

specifically §772.11, Fla.Stats.

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

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

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

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

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

**VII. FRAUD**  
**(Against All Defendants)**

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

herein, preceding paragraphs 1 through 24, inclusive.

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

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

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

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

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

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

### VIII. EQUITABLE LIEN

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

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

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

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

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

### **IX. CONTRACT IMPLIED IN LAW**

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

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

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

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

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

### **X. CONSTRUCTIVE TRUST**



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

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

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

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

## **XL INDEMNIFICATION**

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

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

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

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

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

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

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

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

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

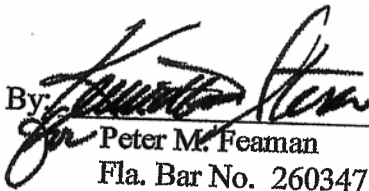
78. Moreover, Defendants had ceased to pay Plaintiff any commissions. Instead, as an employee he was now receiving a salary. To reflect Plaintiff's successful generation of Defendants' business, Defendants made Plaintiff's salary approximate 15% of the amount of commissions received. Nonetheless, as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

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

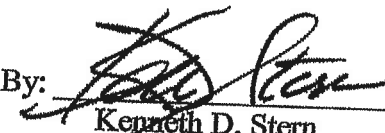
and against refund claims for said commissions, to the extent of 100% thereof, and for such other and further relief as the Court shall deem just and appropriate.

July 30, 2012

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F

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

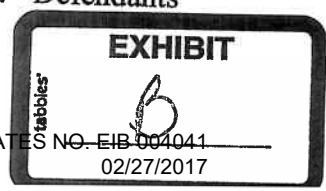
v.

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.

AMENDED COMPLAINT

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

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



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

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

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

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

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

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

### Background

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a) directing LIC Holdings and ARBITRAGE to make payments to third parties not employed by the corporations and who had performed no services on behalf of the corporations for the personal benefit of the BERNSTEINS;
- b) directing the corporations to pay for personal expenses of the wives and other friends of the BERNSTEIN Defendants through corporate credit cards and other forms of payment, notwithstanding that they provided no services for the corporations;
- c) transferring monies from LIC Holdings and ARBITRAGE to third party entities including the BERNSTEIN Defendants, the BERNSTEIN FAMILY REALTY, LLC and the

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

- d) paying themselves exorbitant compensation to the exclusion of STANSBURY;
- e) treating LIC Holdings and ARBITRAGE as alter egos of themselves and otherwise handling the affairs of LIC Holdings and ARBITRAGE without regard to corporate protocol;
- f) failing to convene annual meetings of the stockholders of LIC Holdings and ARBITRAGE, in violation of Florida law;
- g) committing corporate waste by unnecessarily expending corporate assets on unrelated corporate activities;
- h) failing to account for the revenue and expenses of LIC Holdings and ARBITRAGE to STANSBURY, who was entitled to compensation as an employee and as a minority shareholder;
- i) directing LIC Holdings and ARBITRAGE to take actions to reduce the profit of LIC Holdings and ARBITRAGE so as to prevent STANSBURY from earning his just compensation, in violation of prior agreement of the parties.

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

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



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

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

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

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

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

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

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

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

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

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

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

#### V. CONVERSION

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

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

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

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

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

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

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

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

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

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

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

**VII. EQUITABLE LIEN**

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

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

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

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

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

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

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

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

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

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

#### **VIII. CONSTRUCTIVE TRUST**

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

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

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

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

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

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

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

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

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

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

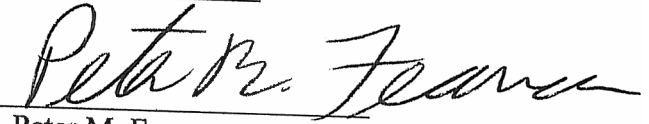
85. Pursuant to §607.1604(3) Fla. Stat. (2012), STANSBURY is entitled to an award of his costs including reasonable attorneys' fees incurred in order to obtain the order and enforce his rights unless the corporation or its officers, director or agent proves that the refusal of the inspection is made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

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

**CERTIFICATE OF SERVICE**

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

PETER M. FEAMAN, P.A.  
3615 W. Boynton Beach Blvd.  
Boynton Beach, FL 33436  
Tel.: 561073405552  
Fax: 561-734-5554  
[pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)

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

The Law Offices  
of  
**PETER M. FEAMAN, P.A.**  
Strategic Counselor. Proven Advocate.™



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3615 Boynton Beach Blvd.  
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Boca Raton, FL 33434

Peter M. Feaman, Esq.  
Nancy E. Guffey, Esq.  
Of Counsel

Telephone: (561) 734-5552  
Facsimile: (561) 734-5554  
pfeaman@feamanlaw.com

June 20, 2012

Via Certified Mail, Return Receipt Requested

**PERSONAL and CONFIDENTIAL**

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

**Re: William (Bill) Stansbury**

Dear Mr. Bernstein:

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

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

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

**EXHIBIT**





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

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

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

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

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

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

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

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

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

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

2. Indemnification issues.

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

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

3. Unauthorized interception of U.S. Mail.

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

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

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

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

4. Shareholder status.

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

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

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

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

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

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

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

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

Very truly yours,

PETER M. FEAMAN, P.A.

By:

  
Peter M. Feaman

PMF/mk

cc: William Stansbury

CC Riggs (e-mail)

00001

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

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

6 ELIOT IVAN BERNSTEIN, PRO SE,  
Petitioner,

7 vs.

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

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

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

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

20  
21 Stenographically Reported By:  
22 JESSICA THIBAUT  
23  
24

25

†

00002

1 APPEARANCES

2  
3 On Behalf of the Petitioner:  
4 ELIOT IVAN BERNSTEIN, PRO SE  
2753 NW 34th Street  
5 Boca Raton, Florida 33434  
6



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

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

12 MR. ELIOT BERNSTEIN: Oh.

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

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

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

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

THE COURT: No, it's waivers of

♀  
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

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

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

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

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

13 MR. MANCERI: Okay.

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

17 MR. MANCERI: April 9th, right.

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

♀  
00028

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

5 MR. MANCERI: Okay.

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

9 MR. MANCERI: Okay.

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

12 MR. SPALLINA: I'm sorry?

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

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

10/22/95  
05-0178116  
OMB No. 1545-0003  
Expires 7-31-91

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

# Application for Employer Identification Number

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

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

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

3a Mailing address (street address) (room, apt., or suite no.)  
**7020 Lions Head**  
3b Address of business (See instructions.)  
**Boca Raton, FL 33496**

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

5 County and state where principal business is located  
**Boca Raton, FL**

6 Name of principal officer, grantor, or general partner (See instructions.)  
**Simon Bernstein**

7a Type of entity (Check only one box.) (See instructions.)  
 Individual SSN  
 REMIC  
 State/local government  
 Other nonprofit organization (specify)  
 Other (specify)  $\triangleright$   
 Estate  
 Personal service corp.  
 National guard  
 Federal government/military  
 If nonprofit organization enter GEN (if applicable)  
 Trust  
 Partnership  
 Farmers' cooperative  
 Church or church controlled organization

8a If corporation, give name of foreign country (if applicable) or state in the U.S. where incorporated  $\triangleright$   
**Foreign country** \_\_\_\_\_ **State** \_\_\_\_\_

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

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

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

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

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

14 Does the applicant operate more than one place of business?  
If "Yes," enter name of business.  $\triangleright$   Yes  No

15 Principal activity or service (See instructions.)  $\triangleright$   Yes  No

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

17 To whom are most of the products or services sold? Please check the appropriate box.  
 Public (retail)  Other (specify)  $\triangleright$   Business (wholesale)

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

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

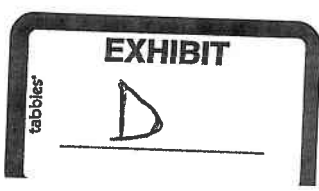
18c Enter approximate date, city, and state where the application was filed and the previous employer identification number if known.  
**Approximate date when filed (Mo., day, year)** \_\_\_\_\_ **City and state where filed** \_\_\_\_\_ **Previous EIN** \_\_\_\_\_

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

Signature  $\triangleright$  **X** **Shirley Bernstein** Date  $\triangleright$  **June 21, 1995**

Please leave blank  $\triangleright$  **Ind.** **Class** **Size** **Reason for applying**

For Paperwork Reduction Act Notice, see attached instructions.



BT000104  
BATES NO. EIB 004067  
02/27/2017

# CLAIMANT STATEMENT

## DECEDENT INFORMATION

1. Name of Deceased (Last, First Middle) <b>Bernstein, Simon Leon</b>		2. Last 4 digits of Deceased's Social Security No. <b>5211</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 checked="" type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending

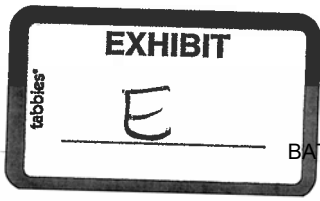
## CLAIMANT INFORMATION

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>65-6178916</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.**



BT000100



# CLAIMANT STATEMENT

## SETTLEMENT OPTIONS

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

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

Name of Settlement Option from Policy \_\_\_\_\_

## Important Information About the USA PATRIOT Act

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

## SUBSTITUTE FOR IRS FORM W-9

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

## SIGNATURES

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

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

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

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

Signature of Claimant and Title \_\_\_\_\_

Date \_\_\_\_\_

Signature of Second Claimant, if any, and Title \_\_\_\_\_

Date \_\_\_\_\_

BT000101

# CLAIMANT STATEMENT

## TRUSTEE CERTIFICATION

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

COMPLETE THIS SECTION ONLY IF A TRUST IS CLAIMING BENEFITS

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

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

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

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

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

Name of Trust

Simon Bernstein Irrevocable Insurance Trust

Date of Trust Agreement

06/01/1995

Date of all Amendments

Trust Tax ID

Number

65-6178916

Printed Name of Trustee(s)

Signature(s)

a

Robert L. Spallina

b

c

d

BT000103

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

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

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

SUPPORT STAFF  
DIANE DUSTIN  
KIMBERLY MORAN  
SUANN TESCHER

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

December 6, 2012

VIA FACSIMILE: 803-333-4936

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

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

Dear Bree:

As per our earlier telephone conversation:

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

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

Sincerely,

*Robert L. Spallina/km*  
ROBERT L. SPALLINA

RLS/km

Enclosures



BT0000083

BATES NO. EIB 004071  
02/27/2017

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

Ted

This is my analysis on the Heritage payout thus far. First, I would like to review the insurance policy as well as the official statements respecting investment returns, use of returns to pay premiums and loans taken from the policy. I understand Ted and Pam have the policy, and do not understand why Mr. Spallina thinks it is curious that I also want to review these materials. Second, I understand the expressed concerns that if the proceeds are paid to the estate then the proceeds would be subject to the claims of creditors of the estate. It is my understanding that the "plan" is to have the proceeds payable to a trust to avoid creditor claims; however, I have also been counseled that if a trust is utilized an estate creditor can challenge the trust transaction as a fraudulent conveyance used to avoid the creditor's claim. We have been told that Dad designated his 1995 trust as his beneficiary with Heritage. We were also told that that trust cannot be located. I would also like to review an affidavit that indicates the precise steps that were taken and by whom and with whom to locate the 1995 trust, and I would imagine that Heritage will require the same. Heritage, we were told, is now saying that the proceeds may have to go to the State under the applicable escheat laws, so Mr. Spallina is telling us that if Heritage accepts a new trust with all potential beneficiaries agreeing to the mechanism, that Heritage may pay the proceeds to this new trust and not to the State. I have been told that the reason the law requires a trust document (and not simply statements from someone who claims they saw the trust) is that it demonstrates Dad's desires, and because Dad had the right to change his mind and thus the beneficiaries under the trust, nothing short of the actual 1995 trust document may be sufficient to Heritage. Last, because the 1995 trust document cannot be located, the proceeds should go to the beneficiaries under {Article IV 2j} and [Article III] of Dad's will, which picks up insurance proceeds under failed beneficiary designations. Under Dad's will and trust, these amounts, like the rest of his estate goes to his grandchildren in equal parts. Thus, to the extent it is decided to use a new trust to avoid the escheat laws, the only beneficiaries that may be acceptable to me is the grandchildren. As I stated above, I and my siblings should remain concerned that any estate creditor could challenge the transaction as a fraudulent conveyance. Also, having the 5 children as beneficiaries with each having the right to disclaim in favor of their children (i.e., Dad's grandchildren) is not acceptable for 2 reasons. First, such a scheme is not consistent with Dad's wishes under his will and trust agreement. Whatever Dad may have provided under the 1995 trust is both unknown and not relevant as stated above. The second reason is simple economics. My kids would get a 33% distribution under the proper method, but only 20% under the other scheme.

Regards,

Ted Bernstein - President



Life Insurance Concepts  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, FL 33487  
Tel: 561.988.8984  
Toll Free: 866.395.8984  
Fax: 561.988.0833  
Email: [Tbernstein@lifeInsuranceConcepts.com](mailto:Tbernstein@lifeInsuranceConcepts.com)  
[www.LifeInsuranceConcepts.com](http://www.LifeInsuranceConcepts.com)



**BT000052**  
BATES NO. EIB 004072  
02/27/2017

## Robert Spallina

---

**From:** Christine Yates [cty@TrippScott.com]  
**Sent:** Wednesday, January 30, 2013 6:17 AM  
**To:** Robert Spallina  
**Cc:** 'Eliot Ivan Bernstein'  
**Subject:** RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Heritage Policy

Robert, after discussions with my client, he is not in agreement with the plan proposed below. A more formal letter will follow.

---

**From:** Robert Spallina [mailto:rspallina@tescherspallina.com]  
**Sent:** Tuesday, January 29, 2013 11:43 AM  
**To:** Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates  
**Cc:** Kimberly Moran  
**Subject:** RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Heritage Policy

I am following up on our telephone conference from last week. Ted has contacted me about circulating a draft of the settlement agreement that would be presented to the court. Again, prior to preparing an agreement, I want to make sure that you are ALL in agreement that the proceeds do not come to the estate. I can tell you that your father planned his estate intending and believing that the five children would split the proceeds equally. We would like to see his wishes carried out and not have the proceeds paid to the estate where they could be subject to creditor claims prior to being split in equal shares among the grandchildren. Please advise if you are in agreement to move forward to petition the court for an order that would split the proceeds equally among the five of you.

Robert L. Spallina, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
E-mail: [rspallina@tescherspallina.com](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  
[iantoni\\_jill@ne.bah.com](mailto:iantoni_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](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:[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)]  
**Sent:** Thursday, January 24, 2013 3:12 PM  
**To:** Robert Spallina  
**Cc:** Jill Iantoni  
**Subject:** Bernstein Estate 1/24/2013

Hi Robert,

thanks for todays call. Three questions.

One, if the 5 kids do NOT all agree that we should split the insurance proceeds amongst the 5 of us, what happens to the insurance proceeds? Can 4 out of 5 (or whatever the number is) over rule and move forward with the court hearing requesting that the insurance proceeds get paid out to the 5 children? If that is a NO, do the proceeds go directly to the estate? If the answer is the 10 grandchildren, will that be subject to creditors or would that money get paid out quickly (just as it would to the 5 of us) and avoid any potential law suit/creditors?

Two, if any of the 5 children have personal counsel representing them, are they allowed to have their bills sent to you/Estate for payment? If yes, is there a provision that the others can put in place that regulates the amount/or a provision that states it come out of their child(ren) portion of the estate?

Can you also clarify, that based on the conversation today, there is a chance that Bill S. case will be null and void and even if it is not, it is not towards Si Bernstein or his estate? Did I understand that correctly?

Thanks so much,

Jill

**Robert Spallina**

---

**From:** Robert Spallina  
**Sent:** Tuesday, January 22, 2013 12:38 PM  
**To:** 'Jill Iantoni'  
**Cc:** Ted Bernstein; Lisa Friedstein; Pam Simon; Christine Yates; Kimberly Moran  
**Subject:** RE: Heritage Policy

We can discuss on Thursday but yes and no

**From:** Jill Iantoni [mailto:jilliantoni@gmail.com]  
**Sent:** Tuesday, January 22, 2013 12:36 PM  
**To:** Robert Spallina  
**Cc:** Ted Bernstein; Lisa Friedstein; Pam Simon; Christine Yates; Kimberly Moran  
**Subject:** Re: Heritage Policy

That time works for me/Jill.

Robert, if the proceeds go to the estate/grandchildren's share, is there a chance that creditors could get this money AND would this amount of 1.7 Million put the estate over 5.1 Million, where it would be taxed?

Thanks  
Jill

On Tue, Jan 22, 2013 at 11:16 AM, Robert Spallina <[rspallina@tescherspallina.com](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

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

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

IN RE: Case No.: 502011CP000653XXXXSB

ESTATE OF SHIRLEY  
BERNSTEIN,  
Deceased.

Division: IY

\_\_\_\_\_ /

**MOTION TO INTERVENE**

COMES NOW William E. Stansbury (“Stansbury”), Creditor of the Estate of Simon Bernstein, the late husband of the decedent, SHIRLEY BERNSTEIN, and Plaintiff in a lawsuit against the Shirley Bernstein Trust, the beneficiary of the Estate of Shirley Bernstein, and pursuant to Florida Rule of Civil Procedure 1.230, serves this, his Motion to Intervene in this Estate and states as follows:

1. Stansbury is a Creditor of the Estate of Simon Bernstein, deceased husband of Shirley Bernstein.

2. All of the assets of the Estate of Shirley Bernstein have passed or will pass to the Shirley Bernstein Trust. The Personal Representatives of the Estate of Shirley Bernstein, the Trustees of the Shirley Bernstein Trust and the Personal Representatives of the Estate of Simon Bernstein are Defendants in Mr. Stansbury’s lawsuit against the Estate of Simon Bernstein and the Shirley Bernstein Trust. A copy of the Second Amended Complaint is attached hereto as Exhibit “A.”

3. The Shirley Bernstein Trust is the primary beneficiary of the Estate of Shirley Bernstein. There are allegations of misconduct on the part of the Personal Representatives of the Estate of Shirley Bernstein and who are also the Trustees of the Shirley Bernstein Trust. A Motion has been filed to remove the Personal Representatives of the Estate.

4. In accordance with Florida Rule of Civil Procedure 1.230:

Anyone claiming an interest in pending litigation made at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to and in recognition of the propriety of the main proceeding unless otherwise ordered by the Court in its discretion.

5. Asserting an interest in property that is part of the Probate Estate is sufficient grounds for the Court to allow intervention. *See, State Dep't of Legal Affairs v. Rains*, 654 So.2d 1254, 1255 (Fla. 2d DCA 1995). In the instant case, the assets that have been transferred or may be transferred from the Shirley Bernstein Estate to the Shirley Bernstein Trust are part of the lawsuit filed by proposed Intervenor, William E. Stansbury.


6. Count X of the Second Amended Complaint alleges a constructive trust on certain assets held by the Shirley Bernstein Trust. Indeed, one of the assets may have already been sold, to wit, a condominium on the ocean in Boca Raton.

WHEREFORE, proposed Intervenor, William E. Stansbury moves this Honorable Court for an Order allowing him to intervene in this matter.

### CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at [mrmlaw@comcast.net](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 of the Estate of Simon Bernstein and Bernstein Family Realty*, 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at [arose@pm-law.com](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, Arbitrage International Management, LLC and the Shirley Bernstein Trust*, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401; and **Eliot Bernstein**, *pro se*, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, at [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv) on this 17 day of October, 2013.

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

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

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**

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

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

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

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

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

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

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

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

### General Allegations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**COUNT II - BREACH OF ORAL CONTRACT**

**(Against LIC Holdings, Inc., ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN)**

38. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 37, inclusive.

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

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

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

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

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

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

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

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

a) SIMON BERNSTEIN and TED BERNSTEIN caused LIC Holdings and/or ARBITRAGE to pay to them at least \$3,756,229.00 and \$5,225,825.00, respectively, in fiscal 2008 during which time STANSBURY, other than the amount referenced in paragraph 21, was paid nothing;

b) According to Palm Beach County public records, in December of 2007 TED BERNSTEIN purchased a property at 880 Berkeley Street, Boca Raton, Florida 33487, for \$4,400,000;

c) According to Palm Beach County public records, on December 28, 2008, TED BERNSTEIN paid off the mortgage in the amount of \$486,400.00 on a property he owned at 15807 Menton Bay Court, Saturnia Isles, Delray Beach, Florida 33446;

d) According to Palm Beach County public records, SIMON BERNSTEIN paid off the mortgage on property he and his wife owned, and subsequently transferred by quitclaim deed on May 20, 2008 to the trustee of SHIRLEY'S TRUST, at 7020 Lions Head Lane, Boca Raton, Florida, 33496. The amount of the mortgage pay-off is unknown, but in 2013 the property was listed for sale at \$2,399,000;

e) According to Palm Beach County public records, on June 18, 2008, BERNSTEIN FAMILY REALTY, LLC acquired a property located at 2753 N.W. 34 Street, Boca Madera Unit 2, Boca Raton, Florida 33432 (the "Boca Madera Property). On July 8, 2008, SIMON BERNSTEIN loaned \$365,000 to BERNSTEIN FAMILY REALTY, LLC. The specific

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

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

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

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

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

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

47. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 46, inclusive.

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

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

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

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



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

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

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

53. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 52, inclusive.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**COUNT V - CIVIL THEFT**  
**(Against ARBITRAGE INTERNATIONAL MARKETING, LLC)**

64. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 63, inclusive.

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

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

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

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

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

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

**COUNT VII - CONVERSION**

70. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 63, inclusive.

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

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

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

72. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, paragraphs 1 through 65, above.

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

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

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

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

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

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

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

**COUNT IX - EQUITABLE LIEN**  
**(As to SIMON BERNSTEIN, TED BERNSTEIN, BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT)**

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

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

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

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

83. BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT were the transferees of some of the corporate assets of LIC Holdings and/or

ARBITRAGE wrongfully diverted and converted by the BERNSTEIN and thus are proper parties to this action and this Count.

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

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

**COUNT X - CONSTRUCTIVE TRUST**  
**(As to SIMON BERNSTEIN, TED BERNSTEIN, BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT)**

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

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



**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at [mrmlaw@comcast.net](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 3 day of September, 2013.

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

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



Peter M. Feaman  
Florida Bar No. 0260347

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of  
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Peter M. Feaman, Esq.  
Nancy E. Guffey, Esq.  
Of Counsel

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Facsimile: (561) 734-5554  
pfeaman@feamanlaw.com

June 20, 2012

Via Certified Mail, Return Receipt Requested

**PERSONAL and CONFIDENTIAL**

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

**Re: William (Bill) Stansbury**

Dear Mr. Bernstein:

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

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

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

**EXHIBIT** A

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

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

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

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

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

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

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

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

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

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

2. Indemnification issues.

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

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

3. Unauthorized interception of U.S. Mail.

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

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

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

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

4. Shareholder status.

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

- I. Minutes of the Board of Directors meetings from January 1, 2008 to the present.
- II. Minutes of Shareholders' meetings from January 1, 2008 to the present.
- III. Records of any actions taken by the Shareholders and/or the Board of Directors without a meeting, from January 1, 2008 to the present.
- IV. Accounting and financial records of LIC Holdings, Inc., Arbitrage International Management, LLC, formerly known as Arbitrage International Holdings, LLC, and all other subsidiary or affiliated companies under your control, including, without limitation, income tax returns, general ledgers, balance sheets, profit and loss statements, stock books, bank statements, loan agreements or guarantees, and any other financial books and records from January 1, 2008 to the present.

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

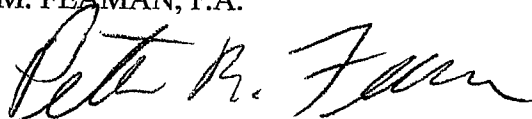
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Please have your legal counsel contact us within ten (10) days. Should we fail to receive a response within that time, Mr. Stansbury will take legal action to protect his rights and interests.

Very truly yours,

PETER M. FEAMAN, P.A.

By:

  
Peter M. Feaman

PMF/mk

cc: William Stansbury

CC Riggs (e-mail)

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span></p> <p><i>[Handwritten Signature]</i></p> <p>B. Received by (Printed Name) <span style="float: right;">C. Date of Delivery</span></p>
<p>1. Article Addressed to:</p> <p>Mr. Ted Bernstein, Pres. LIC Holdings, Inc. 950 Peninsula Corp. Cir. Suite 3010 Boca Raton, FL 33487</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <hr/> <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number (Transfer from service label)</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> <p style="text-align: center;">7011 0110 0000 6015 5239</p>

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

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of  
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Of Counsel

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pfeaman@feamanlaw.com

June 20, 2012

Via Certified Mail, Return Receipt Requested

**PERSONAL and CONFIDENTIAL**

Mr. Ted Bernstein, President  
LIC Holdings, Inc.  
950 Peninsula Corp Circle  
Suite 3010  
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Please have your legal counsel contact us within ten (10) days. Should we fail to receive a response within that time, Mr. Stansbury will take legal action to protect his rights and interests.

Very truly yours,

PETER M. FEAMAN, P.A.

By:

  
Peter M. Feaman

PMF/mk

cc: William Stansbury

cc: Rigas (e-mail)

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008,  
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

\_\_\_\_\_/

Other Applicable Related Cases this Disqualification of Circuit Judge John L. Phillips, Should  
Apply to:

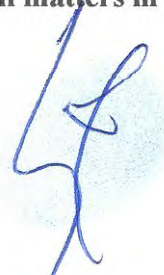
Case # 502012CP004391XXXXSB – Simon Bernstein Estate  
Case # 502011CP000653XXXXSB – Shirley Bernstein Estate  
Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children  
Case # 502014CP003698XXXXSB – Shirley Trust Construction  
Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case  
OLD CASE # 502014CA014637XXXXMB

\_\_\_\_\_/

**VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR  
IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L.  
PHILLIPS**

COMES NOW Eliot Bernstein (“Eliot” or “Petitioner”) and files under information and  
belief this Verified Emergency Petition and Affidavit for Immediate Mandatory Disqualification  
of Judge John L. Phillips, pursuant to Fla R. Admin P. 2.330 and section 38.10, Florida Statutes,  
for the following grounds and reasons:

**Rule 2.330 (a) Application. This rule applies only to county and  
circuit judges in all matters in all divisions of court.**



1. Judge John Phillips is a circuit judge in the 15th Judicial Circuit Probate Division and therefore this rule applies.

**Rule 2.330 (b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.**

2. Petitioner, a party to the case moves for mandatory disqualification on behalf of himself and his three minor children and to otherwise disqualify Judge Phillips provided by rules, statute and by the Code of Judicial Conduct.

3. Judge Phillips is alleged to have violated Statutes and Court and Judicial Rules related to, including but not limited to;

a. Fraud on the Court and by the Court –

This Disqualification shall Reset the case, render void all relevant Orders and Decisions which shall be vacated, all OFFICERS and FIDUCIARIES presently appointed by such Judge shall be replaced and other relief as is just and proper;

b. Continued Fraud in the Court;

c. Continued Fraud by the Court;

d. Continued Obstruction of Justice through

Denial of Due Process;

e. Aiding and Abetting Court Appointed Fiduciaries and Court Appointed Attorneys at Law in covering up Fraud on the Court and Fraud by the Court and continuing Fraud on the Court and Fraud on the Beneficiaries;

f. Violations of Probate Statutes and Rules ;

g. Violations of Judicial Cannons - Judge

Phillips has violated the following Judicial Canons, including but not limited to:

1 of 30

**Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary**

4. Judge Phillips has failed to Uphold the Integrity and Independence of the Judiciary as further set forth herein.

**Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities**

5. Judge Phillips express and direct conduct, statement and activities in the case have created the Appearance of Impropriety in violation of this Canon as set further set forth herein.

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

6. Judge Phillips was required to mandatorily disqualify upon the filing of the Disqualification Motion<sup>1</sup> filed by Petitioner on December 04, 2015 for all the ground set forth therein and should have already Disqualified on his own motion sua sponte prior to Petitioner filing said written motion as it has already been alleged by Petitioner and suggested by Creditor attorney Peter Feaman that the transfer of the cases to Phillips Court was improperly interfered with post recusal by the former Judge Martin Colin as further set forth herein and set forth in the All Writs Petition<sup>2</sup> filed with the Florida Supreme Court in these cases and then Transferred to the 4th DCA<sup>3</sup>

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<sup>1</sup> December 04, 2015 Disqualification Judge Phillips @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

and  
Corrections @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

<sup>2</sup> See All Writ Filed with the Florida Supreme Court @





7. Any competent Judge acting impartially knew or should have known prior Judge Martin Colin was a material fact witness to the multiple frauds occurring in his Court specifically involving Fiduciaries Robert Spallina, Donald Tescher, the Tescher Spallina law firm, and at minimum Ted Bernstein also purporting to act in an alleged fiduciary capacity specifically involving the very case, the Shirley Estate and Trust, which Judge Phillips illegally set for Trial on Sept. 15, 2015 acting in a case Not Noticed for Case Management by the current PR of the Simon Bernstein Estate Brian O'Connell and Joy Foglietta of the Ciklin Lubitz & O'Connell law firm.
8. Thus, Judge Phillips should now be Disqualified further for failing to mandatorily Disqualify previously and knowing he is acting outside his jurisdiction and acting in the clear absence of jurisdiction.
9. Had Judge Phillips not been immediately disqualified due to his being a witness to relevant matters in the improper Transfer and steering of the case to the North Branch where it ended up with Judge Coates who not only was a Proskauer Rose partner (Proskauer also a Counter Defendant in these matters) but turned out he worked in the exact office across the hall from Petitioner where some of the initial frauds and thefts occurred of IP that should be a part of the Estates and Trust values for Shirley and Simon Bernstein, the only proper initial action for Judge Phillips would have been to freeze and enjoin all Court files from the Colin and French and Main Branch courts, freeze and enjoin all Estate and Trust accounts, freeze and enjoin all evidence and

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<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See Amended All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

<sup>3</sup> Transfer Order Florida Supreme Court to Fourth District Court of Appeals @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20151013%20Supreme%20Court%20Florida%20Transfer%20Probate%20Trust%20Cases%20to%20Fourth%20District%20Court.pdf>

records, documents, computer files and all alleged “Originals” and other instruments which instead are still in the hands of the prior fiduciaries Spallina and Tescher who committed some of the original frauds in Judge Colin’s court, then Phillips should have further moved to invalidate the entire proceedings held under Colin and remove all Fiduciaries, Officers of the Court and attorneys involved for having committed FRAUD UPON THE COURT by OFFICERS OF THE COURT who submitted fraudulent documents to the court and used a deceased party to close the Estate of his deceased wife in a bizarre fraud lasting several months after Simon Bernstein died, where he was used post mortem to posit documents with the court to close an estate.

10. A simple, basic, non-octopus wrangling competent reading and review of the Case files assigned to Judge Phillips by the improper Transfer should have revealed to any marginally competent independent and neutral jurist acting consistent with US Constitutional due process that Ted Bernstein had to know of the frauds committed by the fiduciaries Tescher Spallina in Shirley’s Estate, the counsel he retained to represent him in his fiducial capacities before Judge Colin since Ted Bernstein had NOT signed any Waiver in Shirley’s Estate prior to April 9, 2012 and thus Ted Bernstein knew and had to know as early as 2012 or at minimum May of 2013 by Petitioners May 6, 2013 Emergency Filing that ANY document posited by the TESCHER SPALLINA law firm to the contrary to close Shirley’s Estate such as the April 9, 2012 Sworn Petition to Discharge allegedly signed by Simon Bernstein before Robert Spallina was fraud upon the Court, fraud against the Estate of Shirley Bernstein, and fraud involving the use of his father Simon Bernstein prior to his passing and after his passing.

11. A competent impartial judge who is neutral and independent and acting consistent with US Constitutional Due process knew and had to know that in addition to actual Frauds Upon the Court and likely involving the Court, these matters also raised the important issue of whether

Simon Bernstein himself was being unduly influenced and improperly pressured since there would be no reason for Simon Bernstein to sign an April 9, 2012 Petition to Discharge knowing this was fraudulent since a phone call to discuss matters with the Beneficiaries did not even occur until May of 2012 and some of the beneficiaries did not even sign the Waiver until after Simon passed in Sept. of 2012 and that Ted Bernstein, instead of securing ALL files and evidence away from TESCHER and SPALLINA immediately as a proper fiduciary and seeking forensic investigation of key and critical documents and instruments instead continued along and became part of the fraud acting together with TESCHER and SPALLINA and where TED and his counsel Alan Rose, a material fact witness, continued to work with and interact with former fiduciaries SPALLINA and TESCHER even into and during the illegal trial of Dec. 15, 2015. Having failed to properly act in all these matters, Judge Phillips has demonstrated bias, prejudice, lack of impartiality, complete abdication of judicial responsibilities and obligations, intentionally and knowingly denied due process, aided and abetted the crimes using the machinery of the courts and furthering the fraud using the machinery of the courts and thus must mandatorily be disqualified at this time.

12. A minimally and marginally competent impartial judge who is neutral and independent and acting consistent with US Constitutional Due process knew and had to know from even the most minimally marginally competent review of the Transcript of Hearings before Judge Colin on Sept. 13, 2013, that instead, not only did TED BERNSTEIN purporting to Act as Fiduciary “stay silent” on the issues of FRAUD in the Court despite having to possess actual knowledge of these frauds, but further that Judge Martin Colin immersed himself deeper as material and fact witness on such date by including but not limited to: a) failing to get any clear answers out of Spallina specifically including how and who filed the fraudulent instruments in the court; b) failing to get



admissions from Ted Bernstein on his actual knowledge that these matters had to be fraudulent; c) failing to ask Ted Bernstein and Spallina that if Ted was legally supposed to be the Trustee and PR of Shirley's Trust and Estate after Simon passed, why Spallina and Tescher simply didn't have Ted Bernstein act to file proper documents to close the Estate but instead carried on an elaborate fraud scheme; d) how Ted Bernstein could have been permitted to act to illegally sell off multi-million dollar properties such as Shirley's Condo when involved in the nucleus of fraud with TESCHER and SPALLINA; and more. Judge John Phillips having knowingly and intentionally failed in all these matters must be further mandatorily disqualified and is acting outside his jurisdiction and in the clear absence of jurisdiction by instead aiding and abetting ongoing frauds in the machinery of the Palm Beach courts by the fraudulent and illegal orchestration of an alleged Trial in his own Court on Dec. 15, 2015.

13. Judge John L. Phillips is clearly acting knowingly and intentionally outside his jurisdiction knowingly violating due process and further aiding and abetting fraud upon the Courts by the Courts by acting in concert with Alan Rose on Dec. 15, 2015 knowing Alan Rose should have been disqualified as a material fact witness for his magical sudden possession and finding of various "Original" documents and instruments herein being intertwined in the chain of custody but instead permitting Alan Rose to fraudulently hand Judge Phillips a proposed Order on Dec. 15, 2015 without permitting Petitioner to review which contained a proposed Judicial Finding by Judge Phillips that Ted Bernstein is not involved in the frauds when both Alan Rose and Judge Phillips have actual and direct knowledge that the Dec. 15, 2015 Trial which was illegally scheduled anyway was further Not Noticed to hear such matters of Ted Bernstein thus further constituting knowing, intentional and purposeful Due process violations mandating Judge

Phillips immediate Disqualification as further evidenced by the attached Order allegedly signed by Phillips on Dec. 16, 2015<sup>4</sup>,

14. That Ted Bernstein, acting as alleged fiduciary in Shirley's Estate and Trusts and his elaborate team of lawyers were all involved in the Frauds committed and the attorneys who committed the crimes were retained by Ted as his counsel and were his business associates and who committed the frauds to benefit Ted's family directly to the detriment of other beneficiaries. Yet, Phillips allowed Ted and his replacement counsel Alan Rose, as Tescher and Spallina resigned after admitting to fraud, to continue and attempt to cover up and continue the crimes in the court as did Colin.

**(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.**

15. Judge Phillips has not maintained professional competence in hearing the Estate and Trust matters of Simon and Shirley Bernstein as further set forth herein and as shown by the facts alleged in the entirety of this document.

**D. Disciplinary Responsibilities.**

**(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.**

16. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another judge, Martin Colin, has committed a violation of the Judicial Cannons and has failed to take appropriate action in regards to the fraud in and on his court that has already been proven, committed by Fiduciaries and Attorneys at Law involved in these matters, which has

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<sup>4</sup> December 16, 2015 Phillips Order

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151222%20Received%20US%20Mail%20Entered%20by%20Phillips%20Dec%2016%202015%20Order%20Final%20Judgment%20on%20Count%20II%20of%20the%20Amended%20Complaint.pdf>

A blue ink handwritten signature is written over a circular blue stamp that contains the text "7 of 30".

material impact on these matters before Judge Phillips now. Further, Judge Phillips ability to hear the case forward is now precluded for all these reasons and due to improper transfer of the case post recusal by Judge Colin through interference in the transfer process as petitioned in the All Writs Petition pending before the Florida Supreme Court. Judge Phillips had such knowledge as of Dec. 15th, 2015 but instead of properly acting to Disqualify himself and have an illegally scheduled Trial “continued” / “stayed”, acted in disregard of his judicial obligations mandating disqualification at this time.

**(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.**

17. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another lawyer, Alan B. Rose, Esq. has committed a violation of the Rules Regulating the Florida Bar and has failed to take appropriate action. Judge Phillips was made aware prior to an illegally scheduled Trial for Dec. 15, 2015 both by Letter of Attorney Candice Schwager filing a Notice of Abatement and seeking a Continuance to enter the case Pro Hac Vice<sup>5</sup> that Attorney Alan B. Rose should be Disqualified under the Witness Advocate Rule of Florida as Alan B. Rose is a material fact Witness in the chain of custody of various “original” Instruments, Trusts, documents who should have Disqualified before and during Trial.
18. Judge Phillips received similar information by a Motion filed by Petitioner to seek a Continuance and Stay<sup>6</sup> on similar grounds that the attorney sought to enter the case pro hac vice and that Alan Rose was a material fact witness in the chain of custody and possession of critical original

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<sup>5</sup> Attorney Pro Hac Vice Filing

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20ECF%20Filing%20Stamped%20Copy.pdf>

<sup>6</sup> December 15, 2015 Motion to Stay and Continue Judge Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20ESIGNED%20Phillips%20Trial%20Stay%20ECF%20STAMPED%20COPY.pdf>

documents and instruments relating to the Trial and overall case. Judge Phillips knew and should have known Disqualification of attorney Rose was necessary but disregarded all these matters on Dec. 15, 2015 despite himself who should have already mandatorily disqualified.

19. As shown in the prior Disqualification motion, Judge Phillips knew and should have known from information in hearings and in the case pleadings that another Attorney at Law and new Personal Representative of the Estate of Simon Bernstein made pleadings to the Court that Ted Bernstein, counseled by Alan B. Rose, Esq. is acting as a fiduciary when he is not qualified under the terms of the trust he is operating under and therefore is not a "valid" trustee<sup>7</sup>. The terms of the trust preclude a successor that is related to the issuer of the trust, Simon Bernstein and Ted is also considered predeceased in the dispositive documents for all purposes of the trust and dispositions made thereunder, yet despite knowing this, Alan B. Rose, Esq. continues to file pleadings on behalf of a client he knows is not valid and Judge Phillips refuses to address the issue of Alan Rose's client's validity as Trustee first and foremost. Despite this claim coming from a Florida Bar attorney, Brian O'Connell, Esq., Judge Phillips has chosen to allow Rose and Ted Bernstein to continue to plead fraudulently to the Court without first determining the veracity of O'Connell's claims and Judge Phillips further acted on Dec. 15, 2015 continuing the frauds in the court and knowingly and intentionally disregarding judicial obligations.

20. That Judge Phillips has information that Alan B. Rose, Esq. showing a substantial likelihood that he is acting improperly in violation of the Rules Regulating the Florida Bar with his client Ted Bernstein in an Illinois District Court case, acting in conflict and with adverse interest to parties in these matters and where this information of the improper conduct was identified by Attorney

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<sup>7</sup> O'Connell Pleading Affirmative Defense 1 - Page 7

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>



at Law Peter Feaman in a letter to the PR O'Connell<sup>8</sup> and submitted to the Colin Court by Eliot Bernstein. Yet, without first determining these matters first Judge Phillips has ignored this information and moved forward with Alan B. Rose and Ted Bernstein as fiduciaries and counsel without questioning the merits of the claims by licensed Florida Bar members O'Connell or Feaman.

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:**

21. Judge Phillips impartiality is reasonably questioned as set forth herein.

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**

22. Judge Phillips showed continuing improper bias and prejudice on Dec. 15, 2015 by continuing to act outside and in the clear absence of jurisdiction knowing he was mandatorily disqualified yet continued to act on Dec. 15, 2015 showing further bias and prejudice.

23. Judge Phillips showed continuing improper bias and prejudice on Dec. 15, 2015 by knowingly and intentionally mis-stating the applicable law on Dec. 15, 2015 in court to a pro se party by declaring a Motion filed by Petitioner as untimely which was seeking a Continuance of the Trial so an attorney Candice Schwager could be admitted pro hac vice and represent three minor children and to the extent not conflicted, my interests before the Court and at a properly scheduled trial as well. Judge Phillips actually knew that Florida Rules of Civil Procedure

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<sup>8</sup> August 29, 2014 Letter Feaman to O'Connell

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>

and

December 16, 2014 Feaman to O'Connell Letter

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>

**RULE 1.460 CONTINUANCES** allows said motion to be made at Trial and Petitioner's motion was filed before the Trial. Thus, Judge Phillips intentionally and actually knew he was clearly misstating and misapplying the law showing further bias and prejudice against the Petitioner.

24. Judge Phillips showed further actual bias and prejudice on Dec. 15, 2015 knowing he was already mandatorily Disqualified from conducting the trial and acting in these cases by denying proper time for proper witnesses at the trial, Traci Kratish, Kimberly Moran, Donald Tescher (who was seen outside the Courthouse but did not testify despite being one of the Estate Planners,) and other witnesses to the alleged documents and signatures by not permitting Petitioner to adequately review the alleged Exhibits Evidence being placed into the trial or having a proper time to object and by providing Petitioner a mere five minutes to "write down" a Disqualification at the end of the alleged "trial" and further denying Petitioner an opportunity to inspect a proposed "Order" submitted by Alan Rose and denying proper inspection of original instruments, denying the ability to even see a "flow chart" being used by Alan Rose, denying a continuance and counsel to minor children, and continuing knowing the trial was improperly scheduled in a case Not noticed to be heard on Sept. 15, 2015 and denying Petitioner a fair opportunity to be heard before the trial or during the alleged trial.
25. Phillips then scheduled and held a validity hearing where the star witness was a FELON, Spallina<sup>9</sup> and he was attesting to signatures of another FELON Moran on the dispositive

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<sup>9</sup> See, SEC Complaint and "SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant"

<http://www.sec.gov/news/pressrelease/2015-213.html>

and Government Complaint @ <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

and Consent Orders

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tescher%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

and



documents and where both have unclean hands in these matters admitting they committed Fraud, Fraud on the Court and Fraud on the Beneficiaries in the Simon and Shirley Bernstein Estates and Trusts and yet Phillips rules to validate the documents based on Spallina's testimony alone and cuts Eliot off repeatedly, sustaining him when asking questions to probe the crimes of Spallina claiming they are not relevant, despite relevance to his character and testimony<sup>10</sup>.

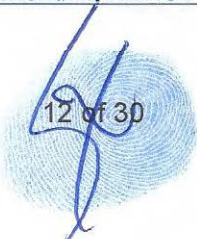
26. At the hearing Spallina admitted he was under a consent order with the SEC for insider trading and had pled guilty to a felony in an unrelated matter. Spallina further admitted that he had committed a Fraud Upon the Court when he closed the Estate of Shirley with a dead Personal Representative her deceased husband Simon, submitting fraudulent documents to close the estate. Spallina further admitted that he had fraudulently created a Shirley Trust document and then mailed it to an attorney at law, Christine Yates, Esq. who was representing Eliot's minor children, as part of a fraud that benefited his client Ted Bernstein at the expense of his other client, the Estate of Simon and the beneficiaries thereunder.

27. While "doodling" through the Validity hearing, Phillips ignored the confessions to felony crimes in the matter by Spallina, who he refers to as "Bob" and his partner Tescher, who he calls "Don" and instead focused on attacking Candice Bernstein, who was served as a party in the Validity hearing service list prepared by Rose for her handing a document to Eliot and asking that Rose turn a display graphic so everyone could see, for this she was sent out of the hearing area and into the gallery where she was threatened with contempt if she made a sound. Candice Bernstein

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Bernstein Emergency Petition before in Florida Probate May 2013 @  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Original%20Large.pdf>

<sup>10</sup> Article Regarding Unclean Hands and Fraud on the Court  
[@http://www.schnader.com/files/publication/e3f5e3d7-1f77-450d-80ff-26866b4aa2c4/preview/publicationattachment/514594c4-8f88-475a-b1d9-1517f201b542/ftd-stern.pdf](http://www.schnader.com/files/publication/e3f5e3d7-1f77-450d-80ff-26866b4aa2c4/preview/publicationattachment/514594c4-8f88-475a-b1d9-1517f201b542/ftd-stern.pdf)



being the guardian of her minor children aids Eliot with his exhibits and witness questions and without her Eliot was lost at the Trial and could not find exhibits, etc. timely, as the record reflects.

28. That despite learning that an Officer of the Court had committed frauds upon the court and the beneficiaries and having admission at the trial, Judge Phillips has done nothing to notify the proper authorities as required by his Judicial Cannons and law or taken any actions to remedy the crimes. For instance, the Court, having learned of the Fraud on the Court should have then ordered all records submitted by those committing Fraud on the Court to be forensically analyzed by an expert to make sure that the documents and records in the Court are not further fraudulent and instead allowed the trustee Ted to shift the burden of investigating and forensically examining the documents to Eliot. The Court should also have ordered all parties to turn over their records, assets, etc. to the Court and provided all records of those parties and the Court to the aggrieved beneficiaries for inspection and transparency. Judge Phillips thus continued to act on Dec. 15, 2015 in the prejudicial, biased, lack of impartiality style that he had on Sept. 15, 2015 the date the “trial” was illegally scheduled and thus mandatorily must be disqualified at this time.

29. One of the facts from the prior Disqualification motion which Judge Phillips knew and knows was legally sufficient and mandatorily disqualified him from acting is contained in an All Writs Petition filed with the Florida Supreme Court and then transferred to the 4th DCA, is if Judge Martin Colin improperly steered the case POST recusal by Judge Shopping the Case and interfering with the transfer first to Judge Coates (who Sua Sponte recused after admitting conflict that should have been cleared prior to even taking the case as his former law firm is a Counter Defendant in these matters and Judge Coates had an office as a Partner in the Proskauer

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Rose law firm in the same Boca Raton, FL location where fraud by his former law firm occurred against Petitioner) and with the intended ultimate steer to Judge Phillips after reasonably knowing Coates would either be disqualified by parties involved or recuse voluntarily, after gaining access and control to the prior Colin courts documents. Therefore, it will be instrumental for Petitioner to receive the Court files regarding the matters as requested in the All Writs to then question both Coates and Phillips as material witnesses about these disputed evidentiary facts regarding their interactions with Colin prior to transfer.

30. Until Phillips knew what the decision from the Florida Supreme Court would be regarding the voiding of the transfer due to the factual interference by Colin in moving the case as a necessary and material fact witness who should have been Disqualified, Judge Phillips only action as a knowing material and fact witness to the events surrounding the improper transfer was to wait the Florida Supreme Court Ruling.
31. Yet, without regard to the All Writs pending and the answer to the improper transfer resolved, he began to deliberate on the matters, acting as he claimed in hearings to be "stupid." In fact, if it is found that the transfer was improper, despite if he was knowledgeable or not of the impropriety by Colin or involved in such act, he would still have had to disqualify because it would lead to an inescapable APPEARANCE OF IMPROPRIETY that could only be resolved by his becoming a witness and being questioned as such since due to the reasonable appearance and chance that the improper transfer by Colin to the North Branch was with criminal intent, Phillips certainly will be a suspect in criminal complaints filed against Colin and others.
32. Judge Phillips has expressed personal bias for a party to the proceeding in professing his love for Judge Martin Colin who is alleged to have participated in a fraud in and on the court when he stated on the record:

  
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THE COURT: Okay. Great. This is the way  
15 I intend to proceed -- I love Marty Colin.  
16 This guy is a judge that's been around a long  
17 time. I know him. He's an entirely different  
18 guy than me.

33. Judge Phillips professed “love” for Judge Martin Colin on the Record who is a necessary and material fact witness before the Court creates substantial bias, prejudice and reasonable fear that Petitioner can not get a fair trial before Judge Phillips as further set forth herein and Judge Phillips must now be mandatorily disqualified as Judge Phillips further knew Judge Colin’s Orders all should have been voided or at least should have been a material fact witness subject to discovery and deposition before any such “trial” on Dec. 15, 2015 yet Judge Phillips continued to act on Dec. 15, 2015 knowing he should be mandatorily disqualified and thus must now be disqualified.
34. The bias, prejudice, appearance of impropriety and reasonable fear that Petitioner can not receive a fair trial before Judge Phillips is particularly egregious in light of the fact that Judge Phillips never even permitted Petitioner to be heard about this pending Petition for All Writs and Stay and Injunctive relief despite 2 assurances at the prior conference that this would occur and further egregious as the Record shows each time Petitioner did attempt to be heard he was cut-off by Judge Phillips without being fully or fairly heard.
35. Judge Phillips also spoke to his personal knowledge of the attorneys at law involved and how he knew them well and did not know Petitioner Eliot Bernstein and this also seemed prejudicial, since attorneys at law in the cases have already committed fraudulent acts, including fraud on the court.

**(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:**

  
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**(iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

36. Judge Phillips is a material witness in the proceeding as it is already alleged that he was a participant in the improper steering of the case, knowingly or unknowingly his involvement must be questioned to determine if Ex Parte conversations took place with Judge Colin prior to the transfer as further defined herein. Judge Phillips continues to know he is a material fact witness and was on Dec. 15, 2015 and remains as such and thus must be mandatorily disqualified.

**Rule 2.330 (c) Motion.  
A motion to disqualify shall:  
(1) be in writing.**

37. This Motion is in writing.

**Rule 2.330 (c) Motion  
(2) allege specifically the facts and reasons upon which the movant relies as the grounds for disqualification.**

38. This Motion specifically alleges specific facts and reasons upon which the movant relies as the grounds for disqualification.

**Rule 2.330 (c) Motion  
(3) be sworn to by the party by signing the motion under oath or by a separate affidavit.**

39. Petitioner is acting Pro Se and has no attorney and therefore Petitioner has sworn to and signed this Motion for Disqualification under oath and before a notary as required by Rule 2.330 (c)

**Rule 2.330 (c) Motion  
(4) include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions.**

40. There has been no previously granted motions to disqualify in this case filed under Rule 2.330

**Rule 2.330 (c) Motion  
(4) The attorney for the party shall also separately certify that the motion and the client's statements are made in good faith. In addition to filing with the clerk, the movant shall immediately**

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serve a copy of the motion on the subject judge as set forth in  
Florida Rule of Florida Rule of Civil Procedure 1.080.

41. Petitioner movant is acting Pro Se and thus has no attorney at law representing him and Pro Se  
Petitioner has certified that the motion and the statements made herein are made in good faith.  
That Service is proper to Judge Phillips under Rule 1.080.

**Rule 2.330 (d) Grounds.**

**A motion to disqualify shall show:**

**(1) that the party fears that he or she will not receive a fair trial  
or hearing because of specifically described prejudice or bias of  
the judge.**

42. That Petitioner asserts for all the reasons and facts alleged herein and as set out below and  
further in the entirety of the document incorporated herein that he will not and has not already  
received a fair trial or hearing and that Judge Phillips because of the following specifically  
described prejudices and biases under Rule 2.330 (d) should be mandatorily disqualified for the  
reasons that follow:

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office  
Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge  
except those in which disqualification is required.**

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in  
which the judge's impartiality might reasonably be questioned,  
including but not limited to instances where:**

**(a) the judge has a personal bias or prejudice concerning a party  
or a party's lawyer, or personal knowledge of disputed  
evidentiary facts concerning the proceeding**

**(d) the judge or the judge's spouse, or a person within the third  
degree of relationship to either of them, or the spouse of such a  
person:**

**(iv) is to the judge's knowledge likely to be a material witness in  
the proceeding;**

**CANON 3B(1) - ...A judge shall hear and decide matters assigned to the judge except those  
in which disqualification is required.**

43. Judge Phillips knew and actually knows he was acting outside his jurisdiction on Dec. 15, 2015 as he knew a legally sufficient mandatory disqualification motion was filed in writing before Trial and he should have disqualified.
44. Judge Phillips knows he was intentionally misstating and improperly applying the law on Motions for Continuance which are allowed to be made at trial and yet Judge Phillips denied as untimely.
45. Judge Phillips knows this is a “complex” case and should have been treated as a complex case under the Case Management rules but instead illegally scheduled a trial in a case not noticed for Trial and then carried on with an illegal trial on Dec. 15, 2015.
46. Judge Phillips knew on Dec. 15, 2015 that not only was an improper trial scheduled and he should be mandatorily disqualified, but further knew no possible fair trial could have been conducted in a day, without determination of proper discovery in advance and without expert witnesses and without counsel for my minor children all being matters which Judge Phillips actually knows he illegally and improperly denied being heard by Petitioner on Sept. 15, 2015, thus Phillips actually knowing he was denying Petitioner due process in violation of the US Constitution and Florida State Constitution and violation of his role and functions as a Judge.
47. In all of these manners, Judge Phillips acted with partiality, prejudice and bias creating a reasonable fear that I would not receive a fair trial and did not and that the trial itself was a sham and fraud.
48. Judge Phillips knew that he, himself is and was a material witness since it is alleged in the All Writ Petition in these matters currently before the Supreme Court of Florida that Judge Coates was never the intended party Judge Colin interfered post recusal to steer the case to, allegedly knowing of Conflict with Coates due to his being a former Proskauer Rose partner and that



Proskauer was a counter defendant in these matters and knowing the case would be moved to a new Judge who was unknown at the time. After Coates first hearing where he Sua Sponte recused himself on record, the case was transferred to Judge Phillips.

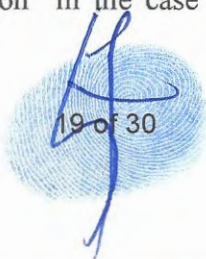
49. Where it is alleged based on information and belief that the interference by Colin was to move the case to Phillips, despite whether it is true, it can only be proven after Petitioner has access to the Court record from Colin, Coates and Phillips and Petitioner has the right to question each party under deposition or otherwise to ascertain their involvement, Judge Phillips new becomes a material and fact witness to a major allegation of fraud on the court in the transfer by Colin and to answer if he had any Ex Parte communications with Judge Coates or Judges Colin or any other party prior to taking the cases that Colin is alleged to have improperly steered to the North District.

In the fact that this question can be reasonably asked of Judge Phillips due to the improper post recusal steering of the case by Colin, Judge Phillips should on his own initiative have then disqualified himself as a witness, allowed a completely independent judge to be picked properly and thus from the start Judge Phillips could not hear the matters further without first addressing this most serious issue of the transfer.

50. That even if the Supreme Court of Florida or Appellate Court were to now attempt to permit such transfer, the fact that Phillips acted first, prior to any rulings, remains cause for his disqualification.

**CANON 3E(1) - ...A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.**

51. Judge Phillips must mandatorily be disqualified as his impartiality is reasonably questioned on multiple grounds as further set forth herein throughout this document including but not limited to his "pre-judging" and "pre-determination" in the case that he would not do anything to find

  
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Judge Colin “wrong” prior to Petitioner even being heard on Sept. 15, 2015, further based upon Judge Phillips professed “love” for Judge Colin who is a necessary and material fact witness, for his due process violations in Ordering a Trial in Shirley Bernstein’s Estate when the Conference was only “Noticed” for Simon Bernstein’s Estate and for other grounds as set forth herein and then continuing to act in fraud and further aid and abet the fraudulent criminal scheme herein using the machinery of the Florida Courts in the North Branch of Palm Beach County on Dec. 15, 2015 and by an illegal Order Dec. 16, 2015.

52. Judge Phillips impartiality is challenged as despite now being a material and fact witness in the matter, he did not clarify or rectify this matter first before determining if he could adjudicate, or allow the Florida Supreme Court to determine if the Colin transfer was improper, before taking ANY judicial action in the matters or even minimally afford Petitioner Due Process to be heard before Judge Phillips on the best procedural manner to bring the issues of the All Writs<sup>11</sup> before the Phillips court.

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<sup>11</sup> See Petition for All Writs by Eliot I. Bernstein @ See All Writ Filed with the Florida Supreme Court @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>  
and  
See Amended All Writ Filed with the Florida Supreme Court @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>  
and  
See VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin>  
and  
Colin Order Denying Disqualification @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>  
and  
See Colin Sua Sponte Recusals @ <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519%20Colin%20Recusals%20Clerk%20Reassigns.pdf>

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53. Instead, Judge John L. Phillips began acting in the matters and in fact held two hearings, including issuing an Order on Sept. 24, 2015 thereby scheduling a Trial date of December 15, 2015 on a claim for construction filed by Attorney Alan B. Rose, Esq. on behalf of an alleged trustee Ted Bernstein and further enforcing a prior Stay Order of Judge Martin Colin who was petitioned for mandatory Disqualification by Eliot I. Bernstein as a material and fact witness to fraud in the Court, upon the Court and potentially by the Court and further that this Order by Judge John L. Phillips was issued despite the pendency of a Petition for All Writs at the Supreme Court of Florida seeking Mandamus and Prohibition in relation to the conduct of Judge Martin Colin and further seeking injunctive relief and other redress Judge John L. Phillips, both by express words, conduct and by omission has committed acts that mandate Disqualification since the judge's impartiality might reasonably be questioned in this proceeding as defined herein and as set out herein throughout this filing specifically referencing ongoing continuing conduct on Dec. 15, 2015. .

**CANON 3E(1)(a) - ...the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.**

54. Judge John L. Phillips is further mandated to be Disqualified again both by express words, conduct and by omissions demonstrating bias and prejudice against Eliot I. Bernstein, a party in this proceeding as defined herein and as set out by the entirety of this document and filing herein.

**CANON 3E(1)(d)(iv) - ...the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

55. As already stated above Judge Phillips has knowledge that he is a material and fact witness in the proceedings to highly relevant information regarding the cases at this time.

**Rule 2.330 Grounds.**



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**(e) Time.** A motion to disqualify shall be filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c) and promptly filed. A motion made during hearing or trial shall be ruled on immediately.

56. Until such time as the frauds upon the court is corrected, the cases reset with new fiduciaries and counsel and due process restored, any such motion presently is timely herein. This motion is otherwise timely being filed on the first day the Courts were open after the Dec. 25th Holiday also closing the Courts on Dec. 26th, 2015.

**Rule 2.330 Grounds.**

**(f) Determination - Initial Motion.**

**The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.**

57. Petitioner states that the Motion is legally sufficient under Rule 2.330 as it fully complies with this code and whether Petitioner has filed a legally sufficient pleading would not negate the fact that Judge Phillips has to voluntarily and mandatorily disqualify under Judicial Canons, Attorney Conduct Codes and Law as stated herein.

**Rule 2.330 Grounds.**

**(g) Determination - Successive Motions.**

**If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion.**