father, each of his children signed a Waiver. The Waivers were delivered to this Court, but initially were rejected for lack of a notary.

9. Regardless, the Estate remains open at this time and the Court has confirmed he nomination of Ted S. Bernstein as Successor Personal Representative under the terms of Shirley's

Will (also upheld as part of the Final Judgment dated December 16, 2015).

10. The Successor Personal Representative has completed the necessary inventory and accounting of the re-opened Estate. While Simon was alive, he disposed of all assets (believed to be tangible personal property only) and resolved all claims (if any) which were presented. No assets were discovered by the Successor Personal Representative in the re-opened Estate.

11. There were no estate taxes due (Shirley died in 2010) and Simon had paid or caused to be paid all claims and expenses of administration. More than two years has passed since Shirley's death, so there can and will be no more claims. There currently is no reason for the estate to remain open.

12. Although this Court reopened the Estate, the Successor Personal Representative has possession of no assets and never has, and is aware of no liabilities. This was confirmed when the Successor Personal Representative conducted the final accounting and inventory of the estate. The Successor Personal Representative will never have any assets to distribute because there are no assets and anything which conceivably could have existed on the date of Shirley's death would have been transferred to Simon as her surviving spouse under the terms of her Will. Any such assets Simon retained as of his death would now be in Simon's estate.

13. This is the Successor Personal Representative's second motion to re-close this Estate. In an effort to reduce the legal expense in this Estate, which has no assets whatsoever, Ted S. Bernstein, as Successor Personal Representative, previously moved to re-close the Estate. At that time, this Court had not yet determined the validity of the Will or the Trust, which is the sole beneficiary of the Estate under the Will. Therefore, at that time, Eliot, as a surviving child of the Decedent, arguably had standing to object. Eliot did object, and this Court (at a time when Judge

Colin was presiding) denied the Petition to Re-Close without prejudice.

14. Now, circumstances have changed. By Final Judgment dated December 16, 2015, this Court determined that the Will and Trust are valid. The Court later confirmed that ruling on February 1, 2016, in an Order determining that Eliot lacked standing to participate in this matter.

15. Under the Will and Trust, Simon Bernstein individually was the sole beneficiary with regard to tangible personal property, including furniture, jewelry, and other personal possessions of Shirley Bernstein. All other assets were to be distributed to The Shirley Bernstein Trust Agreement dated May 20, 2008.

16. Prior to his death, Simon Bernstein was serving as the personal representative of the Estate and as the sole trustee of the Trust. Simon Bernstein alone was entitled to possession and ownership of the tangible personal property, and he alone was entitled to control the Trust assets and was the sole beneficiary of the Trust, all during his lifetime. Before he died, Simon Bernstein signed documents sufficient to discharge him, waive an accounting, and close the Estate.

17. Although none of them are individually beneficiaries, each of his children likewise signed waivers, although Eliot has since withdrawn his. Notwithstanding the "belts and suspenders" approach in seeking waivers from Shirley's adult children, now that the Will and Trust have been construed, it is obvious that none of the children are beneficiaries, directly or indirectly, of the Estate of Shirley Bernstein or her Trust. Moreover, the persons who are the ultimate beneficiaries of The Shirley Bernstein Trust, a Trust created for the benefit of each of her ten grandchildren, are controlled by four of her children and the Guardian *Ad Litem* appointed to represent Eliot's children. All of those parties support and have agreed to that it is in the best interests of the Beneficiaries of this Estate for the Court to order the immediate re-closure of this Estate.

18. The Estate now seeks an order of this Court closing this Estate based upon the accounting and inventory completed by the Successor Personal Representative and the genuineness of the Waivers signed while Simon was alive, coupled with Eliot's lack of standing. In addition, the Successor Personal Representative now has the full knowledge, consent, and approval of the direct beneficiary of the Estate (Ted S. Bernstein, as Successor Trustee of The Shirley Bernstein Trust), and all of the indirect beneficiaries (representatives of Shirley's ten grandchildren), the Personal Representative requests the Court immediately re-close the Estate, discharge the Personal Representative, and grant such other relief as is just.

WHEREFORE, the Successor Personal Representative respectfully requests the entry of an Order re-closing this Estate; discharging the Successor Personal Representative and releasing the surety on any bond which the Successor Personal Representative may have posted in this proceeding; and granting such other relief as it just.

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.

/s/ *Ted Bernstein*
Ted S. Bernstein
Successor Personal Representative

Dated this 7th day of November, 2016.

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 15th day of November, 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
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST

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

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

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
(561) 758-3017 - Telephone
Email: dzlewis@aol.com
Guardian *Ad Litem* for
Eliot Bernstein's minor children,
Jo.B., Ja.B., and D.B.

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
 IN RE: ESTATE OF File No. 502011000653XXXX SB
 SHIRLEY BERNSTEIN, Probate Division
 Deceased.

PETITION FOR DISCHARGE
(full waiver)

Petitioner, SIMON BERNSTEIN, as personal representative of the above estate, alleges:

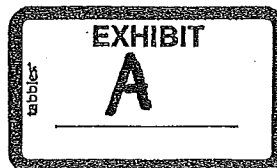
1. The decedent, Shirley Bernstein, a resident of Palm Beach County, died on December 8, 2010, and Letters of Administration were issued to petitioner on February 10, 2011.

2. Petitioner has fully administered this estate by making payment, settlement, or other disposition of all claims and debts that were presented, and by paying or making provision for the payment of all taxes and expenses of administration.

3. Petitioner has filed all required estate tax returns with the Internal Revenue Service and with the Department of Revenue of the State of Florida, and has obtained and filed, or file herewith, evidence of the satisfaction of this estate's obligations for both federal and Florida estate taxes, if any.

4. The only persons, other than petitioner, having an interest in this proceeding, and their respective addresses are:

NAME	ADDRESS	RELATIONSHIP	BIRTH DATE (if Minor)
Simon L. Bernstein	7020 Lions Head Lane Boca Raton, FL 33496	spouse	adult
Ted S. Bernstein	880 Berkeley Street Boca Raton, FL 33487	son	adult



Pamela B. Simon	950 North Michigan Avenue Suite 2603 Chicago, IL 60606	daughter	adult
Eliot Bernstein	2753 NW 34 th Street Boca Raton, FL 33434	son	adult
Jill Iantoni	2101 Magnolia Lane Highland Park, IL 60035	daughter	adult
Lisa S. Friedstein	2142 Churchill Lane Highland Park, IL 60035	daughter	adult

5. Petitioner, pursuant to Section 731.302 of the Florida Probate Code, and as permitted by Fla. Prob. R. 5.400(f), files herewith waivers and receipts signed by all interested persons:

- (a) acknowledging that they are aware of the right to have a final accounting;
- (b) waiving the filing and service of a final accounting;
- (c) waiving the inclusion in this petition of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers or other agents employed by the personal representative and the manner of determining that compensation;
- (d) acknowledging that they have actual knowledge of the amount and manner of determining compensation of the personal representative, attorneys, accountants, appraisers, or other agents, and agreeing to the amount and manner of determining such compensation, and waiving any objections to the payment of such compensation;
- (e) waiving the inclusion in this petition of a plan of distribution;
- (f) waiving service of this petition and all notice thereof;
- (g) acknowledging receipt of complete distribution of the share of the estate to which they are entitled; and
- (h) consenting to the entry of an order discharging petitioner, as personal representative, without notice, hearing or waiting period and without further accounting.

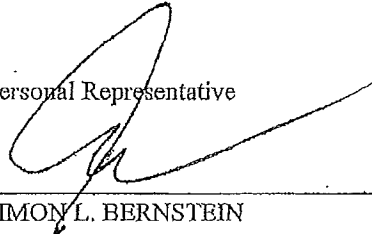
Petitioner requests that an order be entered discharging petitioner as personal representative of this estate and releasing the surety on any bond which petitioner may have posted in this proceeding from any liability on it.



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 April 9, 2012.

Personal Representative


SIMON L. BERNSTEIN

Respectfully Submitted,
TESCHER & SPALLINA, P.A.

By: 

ROBERT L. SPALLINA, ESQUIRE
Florida Bar No. 497381
4855 Technology Way, St. 720
Boca Raton, FL 33431
561-997-7008

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IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 502011CP000653XXXXSB
SHIRLEY BERNSTEIN, Probate Division
Deceased; Division

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SHARON L. B. SCHULTZ
PALM BEACH COUNTY CLERK
SOUTH CITY SQUARE FILED

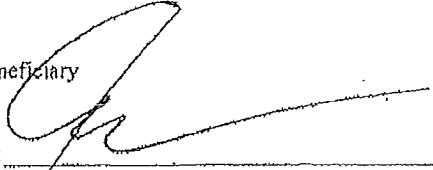
**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR
DISCHARGE; AND RECEIPT OF BENEFICIARY AND
CONSENT TO DISCHARGE**

The undersigned, Simon L. Bernstein, whose address is 7020 Lions Head Lane, Boca Raton, Florida 33496, and who has an interest in the above estate as beneficiary of the estate;

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 4/9/12, 2012.

Beneficiary

By: 
SIMON L. BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 502011CP000653XXXXSB
SHIRLEY BERNSTEIN, Probate Division
Deceased. Division

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SHARON A. BROWN, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BEACH, FL

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR
DISCHARGE; AND RECEIPT OF BENEFICIARY AND
CONSENT TO DISCHARGE**

The undersigned, Eliot Bernstein, whose address is 2753 NW 34th Street, Boca Raton, FL 33434, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on Mag 15, 2012.

Beneficiary

By 
ELIOT BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 502011CP000653XXXXSB
SHIRLEY BERNSTEIN, Probate Division
Deceased. Division

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SHARON L. BROWN, CLERK
PALM BEACH COUNTY
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**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR
DISCHARGE; AND RECEIPT OF BENEFICIARY AND
CONSENT TO DISCHARGE**

The undersigned, Ted S. Bernstein, whose address is 880 Berkeley Street, Boca Raton, Florida 33487, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 8/1/12, 2012.

Beneficiary

By:


TED BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 502011CP000653XXXXSB
SHIRLEY BERNSTEIN, Probate Division
Deceased. Division

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SHARON L. STEIN, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BENCH FILED


**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR
DISCHARGE; AND RECEIPT OF BENEFICIARY AND
CONSENT TO DISCHARGE**

The undersigned, Pamela B. Simon, whose address is 950 North Michigan Avenue, Suite 2603, Chicago, IL 60606, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 8/8, 2012.

Beneficiary

By: 
PAMELA B. SIMON

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 502011CP000653XXXXSB
SHIRLEY BERNSTEIN, Probate Division
Deceased. Division

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SHARON A. FRIEDSTEIN
PALM BEACH COUNTY FL
SOUTH CITY JR. COURSE FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR
DISCHARGE; AND RECEIPT OF BENEFICIARY AND
CONSENT TO DISCHARGE**

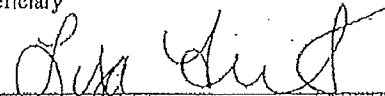
The undersigned, Lisa S. Friedstein, whose address is 2142 Churchill Lane, Highland Park, IL, 60035, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on August 21, 2012.

Beneficiary

By:


LISA S. FRIEDSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 50201 ICP000653XXXXSB
SHIRLEY BERNSTEIN, Probate Division
Deceased; Division

2012 OCT 24 PM 1:31
SHIRLEY BERNSTEIN ESTATE
PALM BEACH COUNTY FILE
SOUTH CITY

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR
DISCHARGE; AND RECEIPT OF BENEFICIARY AND
CONSENT TO DISCHARGE**

The undersigned, Jill Iantoni, whose address is 2101 Magnolia Lane, Highland Park, IL 60035, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on OCTOBER 1st, 2012.

Beneficiary

By: 
JILL IANTONI