

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

IN RE: Case No. 502012CP004391XXXXNBIH

ESTATE OF SIMON L. BERNSTEIN,

Deceased.

/

**ELIOT I. BERNSTEIN, AS A BENEFICIARY OF THE ESTATE OF SIMON L.  
BERNSTEIN WITH STANDING AND AN INTERESTED PERSON UNDER LAW,  
SUPPLEMENTAL EXHIBIT FOR HEARINGS UNDER CASE MANAGEMENT  
ORDER OF JUDGE SCHER DATED DEC. 13, 2016 and MOTION TO VACATE CASE  
MANAGEMENT ORDER AND OPPOSE ALL FIDUCIARY MOTIONS**

Comes now Eliot I. Bernstein, who files and submits this Supplemental Exhibit ( No. 32 to existing Exhibit Lists of Eliot I. Bernstein ) which represents a Hearing Transcript Reported by Lisa Mudrick, RPR, FPR, Notary Public of the State of Florida ( Excerpts ) from Feb. 16, 2017 consisting of Opening Statements of Peter Feaman, Attorney and Alan Rose, Attorney and partial Testimony and Examination of current Estate of Simon Bernstein PR Brian O'Connell, to be used in continuation of such hearings and for Hearing on the Motion of Eliot Bernstein to Vacate, Amend and Modify the existing Case Management Order and for such other and further relief as is just and proper.

**Dated: February 23, 2017**

**By: /S/ Eliot Ivan Bernstein**

Eliot Ivan Bernstein, Pro Se  
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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to counsel of record and the proper parties on the attached Service List via the Court's e-portal system and/or Email Service on this 23rd day of February, 2017.

**By: /S/ Eliot Ivan Bernstein**  
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**EXHIBIT 1**

**Excerpts from Feb. 16, 2017 Hearing Judge Scher**

1 IN THE FIFTEENTH JUDICIAL CIRCUIT COURT  
2 IN AND FOR PALM BEACH COUNTY, FLORIDA  
3 CASE NO: 502012CP004391XXXXNBIH

4

5 IN RE:  
6 ESTATE OF SIMON L. BERNSTEIN,

7 \_\_\_\_\_ /

8

9

10 Proceedings before the Honorable  
11 ROSEMARIE SCHER

12

13 [EXCERPT - OPENING STATEMENTS]

14

15

16 Thursday, February 16, 2017  
17 3188 PGA Boulevard  
18 North County Courthouse  
19 Palm Beach Gardens, Florida 33410  
20 2:38 p.m. - 4:46 p.m.

21 **ORIGINAL**

22  
23 Reported by:  
24 Lisa Mudrick, RPR, FPR  
25 Notary Public, State of Florida

1     APPEARANCES:

2     On behalf of William E. Stansbury:  
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14    Estate of Simon Bernstein:  
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21         BY: THE HONORABLE DIANA LEWIS  
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23    On behalf of Eliot Bernstein:  
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1                   P R O C E E D I N G S

2                   - - -

3                   \* \* \* \* \*

## 4                   OPENING STATEMENTS

5                   - - -

6                   MR. FEAMAN: Thank you, Your Honor. May  
7                   it please the Court. Peter Feaman on behalf of  
8                   William Stansbury. My remarks are by way of an  
9                   opening statement at this time, Your Honor, in  
10                  connection with Your Honor's order, case  
11                  management conference and order specially  
12                  setting hearings.

13                  As Your Honor noted, we are dealing with  
14                  Stansbury's motion, docket entry 496, and  
15                  Stansbury's related motion to disqualify Alan  
16                  Rose and his law firm, docket entry 508.

17                  The story and premise, Your Honor, for  
18                  this is that the personal representative of the  
19                  Simon Bernstein estate, Brian O'Connell, has a  
20                  fiduciary duty to all interested persons of the  
21                  estate. And that's found in Florida Statute  
22                  733.602(1) where it states a personal  
23                  representative is a fiduciary, and in the last  
24                  sentence, a personal representative shall use  
25                  the authority conferred by this code, the

1 authority in the will, if any, and the  
2 authority of any order of the Court, quote, for  
3 the best interests of interested persons,  
4 including creditors, close quote.

5 Mr. Stansbury is an interesting --  
6 interested person to the Estate of Simon  
7 Bernstein as well as a claimant in this case.

8 Interesting -- interested persons -- yes,  
9 he is an interesting person. But interested  
10 persons is defined, Your Honor, in Florida  
11 Statute 731.201(23) which states that an  
12 interested person means, quote, any person who  
13 may reasonably be expected to be affected by  
14 the outcome of the particular proceeding  
15 involved.

16 The evidence will show that Mr. Stansbury  
17 clearly falls into that category.

18 The second part of our presentation, Your  
19 Honor, will then involve the presentation of  
20 evidence to show that in fact there is a  
21 conflict of interest. And then part three --  
22 of conflict of interest of Mr. Rose and his law  
23 firm representing the estate in this case.

24 And thirdly, that the conflict of  
25 interest, the evidence will show, is not

1           waivable.

2           The parties' chart, which we did and  
3           submitted to Your Honor with our package last  
4           week, is the color chart, I have an extra copy  
5           if Your Honor does not have it.

6           THE COURT: I believe it is --

7           MR. FEAMAN: For the Court's convenience.

8           THE COURT: I believe it is in -- I know I  
9           have it. And I know I had it. Oh, got it. I  
10           knew it was in one of my notebooks. Thank you.

11           MR. FEAMAN: Thank you.

12           Now, the summation of the position of the  
13           parties in connection with what the evidence  
14           will show, Your Honor, shows that we are here  
15           obviously on the Estate of Simon Bernstein, and  
16           the proposed attorney is Alan Rose. That's the  
17           box at the top. The two proceedings that are  
18           engaged with regard to the estate right now is  
19           the Stansbury litigation against the estate  
20           which is wherein it is proposed that Mr. Rose  
21           and his law firm defend the estate in that  
22           case.

23           And more significantly, Your Honor,  
24           because it really wouldn't matter what the  
25           other litigation is that Mr. Rose is being

1       asked to defend, because more significantly is  
2       the orange box on the right, which I will call  
3       for the purposes of this litigation the Chicago  
4       litigation. And in that action there are a  
5       number of plaintiffs, one of whom is Ted  
6       Bernstein individually. And the evidence will  
7       show in this case that Alan Rose represents Ted  
8       Bernstein individually, not only in other  
9       matters, but he actually appeared in a  
10      deposition on behalf of Mr. Bernstein  
11      individually in that Chicago litigation, made  
12      objections to questions. And the evidence will  
13      show that he actually on a number of occasions  
14      instructed Mr. Bernstein not to answer certain  
15      questions that were directed to Mr. Bernstein  
16      by counsel for the Estate of Simon Bernstein.

17       In that Chicago litigation we will present  
18      to Your Honor certified copies of pleadings  
19      from the Chicago litigation that shows the  
20      following: That Ted Bernstein, among others,  
21      sued an insurance company to recover  
22      approximately \$1.7 million dollars of life  
23      insurance proceeds. Mr. Stansbury became aware  
24      that that litigation was going on, and moved to  
25      intervene in that lawsuit. Mr. Stansbury was

1 denied.

2 So the evidence will show that he was able  
3 to prevail upon Ben Brown, and Ben Brown moved  
4 on behalf of the estate when he was curator to  
5 intervene. And in fact the Estate of Simon  
6 Bernstein --

7 MR. ROSE: May I object for a second?

8 THE COURT: Legal objection?

9 MR. ROSE: That he is completely  
10 misstating the record of this Court and the  
11 proceedings before Judge Colin.

12 THE COURT: You will have an opportunity  
13 to respond and explain it to me.

14 MR. FEAMAN: Thank you, Your Honor.

15 And the evidence will show that the Estate  
16 of Simon Bernstein is now an intervenor  
17 defendant, and they filed their own intervenor  
18 complaint seeking to recover that same \$1.7  
19 million dollars that Ted Bernstein is seeking  
20 to recover as a plaintiff in that same action.

21 So the evidence will show that Mr. Rose  
22 represents Ted Bernstein. Ted Bernstein is  
23 adverse to the estate. And now Mr. Rose seeks  
24 to represent the estate to which his present  
25 client, Ted Bernstein, is adverse in the

1           Stansbury litigation, which is why we are  
2           there. Now --

3           THE COURT: Wait. Slow down one second.

4           MR. FEAMAN: Sure.

5           THE COURT: That is something you repeated  
6           several times in your motion, but I want you to  
7           state it one more time for me slowly.

8           MR. FEAMAN: Yes. The Chicago litigation  
9           one of the plaintiffs is Ted Bernstein  
10           individually. The Estate of Simon Bernstein  
11           has now intervened in that action. And Ted  
12           Bernstein as plaintiff is seeking to recover  
13           \$1.7 million dollars.

14           Adversely, the Estate of Simon Bernstein  
15           seeks to recover that same \$1.7 million dollars  
16           and is arguing up there that it should not go  
17           to the plaintiffs but should go to the estate.

18           So they are one hundred percent adverse,  
19           that would be Ted Bernstein and the Estate of  
20           Simon Bernstein.

21           And Mr. Rose represents Ted Bernstein, and  
22           now seeks to represent the estate in a  
23           similar -- in an action against the estate, and  
24           they are both going on at the same time. Thus,  
25           the conflict is an attorney cannot represent a

1       plaintiff in an action, whether he is counsel  
2       of record in that action or not, that's adverse  
3       to the Estate of Simon Bernstein, and at the  
4       same time defend the Estate of Simon Bernstein  
5       when he has a client that is seeking to deprive  
6       the estate of \$1.7 million dollars.

7           Now, if Ted Bernstein and the other  
8       plaintiffs in that case were monetary  
9       beneficiaries of the estate, I suppose it could  
10       be a waivable conflict. However, that's not  
11       the case.

12           That drops us to the third box on the --  
13       the fourth box on the chart, which is the green  
14       one, which deals with the Simon Bernstein  
15       Trust. The Simon Bernstein Trust is the  
16       residual beneficiary of the Simon Bernstein  
17       estate. And once the estate captures that  
18       money as a result of the Chicago litigation, if  
19       it does, then the trust will eventually accede  
20       to that money after payment of creditors, one  
21       of which would be or could be my client.

22           And who are the beneficiaries of the  
23       trust? So we have the one beneficiary of the  
24       Simon Bernstein estate, the Simon Bernstein  
25       Trust, and who are the beneficiaries of the

1           trust? Not the children of Simon Bernstein.  
2           Not Ted Bernstein. But the grandchildren of  
3           Simon Bernstein, some of whom are adults and  
4           some of whom are minors in this case. Such  
5           that if the estate prevails in the Chicago  
6           litigation, even assuming Mr. Stansbury wasn't  
7           around making his claim against the estate, if  
8           all of the distributions were finally made when  
9           the estate wins that Chicago litigation, none  
10           of it will ever end up in the hands of Ted  
11           Bernstein as plaintiff. The only way  
12           Mr. Bernstein can get that money is to prevail  
13           as a plaintiff in the Chicago litigation.  
14           Mr. Rose represents Mr. Bernstein, and  
15           therefore there's a conflict, and it's a  
16           non-waivable conflict.

17           And in my final argument when I discuss  
18           the law, I will suggest to the Court that the  
19           conflict that's presented before the Court is  
20           in fact completely non-waivable.

21           THE COURT: Before you sit down, I want  
22           you to address one thing that's been raised in  
23           their responses. And that is why did it take  
24           you so long to file it?

25           MR. FEAMAN: I filed it as soon as I

1       became aware that there was a conflict. For  
2       example, when the order that we are seeking to  
3       set aside was entered, I was not aware that the  
4       Rose law firm represented Ted Bernstein in that  
5       Chicago action. My client then brought it to  
6       my attention. And as soon as we did that, I  
7       moved to set aside the order because it became  
8       apparent that there was a clear conflict.

9           Because initially, as I told Brian  
10       O'Connell, Mr. Stansbury can't dictate who the  
11       estate wishes to hire as its attorneys unless,  
12       as it turns out, that attorney represents  
13       interests that are adverse to the estate. And  
14       that's when we filed our motion to set aside.

15           I got possession of the deposition that  
16       will be offered today. The deposition revealed  
17       to me what I have summarized here today, this  
18       afternoon, and then we moved to set aside the  
19       order. And then we thought that wasn't enough,  
20       we should do a formal motion to disqualify,  
21       which we did.

22           The chronology of the filings, the motion  
23       to vacate, I am not sure exactly when that was  
24       filed, but it wasn't too long after the entry  
25       of the September 7th order, and then the motion

1 to disqualify came after that. And --

2 THE COURT: It was filed October 7th.

3 MR. FEAMAN: Pardon me?

4 THE COURT: It was filed October 7th.

5 MR. FEAMAN: Okay. The motion to vacate?

6 THE COURT: Yes.

7 MR. FEAMAN: Correct. We had to do our  
8 due diligence. We got the copy of the  
9 deposition, and moved. Because we don't get  
10 copies of things that go on up there on a  
11 routine basis.

12 THE COURT: Okay. I just wanted to ask  
13 what your position was. Okay. All right.  
14 Thank you.

15 Opening?

16 MR. ROSE: As a threshold matter, I think  
17 even though this is an evidentiary hearing, you  
18 are going to receive some documentary evidence,  
19 I don't think there's a real need for live  
20 testimony, in other words, from witnesses. No,  
21 no.

22 THE COURT: Okay.

23 MR. ROSE: I am advising you. I am not  
24 asking your opinion of it.

25 THE COURT: Thank you.

1                   MR. ROSE: I am advising you. I have  
2                   spoken to Mr. Feaman.

3                   THE COURT: Okay.

4                   MR. ROSE: So I don't know there's going  
5                   to be live witnesses.

6                   THE COURT: Okay.

7                   MR. ROSE: He has seven documents or eight  
8                   documents he would like to put in evidence, and  
9                   I would be happy if they just went into  
10                  evidence right now.

11                  THE COURT: He can decide how he wants to  
12                  do his case.

13                  MR. ROSE: Okay.

14                  THE COURT: You can do your opening.

15                  MR. ROSE: I think we are going to be  
16                  making one long legal argument with documents,  
17                  so.

18                  THE COURT: Okay. Well, let's do an  
19                  opening and then.

20                  MR. ROSE: Let me start from the beginning  
21                  then.

22                  THE COURT: Okay.

23                  MR. ROSE: So we are here today, and there  
24                  are three motions that you said you would try  
25                  to do today. And I don't have any doubt you

1 will get to do all three today given how much  
2 time we have and progress we are making and the  
3 amount of time Mr. Feaman and I think this will  
4 take.

5 THE COURT: Okay.

6 MR. ROSE: The three are completely  
7 related. They are all the same. They are  
8 three sides of the same coin.

9 Am I blocking you?

10 MR. O'CONNELL: Your Honor, could I step  
11 to the side?

12 THE COURT: Yes, absolutely.

13 MR. ROSE: You can have the chart.

14 MR. O'CONNELL: Okay.

15 THE COURT: Mr. Rose, I have to ask you.  
16 I received a, I think it was a flash drive, and  
17 it had proposed orders on matters that were not  
18 necessarily going to be heard today. I don't  
19 think I got a flash drive with a proposed order.  
20 I did receive Mr. Feaman's on these particular  
21 orders.

22 MR. ROSE: I don't think I sent you a  
23 flash drive that I recall.

24 THE COURT: Okay. But I did on the other  
25 ones. That's what seemed odd to me.

1                   MR. ROSE: I am not aware, I am sorry.

2                   THE COURT: Okay. That's okay. You may  
3                   proceed.

4                   MR. ROSE: There's three matters today and  
5                   they are sort of related, and they involve how  
6                   are we going to deal with the claim by  
7                   Mr. Stansbury against the Estate of Simon  
8                   Bernstein.

9                   And there are currently three separate  
10                  proceedings. There's a proceeding in Illinois.  
11                  It's all taking place in Illinois. There's the  
12                  probate proceeding which we are here on which  
13                  is the Estate of Simon Bernstein. And there's  
14                  the Stansbury litigation that is pending in  
15                  circuit court. It's just been reassigned to  
16                  Judge Marx, so we now have a judge, and that  
17                  case is going to proceed forward. It's set for  
18                  trial, I believe, in July to September  
19                  timeframe.

20                  So the first thing you are asked to do  
21                  today is to reconsider a valid court order  
22                  entered by Judge Phillips on September the 7th.  
23                  We filed our motion in August, and they had 30  
24                  days, more than 30 days before the hearing to  
25                  object or contest the motion to appoint us.

1           The genesis of the motion to appoint us  
2    was what happened at mediation. We had a  
3    mediation in the summer. The parties signed a  
4    written mediation settlement agreement. We  
5    have asked Your Honor at next week's hearing to  
6    approve the mediation settlement agreement. It  
7    is signed by every single one of the ten  
8    grandchildren or their court-appointed guardian  
9    ad litem, Diana Lewis, who has now been  
10    approved by this Court, upheld by the 4th  
11    District, and upheld by the Supreme Court this  
12    week. So I think it's safe to say that she's  
13    going to be here.

14           So the settlement agreement is signed by  
15    all of those people. It's signed by my client  
16    as the trustee. It's also signed by four of  
17    the five children, excluding Eliot Bernstein.

18           And as part of this, once we had a  
19    settlement, there was a discussion of how do we  
20    get this relatively modest estate to the finish  
21    line. And the biggest impediment getting to  
22    the finish line is this lawsuit. Until this  
23    lawsuit is resolved, his client is something.  
24    We can debate what he is. He claims to be an  
25    interested person. I think technically under

1 law he is a claimant. Judge, I think even  
2 Judge Colin ruled he was not a creditor and  
3 denied his motion to remove and disqualify Ted  
4 Bernstein as trustee. That was pending and  
5 there's an order that does that a long time  
6 ago. If I could approach?

7 THE COURT: Sure.

8 MR. ROSE: I don't have the docket entry  
9 number. This is in the court file. This was  
10 Judge Colin on August 22nd of 2014.

11 THE COURT: I saw it.

12 MR. ROSE: He has been trying to remove me  
13 and Mr. Bernstein for like almost three or four  
14 years now. But that's only significant because  
15 he is not a creditor. He is a claimant. So  
16 what we want to do is we want to get his claim  
17 to the finish line.

18 So I am not talking about anything that  
19 happened at mediation. Mediation is now over.

20 We have a signed settlement agreement.

21 Mr. Stansbury participated in the mediation,  
22 but we did not make a settlement with him.

23 Okay.

24 So as a result of the mediation, all the  
25 other people, everybody that's a beneficiary of

1       this estate coming together and signing a  
2       written agreement, those same people as part of  
3       the written agreement said we want this case to  
4       finish, and how are we going to do that.

5           Well, let's see. Mr. Stansbury is the  
6       plaintiff represented by Mr. Feaman. The  
7       estate was represented by -- do you?

8           THE COURT: No.

9           MR. ROSE: I can give you one to have if  
10       you want to make notes on.

11          THE COURT: I would like that. I would  
12       like that very much.

13          MR. ROSE: That's fine. I have two if you  
14       want to have one clean and one with notes.

15          THE COURT: Thank you.

16          MR. ROSE: You will recall -- I don't want  
17       to talk out of school because we decided we  
18       weren't going to talk out of school. But I got  
19       Mr. Feaman's -- like I didn't have a chance to  
20       even get this to you because I hadn't seen his  
21       until after your deadline, but.

22          THE COURT: This is demonstrative.

23          MR. ROSE: Okay.

24          THE COURT: He can pull up something new  
25       demonstrative as well.

1                   MR. ROSE: Mr. -- originally the defendant  
2 here originally was assigned when he was alive.  
3 When he died his estate was substituted in. He  
4 hired counsel. His counsel didn't do much in  
5 the case because I did all the work because I  
6 was representing the companies, Ted Bernstein  
7 and another trust. And in January of 2014 the  
8 PRs of the estate resigned totally unrelated to  
9 this.

10                  So in the interim between the original PRs  
11 and the appointment of Mr. O'Connell, we had a  
12 curator. The curator filed papers, which I  
13 filed, it's in the file, but I have sent it to  
14 Your Honor, where he admits, he states that he  
15 wanted to stay the litigation but he states  
16 that I have been doing a great job representing  
17 him and he hasn't even had to hire a lawyer yet  
18 because he is just piggybacking on the work I  
19 am doing.

20                  I represented in this lawsuit the very one  
21 that Mr. O'Connell wants to retain my firm to  
22 handle. And he wants it with the consent --  
23 and one thing he said was that there's some  
24 people that aren't here. Every single person  
25 who is a beneficiary of this estate wants my

1       firm to handle this for the reasons I am about  
2       to tell you. And I don't think there's any  
3       dispute about it.

4       I was the lawyer that represented the main  
5       company LIC and AIM. Those are the shorthands  
6       for the two companies. Mr. Stansbury was at  
7       one point a ten percent stockholder in these  
8       companies. He gave his stock back. Ted  
9       Bernstein who is my client, and the Shirley  
10      Bernstein trust, I represented all these people  
11      in the case for about 15 or 18 months before we  
12      settled. I could be off on the timing. But I  
13      did all the documents, the production,  
14      interviewed witnesses, interviewed everybody  
15      you could interview. Was pretty much ready to  
16      go to trial other than we had to take the  
17      deposition of Mr. Stansbury, and then he had  
18      some discovery to do.

19       We went and we settled our case. Because  
20      we had a gap, because we didn't have a PR at  
21      the time, we were in the curator period,  
22      Mr. Brown was unwilling to do anything, so we  
23      didn't settle the case.

24       So Mr. O'Connell was appointed, so he is  
25      now the personal representative. He doesn't

1 know the first thing about the case. No  
2 offense. I mean, he couldn't. You know, it's  
3 not expected for him to know the first thing  
4 about it. I don't mean the first thing. But  
5 he doesn't know much about the case or the  
6 facts.

7 We had discussions about hiring someone  
8 from his law firm to do it. I met someone from  
9 his law firm and provided some basic  
10 information, but nothing really happened. We  
11 were hopeful we'd settle in July. We didn't  
12 settle.

13 So they said the beneficiaries with  
14 Mr. O'Connell's consent we want Mr. Rose to  
15 become the lawyer and we want Mr. Ted Bernstein  
16 to become the administrator ad litem.

17 Now, why is that important? That's the  
18 second motion you are going to hear, but it's  
19 kind of important.

20 THE COURT: That's the one Phillips  
21 deferred?

22 MR. ROSE: Well, what happened was  
23 Mr. Feaman filed an objection to it timely.  
24 And in an abundance of caution because it might  
25 require an evidentiary or more time than we

1       had, Judge Phillips deferred. That was my  
2       order. And my main goal was I wanted to get  
3       into the case and so we could start going to  
4       the status conferences and get this case  
5       moving. And what happened was as soon as we  
6       had the first status conference and we started  
7       the case moving, until we got the motion to  
8       disqualify, and stopped and put the brakes on.

9           And this is a bench trial, so there's  
10       not -- this is like maybe argument, but it's a  
11       little bit related. I believe that Mr. -- this  
12       is the case they want to happen first and  
13       they're putting the brakes on this case because  
14       they want this case to move very slowly.  
15       Because the only way there's any money to  
16       pay --

17           MR. FEAMAN: Objection.

18           THE COURT: Legal objection?

19           MR. FEAMAN: What counsel believes is not  
20       appropriate for --

21           THE COURT: Sustained.

22           MR. ROSE: Okay. So this case -- so  
23       anyway. Mr. Bernstein, Ted Bernstein, Ted,  
24       Simon and Bill, that's Ted, the dead guy Simon  
25       and his client Bill, were the three main

1       shareholders of a company.

2           THE COURT: I got it.

3           MR. ROSE: Ted and Simon started it. They  
4       brought Bill in and gave him some stock for a  
5       while. Bill is suing for two and a half  
6       million dollars. The only person alive on this  
7       planet who knows anything about this case is  
8       Ted. He has got to be the representative of  
9       the estate to defend the case. He has got to  
10      be sitting at counsel table. If he is not at  
11      counsel table, he is going to be excluded under  
12      the exclusionary rule and he will be out in the  
13      hallway the whole trial. And whoever is  
14      defending the estate won't be able to do it.  
15      This guy wants Ted out and me out because we  
16      are the only people that know anything about  
17      this case.

18           So why is that important? Well, it makes  
19      it more expensive. It makes him have a better  
20      chance of winning. That's what this is about.  
21      And at the same time the Illinois case is  
22      really critical here because unless the estate  
23      wins the money in Illinois, there's nothing in  
24      this estate to pay him.

25           THE COURT: I understand.

1                   MR. ROSE: Mr. O'Connell, I proffer, he  
2                   advised me today there's about \$285,000 of  
3                   liquid assets in the estate. And we are going  
4                   to get some money from a settlement if you  
5                   approve it.

6                   Now, Eliot and Mr. Stansbury will probably  
7                   object to that. It's not for today. So we  
8                   have a settlement with the lawyers, the ones  
9                   that withdrew. So we got a little bit of money  
10                  from that. But there's really not going to be  
11                  enough money in the estate to defend his case,  
12                  pay all, do all the other things you got to do.  
13                  So this is critical for Mr. Stansbury.

14                  So the original PR, the guys that  
15                  withdrew, they refused to participate in this  
16                  lawsuit because they knew the facts. They knew  
17                  the truth. They met with Simon. They drafted  
18                  his documents. So they were not participating  
19                  in this lawsuit.

20                  Mr. Feaman stated in his opening that his  
21                  client tried to intervene. So Bill tried to  
22                  intervene directly into Illinois, and the  
23                  Illinois judge said, no thank you, leave.

24                  So when these guys withdrew we got a  
25                  curator. The curator I objected --

1                   THE COURT: Mr. Brown?

2                   MR. ROSE: Ben Brown. He was a lawyer in  
3                   Palm Beach, a very nice man. He passed away in  
4                   the middle of the lawsuit at a very young age.  
5                   But he -- the important thing -- I interrupted,  
6                   and I apologize for objecting. I didn't know  
7                   what to do. But Mr. Brown didn't say, hey, I  
8                   want to get in this lawsuit in Illinois; let me  
9                   jump in here. Mr. Feaman and Mr. Stansbury  
10                  filed a motion to require Mr. Brown to  
11                  intervene in the case.

12                  THE COURT: In the federal case?

13                  MR. ROSE: In the federal case in  
14                  Illinois. Because it's critical for  
15                  Mr. Stansbury, it's critical for Mr. Stansbury  
16                  to get this money into the estate.

17                  THE COURT: Into the estate, I understand.

18                  MR. ROSE: Okay. So we had a hearing  
19                  before Judge Colin, a rather contested hearing  
20                  in front of Judge Colin. Our position was very  
21                  simple -- one of the things you will see, my  
22                  client's goals on every one of these cases are  
23                  exactly the same. Minimize time, minimize  
24                  expense, maximize distribution. So we have the  
25                  same goal in every case.

1           All the conflict cases you are going to  
2        see all deal with situations where the lawyers  
3        have antagonistic approaches and they want --  
4        like in one case he has, it's one lawsuit the  
5        lawyer wants two opposite results inside the  
6        same lawsuit for two different clients. That's  
7        completely different. And even that case,  
8        which is the Staples case, it was two to one.  
9        There was a judge that dissented and said,  
10      look, I understand what you are saying, but  
11      there's still not really a conflict there.

12           But our goals are those goals.

13           So what we said to Judge Colin is we think  
14      the Illinois case is a loser for the estate.  
15      We believe the estate is going to lose. The  
16      lawyer who drafted the testamentary documents  
17      has given an affidavit in the Illinois case  
18      saying all his discussions were with Simon.  
19      The judge in Illinois who didn't have that when  
20      he first ruled had that recently, and he denied  
21      their summary judgment in Illinois. So it's  
22      going to trial. But that lawyer was the  
23      original PR, so he wasn't bringing the suit.

24           Mr. Brown says, I am not touching this.

25           So we had a hearing, and they forced Mr. Brown

1 to intervene with certain conditions. And one  
2 of the conditions was very logical. If our  
3 goal is to save money and Mr. Stansbury,  
4 Mr. Feaman's client, is going to pay the cost  
5 of this, he will get it back if he wins, then  
6 we got no objection anymore, as long as he is  
7 funding the litigation. He is the only guy who  
8 benefits from this litigation. None of the --  
9 the children and the grandchildren they don't  
10 really care.

11 Judge Lewis represents Eliot's three kids  
12 versus Eliot. The money either goes to Eliot  
13 or his three kids. She's on board with, you  
14 know, we don't want to waste estate funds on  
15 this. Our goal is to keep the money in the  
16 family. He wants the money.

17 This is America. He can file the lawsuit.  
18 That's great. But these people should be able  
19 to defend themselves however they choose to see  
20 fit. But the critical thing about this is  
21 Mr. Brown didn't do anything in here. Judge  
22 Colin said, you can intervene as long as he is  
23 paying the bills. And that's an order. Well,  
24 that order was entered a long time ago. It was  
25 not appealed.

1           So one of the things, the third thing you  
2 are being asked to do today is vacate that  
3 order, you know. And I did put in my motion,  
4 and I don't know if it was ad hominem toward  
5 Mr. Feaman, it really was his client, his  
6 client is driving this pace. He is driving us  
7 to zero. I mean, we started this estate with  
8 over a million dollars. He has fought  
9 everything we do every day. It's not just  
10 Eliot. Eliot is a lot of this. Mr. Stansbury  
11 is driving us to zero as quickly as possible.

12           So in the Illinois case the estate is  
13 represented by Stamos and Trucco. They are  
14 hired by, I think, Ben Brown but was in  
15 consultation with Mr. Feaman. They  
16 communicated -- the documents will come into  
17 evidence. I am assuming he is going to put the  
18 documents on his list in evidence.

19           You will see e-mails from Mr. Stamos from  
20 the Stamos Trucco firm, they e-mailed to  
21 Mr. O'Connell, and they copied Bill Stansbury  
22 and Peter Feaman because they are driving the  
23 Illinois litigation. I don't care. They can  
24 drive it. I think it's a loser. They think  
25 it's a winner. We'll find out in a trial.

1           They are supposed to be paying the bills.  
2           I think the evidence would show his client's in  
3           violation of Judge Colin's orders because his  
4           client hasn't paid the lawyer all the money  
5           that's due. And Mr. O'Connell, I think, can  
6           testify to that. I don't think it's a disputed  
7           issue. But the lawyer's been paid 70 and he is  
8           owed 40, which means Mr. Feaman's client is  
9           right now technically in violation of a court  
10           order.

11           I have asked numerous times for them to  
12           give me the information. I just got it this  
13           morning. But I guess I can file a motion to  
14           hold him in contempt for violating a court  
15           order.

16           But in the Chicago case the plaintiff is  
17           really not Ted Bernstein, although he probably  
18           nominally at some point was listed as a  
19           plaintiff in the case. The plaintiff is the  
20           Simon Bernstein 1995 irrevocable life insurance  
21           trust. According to the records of the  
22           insurance company, the only person named as a  
23           beneficiary is a defunct pension plan that went  
24           away.

25           THE COURT: Net something net something,

1 right?

2 MR. ROSE: Right. And then the residual  
3 beneficiary is this trust. And these are  
4 things Simon -- he filled out one designation  
5 form in '95 and he named the 95 trust.

6 THE COURT: But there's no paperwork,  
7 right?

8 MR. ROSE: We can't find the paperwork.  
9 Not me. It was not me. I have nothing to do  
10 with it. I said we. I wanted to correct the  
11 record because it will be flown up to Illinois.

12 Whoever it is can't find the paperwork.  
13 So there's a proceeding, and it happens in  
14 every court, and there's Illinois proceedings  
15 to determine how do you prove a lost trust.

16 This lawsuit is going to get resolved one  
17 way or the other. But in this lawsuit the 95  
18 trust Ted Bernstein is the trustee, so he  
19 allowed, though under the terms of the trust in  
20 this case, and we cited it to you twice or  
21 three times, under Section 4J of the trust on  
22 page 18 of the Simon Bernstein Trust, it says  
23 that you can be the trustee of my trust, Simon  
24 said you can be the trustee of my trust even if  
25 you have a different interest as a trustee of a

1       different trust. So that's not really an  
2       issue. And up in Chicago Ted Bernstein is the  
3       trustee of the 95 trust. He is represented by  
4       the Simon law firm in Chicago.

5           I have never appeared in court. He is  
6       going to put in all kinds of records. My name  
7       never appears -- I have the docket which he  
8       said can come into evidence. I don't appear on  
9       the docket.

10          Now, I have to know about this case though  
11       because I represent the trustee of the  
12       beneficiary of this estate. I've got to be  
13       able to advise him. So I know all about his  
14       case. And he was going to be deposed.

15           Guess who was at his deposition? Bill  
16       Stansbury. Bill Stansbury was at his  
17       deposition, sat right across from me. Eliot,  
18       who is not here today, was at that deposition,  
19       and Eliot got to ask questions of him at that  
20       deposition. He wanted me at the deposition.  
21       He is putting the deposition in evidence. If  
22       you study the deposition, all you will see is  
23       on four occasions I objected on what grounds?  
24       Privilege. Be careful what you talk about; you  
25       are revealing attorney/client privilege.

1       That's all I did. I didn't say, gee, don't  
2       give them this information or that information.  
3       And if I objected incorrectly, they should have  
4       gone to the judge in Illinois. And I guarantee  
5       you there's a federal judge in Illinois that if  
6       I had objected improperly would have overruled  
7       my objections. I instructed him to protect his  
8       attorney/client privilege. That's what I was  
9       there for, to advise him and to defend him at  
10       deposition and to protect him. That's all I  
11       did in the Illinois case. And that is over.

12           Now, I am rooting like crazy that the  
13       estate loses this case in one sense because  
14       that's what everybody that is a beneficiary of  
15       my trust wants. But I could care less how that  
16       turns out, you know, from a legal standpoint.  
17       I don't have an appearance in this case. And  
18       everyone up there is represented by lawyers.

19           So what we have now is we have this motion  
20       which seeks to disqualify my law firm. We  
21       still have the objection to Ted serving as the  
22       administrator ad litem. And I think those two  
23       kind of go hand in hand.

24           There's another component you should know  
25       about that motion. But as I told you, our

1       goals are to reduce expense.

2           The reason that everybody wanted Ted to  
3       serve as the administrator ad litem, so he  
4       would sort of be the representative of the  
5       estate, because he said he would do that for  
6       free.

7           THE COURT: I remember.

8           MR. ROSE: Mr. O'Connell is a  
9       professional. He is not going to sit there for  
10       free for a one-week, two-week jury trial and  
11       prepare and sit for deposition. That's enough  
12       money -- just his fees alone sitting at trial  
13       are enough to justify everything -- you know,  
14       it's a significant amount of money.

15           So that's what's at issue today.

16           But their motion for opening statement,  
17       and I realize this is going to overlap, my  
18       other will be --

19           THE COURT: Which motion?

20           MR. ROSE: The disqualification.

21           THE COURT: I wasn't sure.

22           MR. ROSE: I got you. That was sort of  
23       first up. All right. So I am back. That's  
24       the background. You got the background for the  
25       disqualification motion. This is an adversary

1       in litigation trying to disqualify me.

2           I think it is a mean-spirited motion by  
3       Mr. Stansbury designed to create chaos and  
4       disorder and raise the expense, maybe force the  
5       estate into a position where they have to  
6       settle, because now they don't have a  
7       representative or an attorney that knows  
8       anything about the case.

9           MR. FEAMAN: Objection.

10          THE COURT: Legal objection?

11          MR. FEAMAN: Comments on the motivation or  
12       intention of opposing counsel in opening  
13       statement is not proper.

14          THE COURT: I will allow it only -- mean  
15       spirited I will strike. The other comments I  
16       will allow because under Rule 4-1.7, and I may  
17       be misquoting, but it is one of the two rules  
18       we have been looking at under the Florida Bar,  
19       the commentary specifically talks about an  
20       adverse party moving to disqualify and the  
21       strategy may be employed. So I will allow that  
22       portion of his argument, striking mean  
23       spirited.

24          MR. ROSE: Okay. If you turn to tab 2 of  
25       the -- we, I think, sent you a very thin

1 binder.

2 THE COURT: Yes, you did.

3 MR. ROSE: We had already sent you the  
4 massive book a long time ago.

5 THE COURT: Yes.

6 MR. ROSE: And I think all I sent you was  
7 the very thin binder. If you turn to Tab 2.

8 THE COURT: In any other world this would  
9 have been a nice sized binder. In this  
10 particular case you are indeed correct, this is  
11 a very thin binder.

12 MR. ROSE: Okay. If you flip to page  
13 2240 --

14 THE COURT: I am just teasing you, sorry.

15 MR. ROSE: -- which is about five or six  
16 pages in.

17 THE COURT: Yes.

18 MR. ROSE: This is where a conflict is  
19 charged by opposing party.

20 THE COURT: Yes.

21 MR. ROSE: It's part of Rule 4-1.7. These  
22 two rules have a lot of overlap.

23 And I would point for the record I did not  
24 say that Mr. Feaman was mean spirited. I  
25 specifically said mean spirited by his client.

1                   THE COURT: Thank you.

2                   MR. ROSE: So conflicts charged by the  
3                   opponent, and this is just warning you that  
4                   this can be used as a technique of harassment,  
5                   and that's why I am tying that in.

6                   But the important things are I have never  
7                   represented Mr. Stansbury in any matter.

8                   Generally in a conflict of interest situation  
9                   you will see I represented him. I don't have  
10                  any confidential information from  
11                  Mr. Stansbury. I have only talked to him  
12                  during his deposition. It wasn't very  
13                  pleasant. And if you disqualify me to some  
14                  degree my life will be fine, because this is  
15                  not the most fun case to be involved in. I am  
16                  doing it because I represent Ted and we are  
17                  trying to do what's right for the  
18                  beneficiaries.

19                  THE COURT: Appearance for the record.

20                  Someone just came in.

21                  MR. ELIOT BERNSTEIN: Hi. Eliot Ivan  
22                  Bernstein.

23                  THE COURT: Thank you.

24                  MR. ELIOT BERNSTEIN: I am pro se, ma'am.

25                  THE COURT: Thank you. You may proceed.

1       I just wanted the court reporter to know.

2            MR. ELIOT BERNSTEIN: Thank you, Your  
3            Honor.

4            MR. ROSE: I don't have any confidential  
5        information of Mr. O'Connell. He is the PR of  
6        the estate. I don't know anything about  
7        Mr. O'Connell that would compromise my ability  
8        to handle this case. I am not sure he and I  
9        have ever spoken about this case. But in  
10      either case, I don't have any information.

11        So I can't even understand why they are  
12      saying this is a conflict of interest. But the  
13      evidence will show, if you look at the way  
14      these are set up, these are three separate  
15      cases, not one case. And nothing I am doing in  
16      this case criticizes what I am doing in this  
17      case. Nothing I am doing -- the outcome of  
18      this case is wholly independent of the outcome  
19      of this case. He could lose this case and win  
20      this case. He could lose this case and lose  
21      this case. I mean, the cases have nothing to  
22      do with the issues.

23        Who gets the insurance proceeds? Bill  
24      Stansbury is not even a witness in that case.  
25      It has nothing to do with the issue over here,

1       how much money does Bill Stansbury get? So  
2       you've got wholly unrelated, and that's the  
3       other part of the Rule 4-1.9 and 4-1.7, it  
4       talks about whether the matters are unrelated.  
5       And I guess when I argue the statute I will  
6       argue the statute for you.

7           At best what the evidence is going to show  
8       you -- and I am not trying to win this on a  
9       technicality. I want to win this like up or  
10      down and move on. Because this estate can't --  
11      this delay was torture to wait this long for  
12      this hearing.

13       But if I showed up at Ted's deposition,  
14      and I promise you I will never show up again, I  
15      am out of that case, this is a conflict of  
16      interest with a former client. I have ceased  
17      representing him at his deposition. He is  
18      never going to be deposed again. If it's a  
19      conflict of interest with a former client, all  
20      these things are the prerogative of the former  
21      client. They are not the prerogative of the  
22      new client. The new client it's not the issue.  
23       So if I represented Ted in his deposition, I  
24      cannot represent another person in the same or  
25      a substantially related matter.

1           So I can't represent the estate in this  
2 case because I sat at Ted's deposition, unless  
3 the former client gives informed consent. He  
4 could still say, hey, I don't care, you do the  
5 Illinois case for the estate. I wouldn't do  
6 that, but that's what the rule says. Use  
7 information. There's no information. I am not  
8 even going to waste your time. Reveal  
9 information. So there's no information. If  
10 this is the rule we are traveling under, you  
11 deny the motion and we go home and move on and  
12 get back to litigation. If we are traveling  
13 under this rule, I cannot under 4-1.7 --

14           MR. FEAMAN: Excuse me, Your Honor, this  
15 sounds more like final argument than it does  
16 opening statement what the evidence is going to  
17 show.

18           THE COURT: Overruled.

19           MR. ROSE: So under 4-1.7, except as in b,  
20 and I am talking about b because that's maybe  
21 the only piece of evidence we may need is the  
22 waiver. I have a written waiver. I think it  
23 has independent legal significance. Because if  
24 I obtained his writing in writing, I think it's  
25 admissible just because Mr. O'Connell signed

1       it. But they object, they may object to the  
2       admission of the waiver, so I may have to put  
3       Mr. O'Connell on the stand for two seconds and  
4       have him confirm that he signed the waiver  
5       document.

6           But except if it's waived, now let's put  
7       that aside. We never even get to the waiver.  
8       The representation of one client has to be  
9       directly adverse to another client. So  
10      representing Ted in his deposition is not --  
11      has nothing to do -- first of all, Ted had  
12      counsel representing him directly adverse. I  
13      was there protecting him as trustee, protecting  
14      his privileges, getting ready for a trial that  
15      we had before Judge Phillips where he upheld  
16      the validity of the documents, determined that  
17      Ted didn't commit any egregious wrongdoing.  
18      That's the December 15th trial. It's on appeal  
19      to the 4th District. That's what led to having  
20      Eliot determined to have no standing, to Judge  
21      Lewis being appointed as guardian for his  
22      children. That was the key. That was the only  
23      thing we have accomplished to move the thing  
24      forward was that, but we had that.

25           But that's why I was at the deposition,

1       but it was not directly adverse to the estate.

2           Number two, there's a substantial risk  
3           that the representation of one or more clients  
4           will be materially limited by my  
5           responsibilities to another. I have asked them  
6           to explain to me how might -- how what I want  
7           to do here, which is to defend these people  
8           that I have been doing -- I have asked  
9           Mr. Feaman to explain to me how what I am doing  
10           to defend the estate, like I defended all these  
11           people against his client, could possibly be  
12           limited by my responsibilities to Ted. My  
13           responsibilities to Ted is to win this lawsuit,  
14           save the money for his family, determine his  
15           father did not defraud Bill Stansbury. So I am  
16           not limited in any way.

17           So if you don't find one or two, you don't  
18           even get to waiver. But if you get to waiver,  
19           and this is evidence, it's one of the -- I only  
20           gave you three new things in the binder. One  
21           was the waiver. One was the 57.105 amended  
22           motion.

23           I think the significance of that is after  
24           I got the waiver, after I got a written waiver,  
25           I thought that changed the game a little bit.

1       You know, if you are a lawyer and you file a  
2       motion to disqualify -- so when I got the  
3       written waiver --

4            MR. FEAMAN: Your Honor --

5            THE COURT: Legal objection.

6            MR. FEAMAN: Not part of opening statement  
7       when you are commenting on a 57.105 motion --

8            THE COURT: Sustained.

9            MR. FEAMAN: -- that you haven't even seen  
10       yet.

11           THE COURT: Sustained.

12           MR. FEAMAN: Thank you.

13           THE COURT: Sustained.

14           MR. ROSE: I got a waiver signed by  
15       Mr. O'Connell. I had his permission, but I got  
16       a formal written waiver. And it was after our  
17       first hearing, and it was after -- so I sent it  
18       to Mr. Feaman.

19           But if you look under the rule, it's a  
20       clearly waivable conflict. Because I am not  
21       taking an antagonistic position saying like the  
22       work I did in the other case was wrong or this  
23       or that.

24           And if you look at the rules of  
25       professional conduct again, and we'll do it in

1       closing, but I am the one who is supposed to  
2       decide if I have a material limitation in the  
3       first instance. That's what the rules direct.  
4       Your Honor reviews that. But in the first  
5       instance I do not have any material limitation  
6       on my ability to represent the estate  
7       vigorously, with all my heart, with everything  
8       my law firm's resources, and with Ted's  
9       knowledge of the case and the facts to defend  
10      his case, there is no limitation and there's no  
11      substantial risk that I am not going to do the  
12      best job possible to try to protect the estate  
13      from this claim.

14       And I think we would ask that you deny the  
15      motion to disqualify on the grounds that  
16      there's no conflict, and the waiver for  
17      Mr. O'Connell would resolve it.

18       And we also would like you to appoint Ted  
19      Bernstein. There's no conflict of interest in  
20      him defending the estate as its representative  
21      through trial to try to protect the estate's  
22      money from Mr. Stansbury. It's not like Ted or  
23      I are going to roll over and help Mr. Stansbury  
24      or sell out the estate for his benefit. That's  
25      what a conflict would be worried about. We are

1 not taking a position in -- we are not in the  
2 case yet, obviously. If you allow us to  
3 continue in this case, we are not going to take  
4 a position in this case which is different from  
5 any position we have ever taken in any case  
6 because all --

7 THE COURT: Just for the record, for the  
8 record, I see you pointing. So you are not  
9 taking a position in the Palm Beach circuit  
10 court --

11 MR. ROSE: Case.

12 THE COURT: -- civil case --

13 MR. ROSE: Different than we've --

14 THE COURT: -- that's different than  
15 probate or even the insurance proceeds?

16 MR. ROSE: Correct. Different from what  
17 we did in the federal case in Illinois,  
18 different from we are taking in the probate  
19 case. Or more importantly, in fact most  
20 importantly, we are not taking a position  
21 differently than we took when I represented  
22 other people in the same lawsuit.

23 You have been involved in lawsuits where  
24 there are eight defendants and seven settled  
25 and the last guy says, well, gee, let me hire

1       this guy's lawyer, either he is better or my  
2       lawyer just quit or I don't have a lawyer. So  
3       but I am not taking a position like here we  
4       were saying, yeah, he was a terrible guy, he  
5       defrauded you, and now we are saying, oh, no,  
6       it's not, he didn't defraud you. That would be  
7       a conflict. We have defended the case by  
8       saying that Mr. Stansbury's claim has no merit  
9       and we are going to defend it the same way.

10       And then that's what we'd like to do with  
11       the Florida litigation, and then time  
12       permitting we'd like to discuss the Illinois  
13       litigation, because we desperately need a  
14       ruling from Your Honor on the third issue you  
15       set for today which is are you going to vacate  
16       Judge Colin's order and free Mr. Stansbury of  
17       the duty to fund the Illinois litigation.

18       Judge Colin entered the order. The issue  
19       was raised multiple times before Judge  
20       Phillips. He wanted to give us his ruling one  
21       day, and we -- you know, he didn't. We were  
22       supposed to set it for hearing. We had  
23       numerous hearings set on that motion, the  
24       record will reflect, and those were all  
25       withdrawn. And now that they have a new judge,

1       I think they are coming back with the same  
2       motion to be excused from that, and that's the  
3       third thing you need to decide today.

4           THE COURT: All right.

5           MR. ROSE: Unless you have any questions.

6

7           (Opening statements excerpt concluded.)

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1                   C E R T I F I C A T E  
2                   - - -  
34       The State of Florida  
5       County of Palm Beach  
67                   I, Lisa Mudrick, RPR, FPR, certify that I  
8       was authorized to and did stenographically report  
9       the foregoing proceedings, and that the excerpted  
10      transcript is a true record.

11

12                   Dated February 21, 2017.

13

14

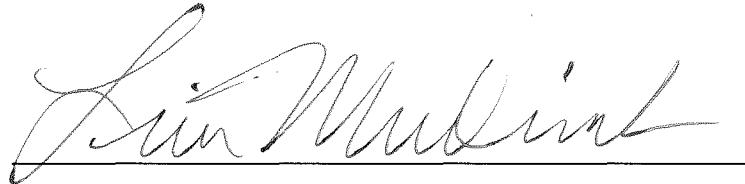
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20                   LISA MUDRICK, RPR, FPR  
21       Mudrick Court Reporting, Inc.  
22       1615 Forum Place, Suite 500  
23       West Palm Beach, Florida 33401  
24       561-615-8181

25

1 IN THE FIFTEENTH JUDICIAL CIRCUIT COURT  
2 IN AND FOR PALM BEACH COUNTY, FLORIDA  
3 CASE NO: 502012CP004391XXXXNBIH

4

5 IN RE:  
6 ESTATE OF SIMON L. BERNSTEIN,

7 \_\_\_\_\_/

8

9

10 Proceedings before the Honorable  
11 ROSEMARIE SCHER

12

13 [EXCERPT - BRIAN O'CONNELL TESTIMONY]

14

15  
16 Thursday, February 16, 2017  
17 3188 PGA Boulevard  
18 North County Courthouse  
19 Palm Beach Gardens, Florida 33410  
20 2:38 p.m. - 4:46 p.m.

21 *ORIGINAL*  
22

23 Reported by:  
24 Lisa Mudrick, RPR, FPR  
Notary Public, State of Florida

25

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24

25

1                   P R O C E E D I N G S  
2  
3                   \* \* \* \* \*4                   BRIAN O'CONNELL TESTIMONY  
5                   - - -  
6  
7                   MR. FEAMAN: Next I would call Brian  
8                   O'Connell to the stand.  
9  
10                  THE COURT: Okay.  
11  
12                  - - -  
13                  Thereupon,  
14                  BRIAN O'CONNELL,  
15                  a witness, being by the Court duly sworn, was  
16                  examined and testified as follows:  
17                  THE WITNESS: I do.  
18                  THE COURT: Have a seat. Thank you very  
19                  much.  
20                  Before we start I need six minutes to use  
21                  the restroom. I will be back in six minutes.  
22                  (A recess was taken.)  
23                  THE COURT: All right. Call  
24                  Mr. O'Connell. I apologize. Let's proceed.  
25                  MR. FEAMAN: Thank you, Your Honor.  
26                  DIRECT (BRIAN O'CONNELL)  
27                  BY MR. FEAMAN:  
28                  Q. Please state your name.

1 A. Brian O'Connell.

2 Q. And your business address?

3 A. 515 North Flagler Drive, West Palm Beach,  
4 Florida.

5 Q. And you are the personal representative,  
6 the successor personal representative of the Estate  
7 of Simon Bernstein; is that correct?

8 A. Yes.

9 Q. And I handed you during the break Florida  
10 Statute 733.602. Do you have that in front of you?

11 A. I do.

12 Q. Would you agree with me, Mr. O'Connell,  
13 that as personal representative of the estate that  
14 you have a fiduciary duty to all interested persons  
15 of the estate?

16 A. To interested persons, yes.

17 Q. Okay. Are you aware that Mr. Stansbury,  
18 obviously, has a lawsuit against the estate,  
19 correct?

20 A. Correct.

21 Q. And he is seeking damages as far as you  
22 know in excess of \$2 million dollars; is that  
23 correct?

24 A. Yes.

25 Q. Okay. And the present asset value of the

1 estate excluding a potential expectancy in Chicago  
2 I heard on opening statement was around somewhere a  
3 little bit over \$200,000; is that correct?

4 A. Correct.

5 Q. And --

6 A. Little over that.

7 Q. Okay. And you are aware that in Chicago  
8 the amount at stake is in excess of \$1.7 million  
9 dollars, correct?

10 A. Yes.

11 Q. And if the estate is successful in that  
12 lawsuit then that money would come to the Estate of  
13 Simon Bernstein, correct?

14 A. Correct.

15 Q. And then obviously that would quintuple,  
16 if my math is correct, the assets that are in the  
17 estate right now; is that correct?

18 A. They would greatly enhance the value of  
19 the estate, whatever the math is.

20 Q. Okay. So would you agree that  
21 Mr. Stansbury is reasonably affected by the outcome  
22 of the Chicago litigation if he has an action  
23 against the estate in excess of two million?

24 A. Depends how one defines a claimant versus  
25 a creditor. He certainly sits in a claimant

1 position. He has an independent action.

2 Q. Right.

3 A. So on that level he would be affected with  
4 regard to what happens in that litigation if his  
5 claim matures into an allowed claim, reduced to a  
6 judgment in your civil litigation.

7 Q. So if he is successful in his litigation,  
8 it would -- the result of the Chicago action, if  
9 it's favorable to the estate, would significantly  
10 increase the assets that he would be able to look  
11 to if he was successful either in the amount of  
12 300,000 or in an amount of two million?

13 A. Right. If he is a creditor or there's a  
14 recovery then certainly he would benefit from that  
15 under the probate code because then he would be  
16 paid under a certain priority of payment before  
17 beneficiaries.

18 Q. All right. And so then Mr. Stansbury  
19 potentially could stand to benefit from the result  
20 of the outcome of the Chicago litigation depending  
21 upon the outcome of his litigation against the  
22 estate?

23 A. True.

24 Q. Correct?

25 A. Yes.

1           Q.    So in that respect would you agree that  
2    Mr. Stansbury is an interested person in the  
3    outcome of the estate in Chicago?

4           A.    I think in a very broad sense, yes.  But  
5    if we are going to be debating claimants and  
6    creditors then that calls upon certain case law.

7           Q.    Okay.

8           A.    But I am answering it in sort of a general  
9    financial sense, yes.

10          Q.    Okay.  We entered into evidence Exhibits 7  
11    and 8 which were e-mails that were sent to you  
12    first by an associate in Mr. Stamos's office and --

13            MR. FEAMAN:  Could I approach, Your Honor?

14            THE COURT:  Yes.  Do you have an extra  
15    copy for him so I can follow along?

16            MR. FEAMAN:  I think I do.

17            THE COURT:  Okay.  If you don't, no  
18    worries.  Let me know.

19            Does anyone object to me maintaining the  
20    originals so that I can follow along?  If you  
21    don't --

22            MR. FEAMAN:  I know we do.

23            MR. ROSE:  If you need my copy to speed  
24    things up, here.

25            ///

1 BY MR. FEAMAN:

2 Q. There's our copies of 7 and 8.

3 A. Which one did you want me to look at  
4 first?

5 Q. Take a look at the one that came first on  
6 January 31st, 2007. Do you see that that was an  
7 e-mail directed to you from is it Mr. Kuyper, is  
8 that how you pronounce his name?

9 A. Yes.

10 Q. Okay. On January 31st. Do you recall  
11 receiving this?

12 A. Let me take a look at it.

13 Q. Sure.

14 A. I do remember this.

15 Q. All right. And did you have any  
16 discussions with Mr. Kuyper or Mr. Stamos  
17 concerning your comments regarding the Court's  
18 ruling which was denying the estate's motion for  
19 summary judgment?

20 A. There might have been another e-mail  
21 communication, but no oral communication since  
22 January.

23 Q. Did you send an e-mail back in response to  
24 this?

25 A. That I don't recall, and I don't have my

1 records here.

2 Q. Okay.

3 A. I am not sure.

4 Q. Why don't we take a look at Exhibit 8, if  
5 we could. That's the e-mail from Mr. Stamos dated  
6 February 14th to you and me and Mr. Stansbury. Do  
7 you see that?

8 A. Yes.

9 Q. And he says, "What's our position on  
10 settlement?," correct?

11 A. Correct.

12 Q. Okay. And that's because Mr. Stamos had  
13 received an e-mail from plaintiff's counsel in  
14 Chicago soliciting some input on a possible  
15 settlement, correct?

16 A. Yes.

17 Q. And when you received this did you respond  
18 to Mr. Stamos either orally or in writing?

19 A. Not yet. I was in a mediation that lasted  
20 until 2:30 in the morning yesterday, so I haven't  
21 had a chance to speak to him.

22 Q. So then you haven't had any discussions  
23 with Mr. Stamos concerning settlement --

24 A. No.

25 Q. -- since this?

1           A. Not -- let's correct that. Not in terms  
2 of these communications.

3           Q. Right.

4           A. I have spoken to him previously about  
5 settlement, but obviously those are privileged that  
6 he is my counsel.

7           Q. Okay. And you are aware that -- would you  
8 agree with me that Mr. Ted Bernstein, who is in the  
9 courtroom today, is a plaintiff in that action in  
10 Chicago?

11          A. Which action?

12          Q. The Chicago filed, the action filed by  
13 Mr. Bernstein?

14          A. Can you give me the complaint?

15          Q. Sure.

16           MR. FEAMAN: If I can take a look?

17           THE COURT: Go ahead.

18 BY MR. FEAMAN:

19          Q. This is the --

20           MR. ROSE: We'll stipulate. The documents  
21 are already in evidence.

22           THE COURT: Same objection?

23           MR. ROSE: I mean, we are trying to save  
24 time.

25           ///

1 BY MR. FEAMAN:

2 Q. Take a look at the third page.

3 (Overspeaking.)

4 THE COURT: Hold on. Hold on. Hold on.  
5 I have got everybody talking at once. It's  
6 Feaman's case. We are going until 4:30. I  
7 have already got one emergency in the, we call  
8 it the Cad, that means nothing to you, but I am  
9 telling you all right now I said we are going  
10 to 4:30.

11 THE WITNESS: Yes, sir, Ted Bernstein is a  
12 plaintiff.

13 BY MR. FEAMAN:

14 Q. Individually, correct?

15 A. Individually and as trustee.

16 Q. And Mr. Stamos is your attorney who  
17 represents the estate, correct?

18 A. Correct.

19 Q. And the estate is adverse to the  
20 plaintiffs, including Mr. Bernstein, correct?

21 A. In this action, call it the Illinois  
22 action, yes.

23 Q. Correct.

24 A. Okay.

25 THE COURT: Hold on. One more time. Go

1 back and say that again. You are represented  
2 by Mr. Stamos?

3 THE WITNESS: Right, in the Illinois  
4 action, Your Honor.

5 THE COURT: Right.

6 THE WITNESS: And Ted Bernstein  
7 individually and as trustee is a plaintiff.

8 THE COURT: Right, individually and as  
9 trustee, got it.

10 THE WITNESS: And the estate is adverse to  
11 Ted Bernstein in those capacities in that  
12 litigation.

13 BY MR. FEAMAN:

14 Q. All right. And are you aware --

15 THE COURT: Thank you.

16 BY MR. FEAMAN:

17 Q. And are you aware that Mr. Rose represents  
18 Mr. Ted Bernstein in various capacities?

19 A. Yes.

20 Q. Generally?

21 A. In various capacities generally, right.

22 Q. Including individually, correct?

23 A. That I am not -- I know as a fiduciary,  
24 for example, as trustee from our various and sundry  
25 actions, Shirley Bernstein, estate and trust and so

1 forth. I am not sure individually.

2 Q. How long have you been involved with this  
3 Estate of Simon Bernstein?

4 A. A few years.

5 Q. Okay. And as far as you know  
6 Mr. Bernstein has been represented in whatever  
7 capacity in all of this since that time; is that  
8 correct?

9 A. He is definitely -- Mr. Rose has  
10 definitely represented Ted Bernstein since I have  
11 been involved. I just want to be totally correct  
12 about exactly what capacity. Definitely as a  
13 fiduciary no doubt.

14 Q. Okay. And did you ever see the deposition  
15 that was taken by your lawyer in the Chicago action  
16 that was introduced as Exhibit 6 in this action?

17 A. Could I take a look at it?

18 Q. Sure. Have you seen that deposition  
19 before, Mr. O'Connell?

20 A. I am not sure. I don't want to guess.  
21 Because I know it's May of 2015. It's possible.  
22 There were a number of documents in all this  
23 litigation, and I would be giving you a guess.

24 Q. On that first page is there an appearance  
25 by Mr. Rose on behalf of Ted Bernstein in that

1 deposition?

2 A. Yes.

3 Q. So would you agree with me that Ted  
4 Bernstein is adverse to the estate in the Chicago  
5 litigation? You said that earlier, correct?

6 A. Yes.

7 Q. Okay. And would you agree with me upon  
8 reviewing that deposition that Mr. Rose is  
9 representing Ted Bernstein there?

10 MR. ROSE: Objection, calls for a legal  
11 conclusion.

12 THE WITNESS: There's an appearance by  
13 him.

14 THE COURT: Sustained.

15 BY MR. FEAMAN:

16 Q. There's an appearance by him? Where does  
17 it show that?

18 MR. ROSE: The objection is sustained.

19 THE COURT: I sustained the objection.

20 MR. FEAMAN: Oh, okay. Sorry.

21 BY MR. FEAMAN:

22 Q. Now, you have not gotten -- you said that  
23 you wanted to retain Mr. Rose to represent the  
24 estate here in Florida, correct?

25 A. Yes. But I want to state my position

1 precisely, which is as now has been pled that Ted  
2 Bernstein should be the administrator ad litem to  
3 defend that litigation. And then if he chooses,  
4 which I expect he would, employ Mr. Rose, and  
5 Mr. Rose would operate as his counsel.

6 Q. Okay. So let me get this, if I understand  
7 your position correctly. You think that Ted  
8 Bernstein, who you have already told me is suing  
9 the estate as a plaintiff in Chicago, it would be  
10 okay for him to come in to the estate that he is  
11 suing in Chicago to represent the estate as  
12 administrator ad litem along with his attorney  
13 Mr. Rose? Is that your position?

14 A. Here's why, yes, because of events. You  
15 have an apple and an orange with respect to  
16 Illinois. Mr. Rose and Ted Bernstein is not going  
17 to have any -- doesn't have any involvement in the  
18 prosecution by the estate of its position to those  
19 insurance proceeds. That's not on the table.

20 THE COURT: Say it again, Ted has no  
21 involvement?

22 THE WITNESS: Ted Bernstein and Mr. Rose  
23 have no involvement in connection with the  
24 estate's position in the Illinois litigation,  
25 Your Honor. I am not seeking that. If someone

1       asked me that, I would say absolutely no.

2   BY MR. FEAMAN:

3       Q.    I am confused, though, Mr. O'Connell.

4   Isn't Ted Bernstein a plaintiff in the insurance  
5   litigation?

6       A.    Yes.

7       Q.    Okay. And as plaintiff in that insurance  
8   litigation isn't he seeking to keep those insurance  
9   proceeds from going to the estate?

10      A.    Right.

11      Q.    Okay.

12      A.    Which is why the estate has a contrary  
13   position --

14      Q.    So if the estate --

15           (Overspeaking.)

16           THE COURT: Let him finish his answer.

17           THE WITNESS: It's my position as personal  
18   representative that those proceeds should come  
19   into the estate.

20   BY MR. FEAMAN:

21      Q.    Correct.

22      A.    Correct.

23      Q.    And it's Mr. Bernstein's position both  
24   individually and as trustee in that same action  
25   that those proceeds should not come into the

1 estate?

2 A. Right.

3 Q. Correct? And Mr. Bernstein is not a  
4 monetary beneficiary of the estate, is he?

5 A. As a trustee he is a beneficiary,  
6 residuary beneficiary of the estate. And then he  
7 would be a beneficiary as to tangible personal  
8 property.

9 Q. So on one hand you say it's okay for  
10 Mr. Bernstein to be suing the estate to keep the  
11 estate from getting \$1.7 million dollars, and on  
12 the other hand it's okay for him and his attorney  
13 to defend the estate. So let me ask you this --

14 A. That's not what I am saying.

15 Q. Okay. Well, go back to Exhibit 8, if we  
16 could.

17 A. Which one is Exhibit 8?

18 Q. That's the e-mail from Mr. Stamos that you  
19 got last week asking about settlement.

20 A. The 31st?

21 Q. Right.

22 A. Well, actually the Stamos e-mail is  
23 February 14th.

24 Q. Sorry, February 14th. And Mr. Rose right  
25 now has entered an appearance on behalf of the

1 estate, correct?

2 A. You have to state what case.

3 Q. Down here in Florida.

4 A. Which case?

5 Q. The Stansbury action.

6 A. The civil action?

7 Q. Yes.

8 A. Yes. You need to be precise because  
9 there's a number of actions and various  
10 jurisdictions and various courts.

11 Q. And Mr. Rose's client in Chicago doesn't  
12 want any money to go to the estate. So when you  
13 are discussing settlement with Mr. Stamos, are you  
14 going to talk to your other counsel, Mr. Rose,  
15 about that settlement when he is representing a  
16 client adverse to you?

17 A. No.

18 Q. How do we know that?

19 A. Because I don't do that and have not done  
20 that.

21 Q. So you --

22 A. Again, can I finish, Your Honor?

23 THE COURT: Yes, please.

24 THE WITNESS: Thanks. Because there's a  
25 differentiation you are not making between

1       these pieces of litigation. You have an  
2       Illinois litigation pending in federal court  
3       that has discrete issues as to who gets the  
4       proceeds of a life insurance policy. Then you  
5       have what you will call the Stansbury  
6       litigation, you represent him, your civil  
7       action, pending in circuit civil, your client  
8       seeking to recover damages against the estate.

9       BY MR. FEAMAN:

10       Q.     So Mr. Rose could advise you as to terms  
11       of settlement, assuming he is allowed to be counsel  
12       for the estate in the Stansbury action down here,  
13       correct?

14       A.     About the Stansbury action?

15       Q.     Right, about how much we should settle  
16       for, blah, blah, blah?

17       A.     That's possible.

18       Q.     Okay. And part of those settlement  
19       discussions would have to entail how much money is  
20       actually in the estate, correct?

21       A.     Depends on what the facts and  
22       circumstances are. Right now, as everyone knows I  
23       think at this point, there isn't enough money to  
24       settle, unless Mr. Stansbury would take less than  
25       what is available. There have been attempts made

1 to settle at mediations and through communications  
2 which haven't been successful. So certainly I am  
3 not as personal representative able or going to  
4 settle with someone in excess of what's available.

5 Q. Correct. But the outcome of the Chicago  
6 litigation could make more money available for  
7 settlement, correct?

8 A. It it's successful it could.

9 Q. Okay. May be a number that would be  
10 acceptable to Mr. Stansbury, I don't know, that's  
11 conjecture, right?

12 A. Total conjecture.

13 Q. Okay.

14 A. Unless we are going to get into what  
15 settlement discussions have been.

16 Q. And at the same time Mr. Rose, who has  
17 entered an appearance at that deposition for  
18 Mr. Bernstein in the Chicago action, his client has  
19 an interest there not to let that money come into  
20 the estate, correct?

21 MR. ROSE: Objection again to the extent  
22 it calls for a legal conclusion as to what I  
23 did in Chicago. I mean, the records speak for  
24 themselves.

25 THE COURT: Could you read back the

1 question for me?

2 (The following portion of the record was  
3 read back.)

4 "Q. And at the same time Mr. Rose, who  
5 has entered an appearance at that deposition  
6 for Mr. Bernstein in the Chicago action, his  
7 client has an interest there not to let that  
8 money come into the estate, correct?"

9 THE COURT: I am going to allow it as the  
10 personal representative his impressions of  
11 what's going on, not as a legal conclusion  
12 because he is also a lawyer.

13 THE WITNESS: My impression based on  
14 stated positions is that Mr. Ted Bernstein does  
15 not want the life insurance proceeds to come  
16 into the probate estate of Simon Bernstein.  
17 That's what he has pled.

18 BY MR. FEAMAN:

19 Q. Right. And you disagree with Mr. Ted  
20 Bernstein on that, correct?

21 A. Yes.

22 MR. FEAMAN: Thank you.

23 CROSS (BRIAN O'CONNELL)

24 BY MR. ROSE:

25 Q. And notwithstanding that disagreement, you

1 still believe that --

2 MR. ROSE: I thought he was done, I am  
3 sorry.

4 MR. ELIOT BERNSTEIN: Are you done, Peter?

5 MR. FEAMAN: No, I am not, Your Honor.

6 MR. ROSE: I am sorry, Your Honor.

7 THE COURT: That's okay. I didn't think  
8 that you were trying to.

9 MR. FEAMAN: Okay. We'll rest.

10 THE COURT: All right.

11 MR. FEAMAN: Not rest. No more questions.

12 MR. ELIOT BERNSTEIN: Excuse me, Your  
13 Honor.

14 BY MR. ROSE:

15 Q. And notwithstanding the fact that in  
16 Illinois Ted as the trustee of this insurance trust  
17 wants the money to go into this 1995 insurance  
18 trust, right?

19 A. Right.

20 Q. And he has got an affidavit from Spallina  
21 that says that's what Simon wanted, or he's got  
22 some affidavit he filed, whatever it is? And you  
23 have your own lawyer up there Stamos and Trucco,  
24 right?

25 A. Correct.

1       Q.    And notwithstanding that, you still  
2   believe that it's in the best interests of the  
3   estate as a whole to have Ted to be the  
4   administrator ad litem and me to represent the  
5   estate given our prior knowledge and involvement in  
6   the case, right?

7       A.    It's based on maybe three things. It's  
8   the prior knowledge and involvement that you had,  
9   the amount of money, limited amount of funds that  
10   are available in the estate to defend the action,  
11   and then a number of the beneficiaries, or call  
12   them contingent beneficiaries because they are  
13   trust beneficiaries, have requested that we consent  
14   to what we have just outlined, ad litem and your  
15   representation, those items.

16      Q.    And clearly you are adverse to  
17   Mr. Stansbury, right?

18      A.    Yes.

19      Q.    But in this settlement letter your lawyer  
20   in Chicago is copying Mr. Stansbury and Mr. Feaman  
21   about settlement position, right?

22      A.    Correct.

23      Q.    Because that's the deal we have,  
24   Mr. Stansbury is funding litigation in Illinois and  
25   he gets to sort of be involved in it and have a say

1 in it, how it turns out? Because he stands to  
2 improve his chances of winning some money if the  
3 Illinois case goes the way he wants, right?

4 A. Well, he is paying, he is financing it.

5 Q. So he hasn't paid in full, right? You  
6 know he is \$40,000 in arrears with the lawyer?

7 A. Approximately, yes.

8 Q. And there's an order that's already in  
9 evidence, and the judge can hear that later, but --  
10 okay. So --

11 THE COURT: I don't have an order in  
12 evidence.

13 MR. ROSE: You do. If you look at Exhibit  
14 Number 2, page --

15 THE COURT: Oh, in the Illinois?

16 MR. ROSE: Yes, they filed it in Illinois.

17 THE COURT: Oh, in the Illinois.

18 MR. ROSE: But it's in evidence now, Your  
19 Honor.

20 THE COURT: Yes, I am sorry, I didn't  
21 realize it was in --

22 MR. ROSE: I am sorry.

23 THE COURT: No, no, that's okay.

24 MR. ROSE: I was going to save it for  
25 closing.

1                   THE COURT: In the Illinois is the Florida  
2                   order?

3                   MR. ROSE: Yes.

4                   THE COURT: Okay. That's the only thing I  
5                   missed.

6                   MR. ROSE: Right.

7                   BY MR. ROSE:

8                   Q. The evidence it says for the reasons and  
9                   subject to the conditions stated on the record  
10                  during the hearing, all fees and costs incurred,  
11                  including for the curator in connection with his  
12                  work, and any counsel retained by the administrator  
13                  ad litem will initially be borne by William  
14                  Stansbury. You have seen that order before, right?

15                  A. I have seen the order, yes.

16                  Q. And the Court will consider a petition to  
17                  pay back Mr. Stansbury. If the estate wins in  
18                  Illinois, we certainly have to pay back  
19                  Mr. Stansbury first because he has fronted all the  
20                  costs, right?

21                  A. Absolutely.

22                  Q. Okay. So despite that order, you have  
23                  personal knowledge that he is \$40,000 in arrears  
24                  with the Chicago counsel?

25                  A. I have knowledge from my counsel.

1 Q. Okay. That you shared with me, though?

2 A. Yes. It's information everyone has.

3 Q. Okay.

4 A. Should have.

5 Q. Would you agree with me that you have  
6 spent almost no money defending the estate so far  
7 in the Stansbury litigation?

8 A. Well, there's been some money spent. I  
9 wouldn't say no money. I have to look at the  
10 billings to tell you.

11 Q. Very minimal. Minimal?

12 A. Not a significant amount.

13 Q. Okay. Minimal in comparison to what it's  
14 going to cost to try the case?

15 A. Yes.

16 Q. Have you had the time to study all the  
17 documents, the depositions, the exhibits, the tax  
18 returns, and all the stuff that is going to need to  
19 be dealt with in this litigation?

20 A. I have reviewed some of them. I can't say  
21 reviewed all of them because I would have to  
22 obviously have the records here to give you a  
23 correct answer on that.

24 Q. And you bill for your time when you do  
25 that?

1           A.    Sure.

2           Q.    And if Ted is not the administrator ad  
3 litem, you are going to have to spend money to sit  
4 through a two-week trial maybe?

5           A.    Yes.

6           Q.    You are not willing to do that for free,  
7 are you?

8           A.    No.

9           Q.    Okay. Would you agree with me that you  
10 know nothing about the relationship, personal  
11 knowledge, between Ted, Simon and Bill Stansbury,  
12 personal knowledge? Were you in any of the  
13 meetings between them?

14          A.    No, not personal knowledge.

15          Q.    Were you involved in the business?

16          A.    No.

17          Q.    Do you have any idea who the accountant --  
18 well, you know who the accountant was because they  
19 have a claim. Have you ever spoken to the  
20 accountant about the lawsuit?

21          A.    No.

22          Q.    Have you ever interviewed any witnesses  
23 about the lawsuit independent of maybe talking to  
24 Mr. Stansbury and saying hello and saying hello to  
25 Ted?

1           A.    Or talking to different parties, different  
2    family members.

3           Q.    Now, did you sign a waiver, written waiver  
4    form?

5           A.    Yes.

6           Q.    And did you read it before you signed it?

7           A.    Yes.

8           Q.    Did you edit it substantially and put it  
9    in your own words?

10          A.    Yes.

11          Q.    Much different than the draft I prepared?

12          A.    Seven pages shorter.

13            MR. ROSE: Okay. I move Exhibit 1 into  
14    evidence. This is the three-page PR statement  
15    of his position.

16            MR. FEAMAN: Objection, it's cumulative  
17    and it's hearsay.

18            THE COURT: This is his affidavit, his  
19    sworn consent?

20            MR. ROSE: Right. It's not cumulative.  
21    It's the only evidence of written consent.

22            THE COURT: How is it cumulative? That's  
23    what I was going to say.

24            MR. FEAMAN: He just testified as to why  
25    he thinks there's no conflict.

1                   THE COURT: But a written consent is  
2                   necessary under the rules, and that's been  
3                   raised as an issue.

4                   MR. FEAMAN: The rule says that --

5                   THE COURT: I mean, whether you can waive  
6                   is an issue, and I think that specifically  
7                   under four point -- I am going to allow it.  
8                   Overruled.

9                   MR. ELIOT BERNSTEIN: Can I object?

10                  THE COURT: Sure.

11                  MR. ELIOT BERNSTEIN: That just came on  
12                  February 9th to me.

13                  THE COURT: Okay.

14                  MR. ELIOT BERNSTEIN: They didn't copy me  
15                  on this thing. I just saw it.

16                  THE COURT: Okay.

17                  MR. ELIOT BERNSTEIN: Which kind of  
18                  actually exposes a huge fraud going on here.  
19                  But I will get to that when I get a moment. It  
20                  shouldn't be in. I hardly had time to review  
21                  it. And I will explain some of that in a  
22                  moment, but.

23                  THE COURT: I am overruling that  
24                  objection. All documents were supposed to be  
25                  provided by the Court pursuant to my order by

1       February 9th. This is a waiver of any  
2       potential conflict that's three pages. And if  
3       you got it February 9th you had sufficient  
4       time. So overruled.

5           I am not sure what to call this,  
6       petitioner's or respondent's, in this case. I  
7       am going to mark these as respondent's.

8           MR. ROSE: You can call it Trustee's 1.

9           THE COURT: I could do that. Let me mark  
10       it.

11           (Trustee's Exb. No. 1, Personal  
12       Representative Position Statement.)

13       BY MR. ROSE:

14       Q. I think you alluded to it. But after the  
15       mediation that was held in July, there were some  
16       discussions with the beneficiaries, including Judge  
17       Lewis who's a guardian ad litem for three of the  
18       children, correct?

19       A. Yes.

20       Q. And you were asked if you would consent to  
21       this procedure of having me come in as counsel  
22       because --

23       THE COURT: I know you are going fast, but  
24       you didn't pre-mark it, so you got to give me a  
25       second to mark it.

1 MR. ROSE: Oh, I am sorry.

2 THE COURT: That's okay.

3 I have to add it to my exhibit list.

4 You may proceed, thank you.

5 BY MR. ROSE:

6 Q. You agreed to this procedure that I would  
7 become counsel and Ted would become the  
8 administrator ad litem because you thought it was  
9 in the best interests of the estate as a whole,  
10 right?

11 A. For the reasons stated previously, yes.

12 Q. And other than having to go through this  
13 expensive procedure to not be disqualified, you  
14 still agree that it's in the best interests of the  
15 estate that our firm be counsel and that Ted  
16 Bernstein be administrator ad litem?

17 A. For the defense of the Stansbury civil  
18 action, yes.

19 Q. And that's the only thing we are asking to  
20 get involved in, correct?

21 A. Correct.

22 Q. Now, you were asked if you had a fiduciary  
23 duty to the interested persons including  
24 Mr. Stansbury, right?

25 A. I was asked that, yes.

1           Q.    So if you have a fiduciary duty to him,  
2   why don't you just stipulate that he can have a two  
3   and a half million dollar judgment and give all the  
4   money in the estate to him?  Because just because  
5   you have a duty, you have multiple duties to a lot  
6   of people, correct?

7           A.    Correct.

8           Q.    And you have to balance those duties and  
9   do what you believe in your professional judgment  
10  is in the best interests of the estate as a whole?

11          A.    Correct.

12          Q.    And you have been a lawyer for many years?

13          A.    Yes.

14          Q.    Correct?  And you have served as trustee  
15  as a fiduciary, serving as a fiduciary,  
16  representing a fiduciary, opposing fiduciary,  
17  that's been the bulk of your practice, correct?

18          A.    Yes, yes and yes.

19            MR. ROSE:  Nothing further.

20            THE COURT:  Redirect?

21            MR. FEAMAN:  Yes.

22            THE COURT:  Wait a minute.  Let me let  
23  Mr. Eliot Bernstein ask any questions.

24            MR. ELIOT BERNSTEIN:  Can I ask him  
25  questions at one point?

1                   THE COURT: You can.

2                   MR. ELIOT BERNSTEIN: Your Honor, first, I  
3                   just wanted to give you this and apologize for  
4                   being late.

5                   THE COURT: Don't worry about it. Okay.

6                   MR. ELIOT BERNSTEIN: Well, no, it's  
7                   important so you understand some things.

8                   I have got ten steel nails in my mouth so  
9                   I speak a little funny right now. It's been  
10                  for a few weeks. I wasn't prepared because I  
11                  am on a lot of medication, and that should  
12                  explain that. But I still got some questions  
13                  and I would like to have my....

14                  MR. ROSE: I would just state for the  
15                  record that he has been determined to have no  
16                  standing in the estate proceeding as a  
17                  beneficiary.

18                  THE COURT: I thought that was in the  
19                  Estate of Shirley Bernstein.

20                  MR. ROSE: It's the same ruling --  
21                  (Overspeaking.)

22                  THE COURT: Please, I will not entertain  
23                  more than one person.

24                  MR. ROSE: By virtue of Judge Phillips'  
25                  final judgment upholding the documents, he is

1 not a beneficiary of the residuary estate. He  
2 has a small interest as a one-fifth beneficiary  
3 of tangible personal property, which is --

4 THE COURT: I understand.

5 MR. ROSE: Yes, he has a very limited  
6 interest in this. And I don't know that he --

7 THE COURT: Wouldn't that give him  
8 standing, though?

9 MR. ROSE: Well, I don't think for the  
10 purposes of the disqualification by Mr. Feaman  
11 it wouldn't.

12 THE COURT: Well, that would be your  
13 argument, just like you are arguing that  
14 Mr. Stansbury doesn't have standing to  
15 disqualify you, correct?

16 MR. ROSE: Right.

17 THE COURT: So that's an argument you can  
18 raise.

19 You may proceed.

20 CROSS (BRIAN O'CONNELL)

21 BY MR. ELIOT BERNSTEIN:

22 Q. Mr. O'Connell, am I a devisee of the will  
23 of Simon?

24 MR. ROSE: Objection, outside the scope of  
25 direct.

1                   THE COURT: That is true. Sustained.

2                   That was not discussed.

3 BY MR. ELIOT BERNSTEIN:

4                   Q. Do I have standing in the Simon estate  
5 case --

6                   MR. ROSE: Objection, calls for a legal  
7 conclusion.

8 BY MR. ELIOT BERNSTEIN:

9                   Q. -- in your opinion?

10                  MR. ELIOT BERNSTEIN: Well, he is a  
11 fiduciary.

12                  THE COURT: He was asked regarding his  
13 thoughts regarding a claimant, so I will allow  
14 it. Overruled.

15                  THE WITNESS: You have standing in certain  
16 actions by virtue of your being a beneficiary  
17 of the tangible personal property.

18 BY MR. ELIOT BERNSTEIN:

19                  Q. Okay, so beneficiary?

20                  A. Right.

21                  Q. Okay. Thank you. Which will go to the  
22 bigger point of the fraud going on here, by the  
23 way.

24                  Are you aware that Ted Bernstein is a  
25 defendant in the Stansbury action?

1           A.    Which Stansbury action?

2           Q.    The lawsuit that Mr. Rose wants Ted to  
3 represent the estate in?

4           A.    I'd have to see the action, see the  
5 complaint.

6           Q.    You have never seen the complaint?

7           A.    I have seen the complaint, but I want to  
8 make sure it's the same documents.

9           Q.    So Ted --

10           THE COURT: You must allow him to answer  
11 the questions.

12           MR. ELIOT BERNSTEIN: I am sorry, okay.

13           THE WITNESS: I would like to see if you  
14 are referring to Ted Bernstein being a  
15 defendant, if someone has a copy of it.

16           MR. ROSE: Well, I object. Mr. Feaman  
17 knows that he has dismissed the claims against  
18 all these people, and this is a complete waste.  
19 We have a limited amount of time and these are  
20 very important issues.

21           MR. ELIOT BERNSTEIN: Excuse me.

22           THE COURT: Wait.

23           MR. ROSE: These defendants they are  
24 dismissed, they are settled. Mr. Feaman knows  
25 because he filed the paper in this court.

1                   THE COURT: Mr. Rose.

2                   MR. ROSE: It's public record.

3                   THE COURT: Mr. Rose, you are going to  
4                   have to let go of the -- it's going to finish  
5                   by 4:30.

6                   MR. ROSE: Okay.

7                   THE COURT: Because I know that's why you  
8                   are objecting, and you know I have to allow --

9                   MR. ROSE: Okay.

10                  THE COURT: All right? The legal  
11                  objection is noted. Mr. O'Connell can respond.  
12                  He asked to see a document.

13          BY MR. ELIOT BERNSTEIN:

14          Q. I would like to show you --

15          THE DEPUTY: Ask to approach, please.

16          MR. ELIOT BERNSTEIN: Oh, ask to.

17          BY MR. ELIOT BERNSTEIN:

18          Q. Can I approach you?

19          THE COURT: What do you want to approach  
20          with?

21          MR. ELIOT BERNSTEIN: I just want to show  
22          him the complaint.

23          THE COURT: Complaint? As long as you  
24          show the other side what you are approaching  
25          with.

1                   MR. ELIOT BERNSTEIN: It's your second  
2                   amended complaint.

3                   MR. ROSE: No objection.

4                   BY MR. ELIOT BERNSTEIN:

5                   Q.     Is Ted Bernstein a defendant in that  
6                   action?

7                   A.     I believe he was a defendant, past tense.

8                   Q.     Okay. Let me ask you a question. Has the  
9                   estate that you are in charge of settled with Ted  
10                  Bernstein?

11                  A.     In connection with this action?

12                  MR. ROSE: Objection, relevance.

13                  BY MR. ELIOT BERNSTEIN:

14                  Q.     Yes, in connection with this action?

15                  THE COURT: Which action?

16                  MR. ELIOT BERNSTEIN: The Stansbury  
17                  lawsuit that Ted wants to represent.

18                  THE COURT: If he can answer.

19                  MR. ELIOT BERNSTEIN: This is the conflict  
20                  that's the elephant in the room.

21                  THE COURT: No, no, no.

22                  MR. ELIOT BERNSTEIN: Okay.

23                  THE COURT: I didn't allow anyone else to  
24                  have any kind of narrative.

25                  MR. ELIOT BERNSTEIN: Sorry.

1                   THE COURT: Ask a question and move on.

2                   MR. ELIOT BERNSTEIN: Got it.

3                   THE COURT: Mr. O'Connell, if you can  
4                   answer the question, answer the question.

5                   THE WITNESS: Sure. Thanks, Your Honor.

6                   I am going to give a correct answer. We have  
7                   not had a settlement in connection with Ted  
8                   Bernstein in connection with what I will call  
9                   the Stansbury independent or civil action.

10                  BY MR. ELIOT BERNSTEIN:

11                  Q. Okay. So that lawsuit --

12                  A. The estate has not entered into such a  
13                  settlement.

14                  Q. So Stansbury or Ted Bernstein is still a  
15                  defendant because he sued the estate and the estate  
16                  hasn't settled with him and let him out?

17                  A. The estate prior to -- I thought you were  
18                  talking about me, my involvement. Prior to my  
19                  involvement there was a settlement.

20                  Q. With Shirley's trust, correct?

21                  A. No, I don't recall there being --

22                  Q. Well, you just --

23                  THE COURT: Wait. You have to let him  
24                  answer.

25                  MR. ELIOT BERNSTEIN: Sorry, okay.

1                   THE WITNESS: I recall there being a  
2                   settlement again prior to my involvement with  
3                   Mr. Stansbury and Ted Bernstein.

4                   BY MR. ELIOT BERNSTEIN:

5                   Q.    But not the estate? The estate as of  
6                   today hasn't settled the case with Ted?

7                   A.    The estate, the estate, my estate, when I  
8                   have been personal representative, we are not in  
9                   litigation with Ted. We are in litigation with  
10                   Mr. Stansbury. That's where the disconnect is.

11                  Q.    In the litigation Ted is a defendant,  
12                   correct?

13                  A.    I have to look at the pleadings. But as I  
14                   recall the claims against Ted Bernstein were  
15                   settled, resolved.

16                  Q.    Only with Mr. Stansbury in the Shirley  
17                   trust and individually.

18                  So let me ask you --

19                  THE COURT: You can't testify.

20                  MR. ELIOT BERNSTEIN: Okay.

21                  BY MR. ELIOT BERNSTEIN:

22                  Q.    Ted Bernstein, if you are representing the  
23                   estate, there's a thing called shared liability,  
24                   meaning if Ted is a defendant in the Stansbury  
25                   action, which he is, and he hasn't been let out by

1 the estate, then Ted Bernstein coming into the  
2 estate can settle his liability with the estate.  
3 You following? He can settle his liability by  
4 making a settlement that says Ted Bernstein is out  
5 of the lawsuit, the estate is letting him out, we  
6 are not going to sue him. Because the estate  
7 should be saying that Ted Bernstein and Simon  
8 Bernstein were sued.

9 THE COURT: I am sorry, Mr. Bernstein, I  
10 am trying to give you all due respect.

11 MR. ELIOT BERNSTEIN: Okay.

12 THE COURT: But is that a question?

13 MR. ELIOT BERNSTEIN: Yeah, okay.

14 THE COURT: I can't --

15 MR. ELIOT BERNSTEIN: I will break it  
16 down, because it is a little bit complex, and I  
17 want to go step by step.

18 THE COURT: Thank you. And we will be  
19 concluding in six minutes.

20 MR. ELIOT BERNSTEIN: Then I would ask for  
21 a continuance.

22 THE COURT: We will be concluding in six  
23 minutes.

24 MR. ELIOT BERNSTEIN: Okay.

25 THE COURT: Ask what you can.

1                   MR. ELIOT BERNSTEIN: Okay.

2    BY MR. ELIOT BERNSTEIN:

3                   Q. Ted Bernstein was sued by Mr. Stansbury  
4 with Simon Bernstein; are you aware of that?

5                   A. I am aware of the parties to the second  
6 amended complaint that you have handed me.

7                   Q. Okay.

8                   A. At that point in time.

9                   Q. So both those parties share liability if  
10 Stansbury wins, correct?

11                  MR. ROSE: Objection.

12                  THE WITNESS: No.

13                  THE COURT: Hold on.

14                  MR. ROSE: Objection, calls for a legal  
15 conclusion, misstates the law and the facts.

16                  MR. ELIOT BERNSTEIN: Well, if  
17 Mr. Stansbury won his suit and was suing Ted  
18 Bernstein --

19                  THE COURT: Hold on one second. Hold on,  
20 please. You have got to let me rule. I don't  
21 mean to raise my voice at all.

22                  But his question in theory is appropriate.  
23 He says they are both defendants, they share  
24 liability. Mr. O'Connell can answer that. The  
25 record speaks for itself.

1                   THE WITNESS: And the problem, Your Honor,  
2                   would be this, and I will answer the question,  
3                   but I am answering it in the blind without all  
4                   the pleadings. Because as I -- I will give you  
5                   the best answer I can without looking at the  
6                   pleadings.

7                   THE COURT: You can only answer how you  
8                   can.

9                   THE WITNESS: As I recall the state of  
10                  this matter, sir, this is the independent  
11                  action, the Stansbury action, whatever you want  
12                  to call it, Ted Bernstein is no longer a  
13                  defendant due to a settlement.

14                  BY MR. ELIOT BERNSTEIN:

15                  Q. He only settled with Mr. Stansbury,  
16                  correct? The estate, as you said a moment ago, has  
17                  not settled with Ted Bernstein as a defendant. So  
18                  the estate could be --

19                  THE COURT: Mr. Bernstein, Mr. Bernstein.

20                  MR. ELIOT BERNSTEIN: Uh-huh.

21                  THE COURT: From the pleadings the Court  
22                  understands there is not a claim from the  
23                  estate against Ted Bernstein in the Stansbury  
24                  litigation. Is the Court correct?

25                  MR. ELIOT BERNSTEIN: The Court is

1           correct.

2           THE COURT: Okay.

3           MR. ELIOT BERNSTEIN: But the estate, if  
4           Mr. O'Connell was representing the  
5           beneficiaries properly, should be suing Ted  
6           Bernstein because the complaint alleges that he  
7           did most of the fraud against Mr. Stansbury,  
8           and my dad was just a partner.

9           THE COURT: Okay. So that's your  
10          argument, I understand.

11          MR. ELIOT BERNSTEIN: Okay.

12          THE COURT: But please ask the questions  
13          pursuant to the pleadings as they stand.

14          MR. ELIOT BERNSTEIN: Okay.

15          BY MR. ELIOT BERNSTEIN:

16          Q. Could the estate sue Ted Bernstein since  
17          he is a defendant in the action who has shared  
18          liability with Simon Bernstein?

19          MR. ROSE: Objection, misstates -- there's  
20          no such thing as shared liability.

21          THE COURT: He can answer the question if  
22          he can.

23          MR. ROSE: Okay.

24          THE WITNESS: One of the disconnects here  
25          is that he is not a current beneficiary in the

1 litigation as you just stated.

2 MR. ELIOT BERNSTEIN: There's no  
3 beneficiary in that litigation.

4 THE COURT: Okay. You can't answer again.

5 MR. ELIOT BERNSTEIN: Oh.

6 THE COURT: Remember, you have got to ask  
7 questions.

8 THE WITNESS: Defendant, Your Honor, wrong  
9 term. He is not a named defendant at this  
10 point due to a settlement.

11 BY MR. ELIOT BERNSTEIN:

12 Q. Could the estate sue back a  
13 counter-complaint to Ted Bernstein individually who  
14 is alleged to have committed most of the egregious  
15 acts against Mr. Stansbury? He is a defendant in  
16 the action. Nobody settled with him yet from the  
17 estate. Could you sue him and say that half of the  
18 liability, at least half, if not all, is on Ted  
19 Bernstein?

20 A. Anyone, of course, theoretically could sue  
21 anyone for anything. What that would involve would  
22 be someone presenting in this case me the facts,  
23 the circumstances, the evidence that would support  
24 a claim by the estate against Ted Bernstein. That  
25 I haven't seen or been told.

1           Q.    Okay.  Mr. Stansbury's complaint, you see  
2    Ted and Simon Bernstein were sued.  So the estate  
3    could meet the argument, correct, that Ted  
4    Bernstein is a hundred percent liable for the  
5    damages to Mr. Stansbury, correct?

6           A.    I can't say that without having all the  
7    facts, figures, documents --

8           Q.    You haven't read this case?

9           A.    -- in front of me.  Not on that level.  
10   Not to the point that you are -- not to the point  
11   that you are --

12          Q.    Let me ask you a question.

13          A.    -- trying to.

14            MR. ROSE: Your Honor?

15   BY MR. ELIOT BERNSTEIN:

16          Q.    Let me ask you a question.

17            THE COURT: Hold on one second, sir.

18            MR. ROSE: He is not going to finish in  
19    two minutes and there are other things we need  
20    to address, if we have two minutes left.  So  
21    can he continue his cross-examination at the  
22   continuance?

23            THE COURT: March we have another hearing.

24            MR. ELIOT BERNSTEIN: Can we continue this  
25   hearing?

1                   THE COURT: Yes. But I am going to give  
2                   you a limitation. You get as much time as  
3                   everybody else has.

4                   MR. ELIOT BERNSTEIN: That's fine.

5                   THE COURT: You have about ten more  
6                   minutes when we come back.

7                   MR. ELIOT BERNSTEIN: Okay. Can I submit  
8                   to you the binder that I filed late?

9                   THE COURT: Sure.

10                  MR. ELIOT BERNSTEIN: (Overspeaking).

11                  THE COURT: As long as it has been -- has  
12                  it been filed with the Court and has everybody  
13                  gotten a copy?

14                  MR. ELIOT BERNSTEIN: I sent them copies  
15                  and I brought them copies today.

16                  THE COURT: As long as everybody else gets  
17                  a copy --

18                  MR. ELIOT BERNSTEIN: Okay.

19                  THE COURT: -- you can submit the binder.  
20                  Just give it to my deputy.

21

22                  (Brian O'Connell excerpt concluded.)

23

24

25

1                   C E R T I F I C A T E  
2                   - - -  
34       The State of Florida  
5       County of Palm Beach  
67                   I, Lisa Mudrick, RPR, FPR, certify that I  
8       was authorized to and did stenographically report  
9       the foregoing proceedings, and that the excerpted  
10      transcript is a true record.11  
12                   Dated February 21, 2017.  
13  
14  
15  
16  
1718                     
1920                   LISA MUDRICK, RPR, FPR  
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