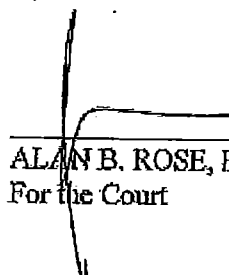


Palm Beach Gardens, FL 33410 *Courtroom 3* on April 8, 2016 at 9:45 A.M. to testify in this action and to have with you at that time, the documents outlined in Exhibit A attached to this Subpoena.

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 9<sup>th</sup> 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:

**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 E. 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.: 502014CP003698XXXXSB

Plaintiff,

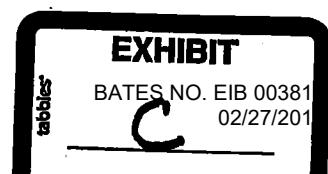
v.

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 or 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.<sup>1</sup> 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.

---

<sup>1</sup> 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.**  
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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  
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Eric Bernstein, Michael Bernstein

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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  
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Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

**COURTESY COPY ONLY:**

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Joielle A. Foglietta, Esq.  
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[slobdell@ciklinlubitz.com](mailto: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 indemnity<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup>

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

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<sup>2</sup> 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](mailto:arose@mrachek-law.com)  
Secondary: [mchandler@mrachek-law.com](mailto: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  
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(561) 833-0866 - Telephone  
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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](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
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561-833-4209 - Facsimile  
Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com);  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto: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 <sup>3</sup>	\$31,902.50
Legal fees: Buyer	\$15,000.00
Legal fees: Seller	\$50,000.00
<b>TOTAL</b>	<b>\$231,934.78</b>

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<sup>3</sup> 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](http://www.sunbiz.org) where I quickly found:

1) [www.sunbiz.org](http://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](mailto:kh.itconsultingsalesoffices@gmail.com)

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On Mon, Mar 7, 2016 at 12:55 PM, Alan Rose <[ARose@mrachek-law.com](mailto: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

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**From:** Eliot Ivan Bernstein <[iviewit@iviewit.tv](mailto: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 4<sup>th</sup> 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.

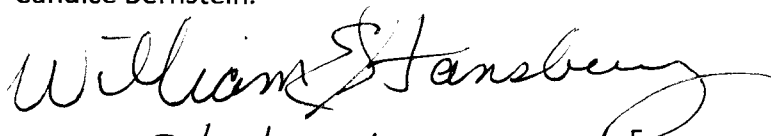
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They are being portrayed this way because they believe that, by having Ted Bernstein serving as trustee of Simon's trust, that the directives of Simon Bernstein in that document are not being honored.

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.

  
3/2/2016 5

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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.

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, Spallina admits to the court and the police that, after Shirley's death, 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 forging signatures on certain probate documents in the Estate of Shirley Bernstein and to notarizing those documents. 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. I believe that Eliot's efforts were the primary reason that Spallina's conduct in connection with these court filings was exposed.
- 4) As evidenced by a court transcript from a hearing in one of the above-referenced cases, Judge Colin stated twice that he had heard enough to read several officers of the court 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 to Heritage Union Life Insurance Company through the U.S. mail for payment of an approximately \$1.7M death benefit on a policy owned by Simon Bernstein personally. The records from the insurance company list the Simon Bernstein Irrevocable Trust N.A. executed in 1995 (the "1995 ILIT") as the contingent beneficiary (the primary beneficiary was LaSalle National Bank). Spallina represented himself on the claim form submitted to the insurance company as the trustee of the 1995 ILIT. Subsequently, Spallina admitted that he had never seen the 1995 ILIT and no idea what its terms were. To make matters worse, 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. 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, Heritage Union refused to pay the claim. I believe that Eliot's efforts helped to expose Spallina's actions.
  - 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

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. Thus, 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. 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, 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 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 4<sup>th</sup> 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.
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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.

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2/29/2016

The Law Offices  
of  
**PETER M. FEAMAN, P.A.**  
Strategic Counselors. Proven Advocates.™

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Jeffrey T. Royer, Esq.  
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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.  
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Jeffrey and Lisa Friedstein  
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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 19<sup>th</sup> day of May, 2015.

---

**MARTIN H. COLIN**  
Circuit Judge

Copies furnished:  
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Boca Raton, Fl. 33434

John P. Morrissey, Esquire  
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Boca Raton, FL 33431

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> 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 (7<sup>th</sup> 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. 1<sup>st</sup> 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 15<sup>th</sup> 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 34<sup>th</sup> Street  
Boca Raton, Florida 33434  
Email: [iviewit@iviewit.tv](mailto: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](mailto:arose@mrachek-law.com)

**John P. Morrissey, Esq.**  
330 Clematis Street, Suite 213  
West Palm Beach, Florida 33401  
Email: [john@jmorrisseylaw.com](mailto: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](mailto: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](mailto:lisa.friedstein@gmail.com)

**Brian M. O'Connell, Esquire**

**Joielle A. Foglietta, Esq.**

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

Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com)

[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com)

[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)

[slobdell@ciklinlubitz.com](mailto: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](mailto:jilliantoni@gmail.com)

PETER M. FEAMAN, P.A.

3695 West Boynton Beach Blvd., #9

Boynton Beach, FL 33436

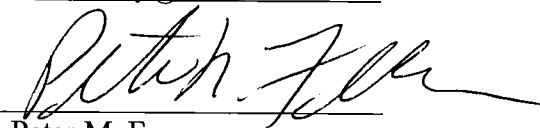
Telephone: (561) 734-5552

Facsimile: (561) 734-5554

Service: [service@feamanlaw.com](mailto:service@feamanlaw.com)

[mkoskey@feamanlaw.com](mailto: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](mailto:pfeaman@feamanlaw.com)  
To: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com)  
CC: [jroyer@feamanlaw.com](mailto: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](http://www.feamanlaw.com)

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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.



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Facsimile: 561-734-5554

August 29, 2014

**PERSONAL and CONFIDENTIAL**  
[bocconnell@ciklinlubitz.com](mailto:bocconnell@ciklinlubitz.com)

Brian M. O'Connell, Esq.  
Ciklin Lubitz Martens & O'Connell  
515 N. Flagler Drive, 20<sup>th</sup> 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.

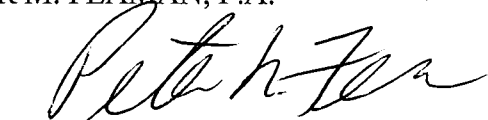
Brian O'Connell, Esq.  
August 29, 2014  
Page 2

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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of  
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Peter M. Feaman, Esq.  
Nancy E. Guffey, Esq.  
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August 29, 2014

**PERSONAL and CONFIDENTIAL**  
[bocconnell@ciklinlubitz.com](mailto:bocconnell@ciklinlubitz.com)

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

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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.



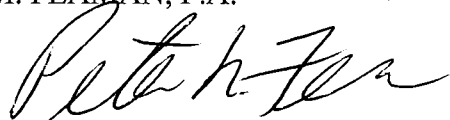
Brian O'Connell, Esq.  
August 29, 2014  
Page 2

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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 <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

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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](mailto: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.

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Boynton Beach, FL 33436

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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](mailto: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 (7<sup>th</sup> 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. 1<sup>st</sup> 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**

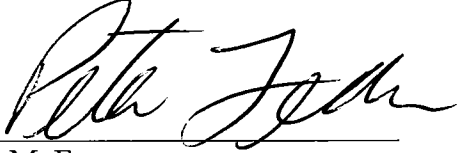
There are serious allegations of fraud and forgery in the Shirley Bernstein Estate where Ted Bernstein is the Personal Representative. Documents were submitted to the Court bearing notarized signatures of Simon Bernstein on a date after he had passed away.

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.

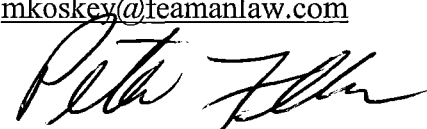
  
Peter M. Feaman

**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](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com); John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com); Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto: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](mailto:bill@palmettobaylaw.com); Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell 515 North Flagler Drive, 20<sup>th</sup> Floor, West Palm Beach, FL 33401, [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com); John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com); Irwin J. Block, Esq., 700 S. Federal Hwy., Suite 200, Boca Raton, FL 33432, [ijb@ijblegal.com](mailto: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  
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[mkoskey@feamanlaw.com](mailto: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](http://www.tescherspallina.com)

LAW OFFICES  
TESCHER & SPALLINA, P.A.

**EXHIBIT** A



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SIMON L. BERNSTEIN

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AMENDED AND RESTATED TRUST AGREEMENT

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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.

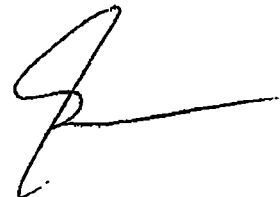
C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust 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 1.A hereof, provided I otherwise have legal capacity to do so.

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

#### ARTICLE IV. FIDUCIARIES

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

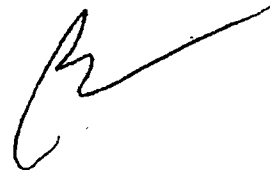
e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Appointment of Successor Trustee.

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



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

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

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

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

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

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

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



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

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

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

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

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

G. Liability and Indemnification of Trustee.

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

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



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

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

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

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

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



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

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

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

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

#### ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

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

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LAW OFFICES  
**TESCHER & SPALLINA, P.A.**



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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:

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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 21 day of July, 2012:

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

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

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

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

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

[Seal with Commission Expiration Date]

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

Personally Known \_\_\_\_\_ or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

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LAW OFFICES  
TESCHER & SPALLINA, P.A.



LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

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

*ATTORNEYS*

DONALD R. TESCHER  
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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 34<sup>th</sup> 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

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DIANE DUSTIN  
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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.”<sup>1</sup>

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 14<sup>th</sup> Order to deny Stansbury’s second effort to intervene in this lawsuit.

---

<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

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<sup>2</sup> 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

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

<sup>4</sup> 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.

<sup>5</sup> 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.<sup>6</sup> 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).

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<sup>6</sup> 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. (1<sup>st</sup>) 123025, 373 Ill. Dec. 620, 994 N.E.2<sup>nd</sup> 105 (1<sup>st</sup> 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.*”<sup>7</sup> (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.

---

<sup>7</sup> 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 (7<sup>th</sup> 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 (2<sup>nd</sup> 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 (1<sup>st</sup> 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.<sup>8</sup>

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.<sup>9</sup>

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.

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

<sup>9</sup> 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 (1<sup>st</sup> 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."<sup>10</sup>

This language again mirrors the language in Stansbury's prior motion to intervene.<sup>11</sup> 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.

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<sup>10</sup> See Dkt. #110, Estate motion to intervene at ¶9.

<sup>11</sup> 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**  
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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):

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on the 28th day of June, 2014.

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Attorney for Plaintiffs

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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,

7 vs.

8 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA  
9 (BOTH PERSONALLY & PROFESSIONALLY); DONALD  
R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);  
10 THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL  
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 South County Courthouse  
17 200 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. 4<sup>th</sup> 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. 1<sup>st</sup> 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](mailto:arose@mrachek-law.com) and [mhandler@mrachek-law.com](mailto: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](mailto: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 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto: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](mailto:bill@palmettobaylaw.com); Benjamin P. Brown, Esq., Matwiczuk & Brown, LLP, 625 N. Flagler Drive, Suite 401, West Palm Beach, FL 33401, [bbrown@matbrolaw.com](mailto:bbrown@matbrolaw.com); John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com), Irwin J. Block, Esq., 700 S. Federal Hwy., Suite 200, Boca Raton, FL 33432, [ijb@ijblegal.com](mailto:ijb@ijblegal.com), on this 27<sup>th</sup> day of June, 2014.

PETER M. FEAMAN, P.A.  
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By: \_\_\_\_\_

  
Peter M. Feaman  
Florida Bar No.: 0260347

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

IN RE: Case No. 502012CP004391 SB

ESTATE OF SIMON  
BERNSTEIN,  
Deceased.

Division: IZ

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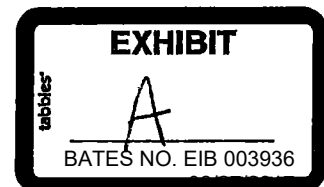
SHARON R. BOCK  
CLERK & COMPTROLLER  
PALM BEACH COUNTY

STATEMENT OF CLAIM BY WILLIAM E. STANSBURY

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

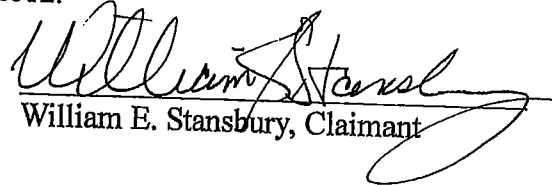
1. The basis for the claim is the action pending in Palm Beach County, Florida, *Stansbury v. Bernstein, et. al*, Case No. 502012CA 013933XXXX MB (the "Pending Action"). A true and correct copy of the Complaint filed by claimant that initiated the Pending Action is attached hereto as Exhibit "A" and 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]*

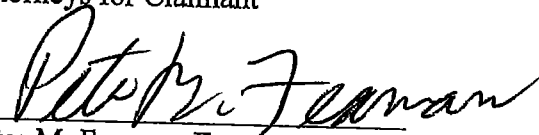


Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on November 6, 2012.

  
William E. Stansbury, Claimant

Attorneys for Claimant

  
Peter M. Feaman, Esq.  
Florida Bar No.: 260347  
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Copy mailed to attorney for Personal  
Representative on \_\_\_\_\_  
2012.

**MUST BE FILED IN DUPLICATE**

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> 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](mailto:mrmlaw@comcast.net); and [mrmlaw1@gmail.com](mailto: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](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto: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](mailto: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.

25

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33 Stenographically Reported By:  
34 JESSICA THIBAUT

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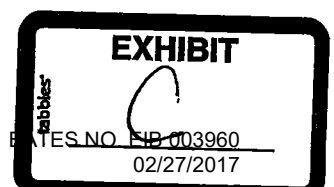
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APPEARANCES

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

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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. 501(c)(3)

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"/> Prop. administrator SSN	<input type="checkbox"/> Partnership
<input type="checkbox"/> State/local government	<input type="checkbox"/> Other corporation (specify)	<input type="checkbox"/> Farmers' cooperative
<input type="checkbox"/> Other nonprofit organization (specify)	<input type="checkbox"/> Federal government/military	<input type="checkbox"/> Church or church controlled organization
<input type="checkbox"/> Other (specify) <u>  </u>	If nonprofit organization enter GEN (if applicable)	

8b Personal service corp.  National guard

9a 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)

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

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

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."

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

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

Yes  No

15 Principal activity or service (See instructions.)   

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

Yes  No

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

Public (retail)  Other (specify)     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    Trade name   

19c 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.

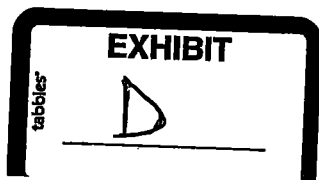
Name and title (Please type or print clearly) Shirley Bernstein, Trustee Telephone number (include area code) 407-477-9991

Signature X Date June 21, 1995

Please leave blank                  

Note: Do not write below this line. For official use only.

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) <b>Bernstein, Simon Leon</b>		2. Last 4 digits of Deceased's Social Security No. <b>5221</b>	
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) <b>1009208</b>		5. If policy is lost or not available, please explain: <b>unable to locate, policy is 30 years old</b>	
6. Deceased's Date of Death <b>09/13/12</b>		7. Cause of Death <b>natural causes</b>	
8. <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending			

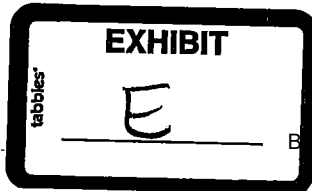
## CLAIMANT INFORMATION

9. Claimant Name (Last, First, Middle) If trust, please list trust name and complete Trustee Certification section. <b>Simon Bernstein Irrevocable Insurance Trust</b>				
10. Street Address		11. City	12. State and Zip	13. Daytime Phone Number
14. Date of Birth		15. Social Security or Tax ID Number <b>65-617 8916</b>		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

*[Handwritten Signature]*  
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.

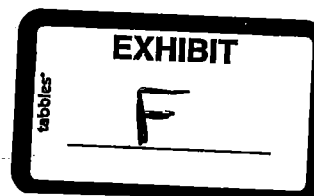
If you have any questions with regard to the foregoing, please do not hesitate to contact me.

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](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

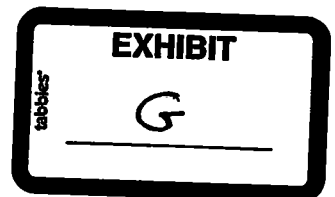
The information contained in this message is legally privileged and confidential information intended only for the use of the individual or entity named above. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS 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](mailto: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](mailto:jill@ne.bah.com)  
Recruiting Services  
Booz | Allen | Hamilton

On Jan 29, 2013, at 2:03 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto: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](mailto: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](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.

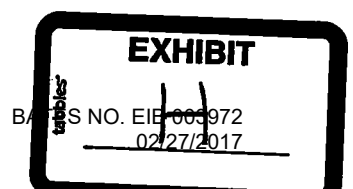
**WORK EXPERIENCE**

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, 28<sup>th</sup> 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).

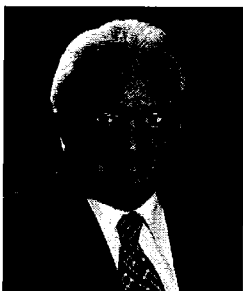
### **EXPERT WITNESS TESTIMONY**

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.

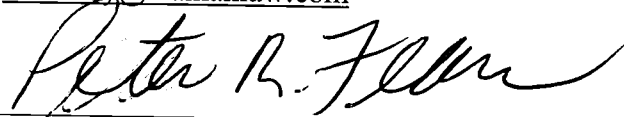
  
Peter M. Feaman, Esq.

**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](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com); John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com); Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto: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](mailto:bill@palmettobaylaw.com); Benjamin P. Brown, Esq., Matwiczuk & Brown, LLP, 625 N. Flagler Drive, Suite 401, West Palm Beach, FL 33401, [bbrown@matbrolaw.com](mailto:bbrown@matbrolaw.com); John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com) on this 2<sup>nd</sup> 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](mailto:service@feamanlaw.com)  
[mkoskey@feamanlaw.com](mailto: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. 4<sup>th</sup> 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. 4<sup>th</sup> 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. 1<sup>st</sup> 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](mailto:arose@pm-law.com) and [mhandler@pm-law.com](mailto:mhandler@pm-law.com); John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com); Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto: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](mailto: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](mailto: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](mailto:service@feamanlaw.com)  
[mkoskey@feamanlaw.com](mailto: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. 501(c)(3) 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) o
  - Estate
  - Trust
  - Partnership
  - Farmers' cooperative
  - Federal government/military
  - Church or church controlled organization
- If nonprofit organization enter GEN (if applicable)

8b If a corporation, give name of foreign country (if applicable) or state in the U.S. where incorporated o Foreign country State

- 9 Reason for applying (Check only one box)
- Started new business
  - Hired employees
  - Created a pension plan (specify type) o
  - Banking purpose (specify) o
  - Other (specify) o
  - Changed type of organization (specify) o
  - Purchased going business
  - Created a trust (specify) Insurance Trust

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. o Yes o No

15 Principal activity or service (See instructions.) o

16 Is the principal business activity manufacturing?  
If "Yes," principal product and raw material used o Yes o No

17 To whom are most of the products or services sold? Please check the appropriate box.  
 Public (retail)  Other (specify) o  Business (wholesale)  N/A

18 Has the applicant ever applied for an identification number for this or any other business?  
Note: If "Yes," please complete lines 18b and 18c. o Yes  No

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

True name o Trade name o

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 o Gov. o Ind. o Class o Size o Reason for applying o

For Paperwork Reduction Act Notice, see attached instructions.

EXHIBIT **B** 000104 BATES NO. EIB 003992 02/27/2017

# CLAIMANT STATEMENT

## DECEASED INFORMATION

1. Name of Deceased (Last, First Middle) <b>Bernstein, Simon Leon</b>		2. Last 4 digits of Deceased's Social Security No. <b>5221</b>	
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) <b>1009208</b>		5. If policy is lost or not available, please explain: <b>Unable to locate, policy is 30 years old</b>	
6. Deceased's Date of Death <b>09/13/12</b>	7. Cause of Death <b>natural causes</b>	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. <b>Simon Bernstein Irrevocable Insurance Trust</b>			
10. Street Address		11. City	12. State and Zip
			13. Daytime Phone Number
14. Date of Birth	15. Social Security or Tax ID Number <b>65-6178916</b>		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 2<sup>nd</sup> 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.

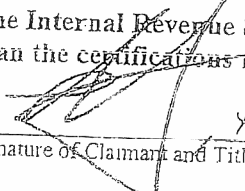
## SIGNATURES

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 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

EXHIBIT D

BATES NO. JEB 003996  
02/27/2017

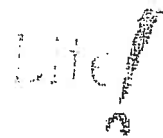


We are going to do what is necessary. I have the proceeds paid where they were intended to be paid, as quickly as possible now. If you think I am factually incorrect about any of this, please either call me or email me and explain where I may be wrong. It goes without saying, this is not my expertise. 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.

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](mailto:Tbernstein@lifeInsuranceConcepts.com)  
[www.LifeInsuranceConcepts.com](http://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](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://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](mailto: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](mailto:jill@ne.bah.com)  
Recruiting Services  
Booz | Allen | Hamilton

On Jan 29, 2013, at 2:03 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto: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](mailto: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](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:** 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](mailto: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](mailto: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. 4<sup>th</sup> 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.

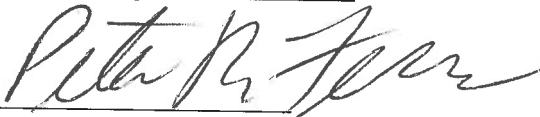
WHEREFORE, Interested Person, William E. Stansbury moves this Honorable Court for an Order Appoint an Administrator Ad Litem to protect the interests of the Estate of Simon Bernstein in Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company, Case No. 13 cv 3643 (N.D. Ill., 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](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com); John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com); Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto: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](mailto:bill@palmettobaylaw.com) on this 14<sup>th</sup> 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](mailto:service@feamanlaw.com)  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)

By: \_\_\_\_\_

  
Peter M. Feaman  
Florida Bar No.: 0260347

of  
**PETER M. FEAMAN, P.A.**  
Strategic Counselors. Proven Advocates.™



www.FeamanLaw.com

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

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](mailto: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

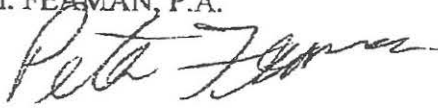
effective or otherwise, to the Plaintiff's position, or in the settlement of the case by the current parties which results in a disposition of the insurance proceeds outside the Estate.

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. 4<sup>th</sup> 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. 1<sup>st</sup> 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

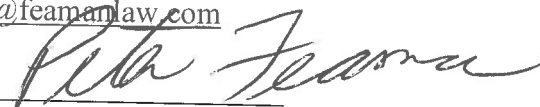
independent, third party Curator or Personal Representative that will administer the Estate in an objective, unbiased and fair manner, as set forth in § 733.5061, Fla. Stat. (2013) and in accordance with the procedure set forth in §733.501, Fla. Stat. (2013).

**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](mailto:arose@mrachek-law.com) and [mchandler@mrachek-law.com](mailto: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](mailto: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](mailto: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

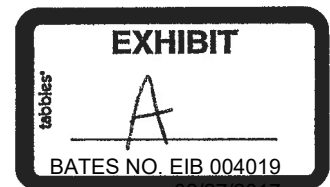
SHARON R. BOCK  
CLERK & COMPTROLLER  
PALM BEACH COUNTY

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]*

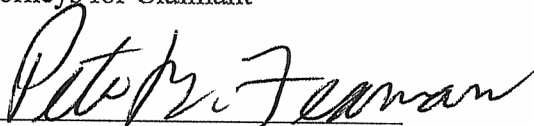


Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

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](mailto: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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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