

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 50 2012-CP-4391 XXXXNB

IN RE: THE ESTATE OF:
SIMON BERNSTEIN,

Deceased.

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- - -

MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
HAD BEFORE THE HONORABLE ROSEMARIE SCHER

- - -

DATE: OCTOBER 19, 2017

TIME: 1:59 - 3:04 P.M.

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1 APPEARING ON BEHALF OF CLAIMANT WILLIAM STANSBURY:
 2 Peter Feaman, Esq.
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5 APPEARING ON BEHALF OF TRUSTEE TED BERNSTEIN:
 6 Alan B. Rose, Esq.
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 West Palm Beach, Florida 33401

9 APPEARING ON BEHALF OF PERSONAL REPRESENTATIVE OF
 THE ESTATE:

11 Brian M. O'Connell, Esq.
 Ashley Crispin Ackal, Esq.
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 515 North Flagler Drive, 20th Floor
 13 West Palm Beach, Florida 33401

15 ELLIOT BERNSTEIN, Pro Se

17 - - -

18 BE IT REMEMBERED, that the following testimony
 19 and proceedings were had in the above-entitled cause
 20 before the Honorable Rosemarie Scher, in Room 4, in
 21 the Palm Beach County Courthouse, City of Palm Beach
 22 Gardens, State of Florida, on Thursday, the 19th day
 23 of October, 2017, to wit:

24 - - -

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1 THE COURT: We have a court call
 2 appearance. Let's see. We have Mr. Stamos on
 3 court call but we'll call him when we're ready
 4 for him to testify.

5 Appearances for the record, please.

6 MS. CRISPIN: Your Honor, Ashley Crispin
 7 on behalf of Brian O'Connell, the Personal
 8 Representative of the Estate of Simon
 9 Bernstein.

10 THE COURT: Thank you.

11 MR. ROSE: Alan Rose, Your Honor, on
 12 behalf of Ted Bernstein as Trustee. The only
 13 thing I would -- there might have been another
 14 beneficiary that was going to be participating
 15 in court call. I'm not sure. They called this
 16 morning to see if they could. It was too late
 17 so they were checking with court call.

18 THE COURT: I didn't get a notification
 19 but I can call. We'll have to disconnect if
 20 it's -- well, generally speaking, we don't have
 21 the witnesses listed until we receive a court
 22 call but we can call and see if the beneficiary
 23 is there. I didn't get a notification though.
 24 we have someone else appearing. I'm not sure
 25 who that is.

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I N D E X

WITNESSES:

5 BRIAN O'CONNELL DIRECT CROSS

6 By Ms. Crispin 9
 7 By Mr. Feaman 18
 8 By Mr. Bernstein 24
 9 By Mr. Rose 35

11 BRIAN O'CONNELL

12 By Mr. Bernstein 41

14 JAMES STAMOS

15 By Ms. Crispin 52
 16 By Mr. Feaman 55
 17 By Mr. Bernstein 59
 18 By Mr. Rose 62

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1 MR. FEAMAN: Peter Feaman on behalf of
 2 William Stansbury, Claimant.

3 THE COURT: Thank you very much.
 4 Mr. Elliot?

5 MR. BERNSTEIN: Elliot Berstein, pro se.
 6 Your Honor, can I have my wife sit next to me?
 7 I have cough syncope and I faint and fall.
 8 She's been next to me 24 hours a day for three
 9 months. It's a medical condition that I've
 10 got.

11 THE COURT: Yes. That's fine.

12 MR. BERNSTEIN: It isn't fine.

13 THE COURT: No. I didn't mean to
 14 insinuate your condition was fine at all.

15 All right. Are we ready to proceed? This
 16 is Mr. O'Connell's motion.

17 MS. CRISPIN: Yes, Your Honor, we're ready
 18 to proceed.

19 MR. BERNSTEIN: Could I ask about your
 20 jurisdiction to hear this prior to the hearing
 21 or during the hearing?

22 THE COURT: No. I have jurisdiction. I
 23 will announce I have jurisdiction to hear this.
 24 So we'll continue. Thank you.

25 MS. CRISPIN: Your Honor, I'll call Mr.

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1 O'Connell to the stand.
 2 MR. FEAMAN: If it please the Court, I'd
 3 just like to put a statement on the record if I
 4 could before we actually begin the testimony.
 5 THE COURT: Yes. Mr. O'Connell -- do you
 6 mind if he sits there?
 7 MR. FEAMAN: No, not at all.
 8 On behalf of Mr. Stansbury, Your Honor, we
 9 just -- even though you have already denied our
 10 motion, our amended motion to specially
 11 sequence this hearing behind another one, we
 12 just want to reiterate our position that this
 13 hearing should not go forward at this time
 14 until the propriety of Mr. Ted Bernstein's
 15 position as successor trustee be determined by
 16 the Court one way or the other. I'm mindful
 17 that Your Honor has already denied that request
 18 but I wanted to put it on the record so there
 19 wouldn't be any construction of waiver or
 20 anything like that.
 21 THE COURT: Fair enough.
 22 MR. BERNSTEIN: Your Honor, could I put
 23 something on the record? We were told that my
 24 two adult children were going to be notified of
 25 this hearing as necessary parties by Mr. Rose.

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1 documents or trusts regarding that.
 2 THE COURT: All right. That is so noted.
 3 Obviously it's a public court file. They can
 4 get the -- I don't have a notice of appearance
 5 but --
 6 MR. BERNSTEIN: But she's asking for the
 7 full records.
 8 THE COURT: That would be a different
 9 hearing. Okay. Are we ready to proceed?
 10 MR. ROSE: Just for the record, I dispute
 11 what he just said. The only thing I would just
 12 say, just so you know where we stand, my
 13 client's position is he's in favor of the
 14 settlement. I think Mr. Feaman --
 15 THE COURT: Thank you. I mean thank you
 16 for your position.
 17 MR. ROSE: Mr. Feaman, I think his client
 18 advised us both on several occasions is taking
 19 no position with regard to settlement. The
 20 only person objecting is Elliot Bernstein.
 21 THE COURT: Okay. Thank you.
 22 All right. You may proceed.
 23 THEREUPON,
 24 BRIAN M. O'CONNELL, ESQ.,
 25 called as a witness in his behalf, having been first

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1 They haven't even been notified they're
 2 beneficiaries ever, but in court he said he was
 3 going to notify them and have them here and
 4 they're not here and they're necessary parties
 5 to a settlement that's happening that they
 6 don't even know about. They haven't been
 7 involved, haven't been summoned, nothing
 8 served.
 9 THE COURT: If they're adult children, you
 10 can't represent them.
 11 MR. BERNSTEIN: I'm not representing them.
 12 THE COURT: No, but you are --
 13 MR. BERNSTEIN: I'm saying they're
 14 necessary parties on the hearing.
 15 THE COURT: Mr. Elliot, if you want to say
 16 that, that's fine, but you cannot speak on
 17 their behalf if they are an adult.
 18 MR. BERNSTEIN: I'm not going to. I'm
 19 going to speak about them in the hearing, I
 20 think, but they're not here. And, by the way,
 21 there's one more point. There's one more
 22 point. They have counsel and they've been
 23 trying to enter this case now almost for over a
 24 year or so, but Mr. Rose is refusing their
 25 counsel to give them any of the dispositive

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1 duly sworn by the Court, in answer to questions
 2 propounded, was examined and testified as follows:
 3 MS. CRISPIN: Your Honor, we're here, just
 4 so the court reporter has it, we're here on
 5 Mr. O'Connell's verified motion for approval of
 6 settlement agreement entered in the Illinois
 7 federal action. I have another copy for
 8 Mr. Bernstein if you need it.
 9 Do you need it?
 10 MR. BERNSTEIN: What is it?
 11 MS. CRISPIN: Another copy of the motion
 12 set for today.
 13 Your Honor, I'd also like to approach the
 14 witness. I've marked it as Exhibit 1 although
 15 it's already in the court file.
 16 THE COURT: Sure. And I have a copy.
 17 Thank you.
 18 DIRECT EXAMINATION
 19 BY MS. CRISPIN:
 20 Q Mr. O'Connell, please state your name and
 21 your position in this matter.
 22 A Brian O'Connell, and I'm the personal
 23 representative of the Estate of Simon Bernstein.
 24 Q And for how long have you been serving?
 25 A At this point since 2014, June of 2014, so

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1 a little over three years, almost three and a half
 2 years.
 3 Q And you're currently aware of a pending
 4 litigation entitled Simon Bernstein Irrevocable
 5 Insurance Trust, et al, vs. Heritage Union Life
 6 Insurance Company, correct?
 7 A I'm familiar with that litigation, yes.
 8 Q Okay. For how long have you been familiar
 9 with the litigation?
 10 A Pretty much since my appointment.
 11 Q So since June or so of 2014?
 12 A Yes.
 13 Q And has the estate entered an appearance
 14 in that litigation?
 15 A It has.
 16 Q And you have counsel in your role as
 17 personal representative?
 18 A I do.
 19 Q And who is that?
 20 A James Stamos.
 21 Q And has that always been the counsel
 22 that's represented the estate and thus you?
 23 A To my knowledge, yes.
 24 Q And can you just give me generally what
 25 the nature of that litigation is?

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1 A Ben Brown who was a curator was allowed to
 2 intervene in that litigation for some period of
 3 time. I don't think it was very long.
 4 Q Now, did there come a time when you had
 5 made the decision to explore settlement in the case?
 6 A Correct.
 7 Q And when was that?
 8 A It actually started probably six, eight
 9 months ago, the beginnings of discussions, to see if
 10 some resolutions could be made. Prior to that,
 11 there might have been some isolated talk but nothing
 12 real concrete.
 13 Q And can you take a look at what I've
 14 marked as Exhibit 1?
 15 A Yes.
 16 Q And is this your motion for approval of
 17 the settlement agreement?
 18 A It is.
 19 Q And have you signed it and read the facts
 20 that are alleged in the motion?
 21 A I have.
 22 Q And do you believe that they're true to
 23 the best of your knowledge?
 24 A I do.
 25 Q Okay. One of the attachments to the

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1 A That was a dispute over who was the
 2 beneficiary of an insurance policy, whether it would
 3 be a trust, a free-standing trust that was alleged
 4 to be the beneficiary by some of the Bernstein
 5 family members, or the default being the estate,
 6 probate estate being the beneficiary.
 7 Q Okay. And in the litigation, if you can
 8 explain, really there was competing positions by the
 9 insurance trust and by the estate?
 10 A Oh, absolutely.
 11 Q And tell me what the position of the
 12 insurance trust is to the best of your knowledge as
 13 a litigant.
 14 A Well, the trust through the trustee was
 15 claiming a hundred percent of the policy proceeds.
 16 The estate through myself was claiming we were
 17 entitled, the estate was entitled to a hundred
 18 percent of the policy proceeds.
 19 Q And to the best of your knowledge, who is
 20 the trustee of the irrevocable insurance trust as
 21 part of that litigation?
 22 A Ted Bernstein.
 23 Q And other than you, has there ever been a
 24 prior fiduciary that appeared in that proceeding on
 25 behalf of the estate?

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1 motion is the actual proposed settlement agreement?
 2 A Correct.
 3 Q And you signed that agreement, correct?
 4 A I did.
 5 Q And is it contingent on this Court's
 6 approval?
 7 A It is.
 8 Q And as part of your motion, have you asked
 9 the Court to go ahead and approve you entering into
 10 the settlement agreement?
 11 A I am seeking the Court's approval, yes.
 12 Q Why?
 13 A That's a contingency under the agreement.
 14 Q And why do you believe that the settlement
 15 agreement should be approved by this Court?
 16 A Because it's in the best interest of the
 17 estate given the nature, extent of the litigation,
 18 the cost of litigation, the uncertainties of
 19 litigation, that the matter be settled on this
 20 basis.
 21 Q Okay. I'm asking you not to draw on
 22 attorney-client privilege or work product here
 23 because the agreement has not yet been approved, but
 24 can you explain at least for the Court monetarily,
 25 if you are were looking at this agreement, how it

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1 works out in part an analysis about why this
2 settlement agreement is in the best interest of the
3 estate and its beneficiaries?
4 A Sure. The way the litigation is posited
5 right now, it's an all-or-nothing situation, as in
6 either the estate gets all of the policy proceeds,
7 about a million, seven hundred thousand dollars, or
8 none of the proceeds. There's no middle ground.
9 There's no way you approach 50 percent or something
10 of that nature.

11 So when you consider that scenario and you
12 also have to look at the fact that there's cost of
13 litigation, meaning out-of-pocket costs, attorney's
14 fees that would have to be expended, and based on
15 more recent rulings, the fact that Mr. Stansbury no
16 longer has to fund the litigation, that combination
17 of factors along with a summary judgment having been
18 denied, we moved for summary judgment in our favor
19 and that was denied, put the matter into the trial
20 mode, it would have been frankly tried the end of
21 this summer.

22 So that put it to me in a settlement
23 posture, see what the best that could be done in the
24 way of a settlement, especially considering the fact
25 that we might have had to switch this to a

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1 A I think it's about 40 percent of the, I
2 think, top value of the claim. If we recovered
3 every dollar, that would represent a 40 percent
4 portion of a hundred percent victory.

5 Q And other than the \$708,000 that will
6 actually be garnered by the estate, are there any
7 other monetary benefits by virtue of the settlement?

8 A Payment of some fees.

9 Q Savings of fees or...?

10 A Payment of fees being, I guess,
11 eliminated.

12 Q Okay.

13 A Which could have been about \$75,000. My
14 counsel had estimated that would be the cost from
15 say the spring going forward through trial.

16 Q And then you also talked about a
17 contingency situation. Have you evaluated it, had
18 you changed the nature of the representation to a
19 contingency fee agreement, what was the fee that
20 would have been assessed by Mr. Stamos if you went
21 to trial?

22 A For going to trial, we would have charged
23 40 percent of what was recovered. So it would bring
24 you down to a net, again, if you won a hundred
25 percent, about a million, one hundred thousand with

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1 contingency fee situation which would have, if we
2 were victorious, eaten into the proceeds; of course,
3 if we were successful, we would have had a benefit
4 of not expending any further fees. But it's sort of
5 drawing on that combination of factors. And not
6 that it's an exact midpoint. The settlement was
7 about \$700,000, is the dollar amount, but when you
8 look at it from that standpoint with an
9 all-or-nothing scenario, that was sort of the driver
10 in my thinking at least as to why the settlement was
11 appropriate at this particular time.

12 Q Okay. Let's talk particularly about if we
13 were operating under an hourly fee arrangement just
14 so we can talk monetarily about how the settlement
15 really works monetarily. So if we were using an
16 hourly fee situation, have you done the, at least
17 rough math to try to determine sort of what this
18 settlement really is worth to the estate?

19 A Roughly.

20 Q Okay. And can you share that with the
21 Court?

22 A Well, you have right now a \$708,000
23 recovery, in the way of a settlement.

24 Q Okay. And have you computed sort of what
25 that mathematically is?

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1 the balance going to him towards fees.

2 Q And that would be a best-day scenario?

3 A Best day.

4 Q Now, in an hourly situation, if you didn't
5 settle the case and in fact the estate lost, have
6 you looked at what the ramifications to the estate
7 would be monetarily?

8 A Yes. There would be two things. You'd be
9 out of pocket, again let's use Mr. Stamos' estimate
10 that there is \$75,000 that would be required by him.
11 Then I would have some fees and costs. Obviously I
12 have to attend the trial. Things of that nature to
13 be involved would have been an extra expense on top
14 of that, could have easily been ten, twelve thousand
15 dollars there.

16 Q And with respect to your fees, that would
17 have been incurred by the estate whether you won or
18 lost under an hourly or contingency fee arrangement,
19 correct?

20 A Correct.

21 MS. CRISPIN: Your Honor, I ask that we be
22 able to admit into evidence the verified motion
23 for approval of settlement agreement as Exhibit
24 1.

25 THE COURT: Thank you. So admitted. You

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1 may proceed.
 2 MR. FEAMAN: By the way, Your Honor, by
 3 not objecting to the admission, I just want to
 4 make it clear to the Court that agreement
 5 contemplates a payment to my client, Mr.
 6 Stansbury, of a certain amount of money.
 7 Mr. Stansbury does not agree that that amount
 8 of money is all he would be entitled to.

9 MR. BERNSTEIN: And I object to the
 10 settlement being entered because the parties
 11 that are named in there aren't all here.

12 THE COURT: So noted. So admitted.

13 MS. CRISPIN: I have nothing further for
 14 Mr. O'Connell on direct.

15 THE COURT: Mr. Rose?

16 MR. ROSE: No questions.

17 THE COURT: Mr. Feaman?

18 MR. FEAMAN: Just a few, Your Honor.

19 MR. ROSE: Can I reserve, Your Honor?

20 THE COURT: You may.

21 CROSS EXAMINATION

22 BY MR. FEAMAN:

23 Q Mr. O'Connell, you stated that settlement
 24 discussions started about six to eight months ago,
 25 is that correct?

Page 20

1 MS. CRISPIN: Objection, relevance.

2 THE COURT: Sustained.

3 MR. FEAMAN: The relevance is I'm laying a
 4 predicate for when we come back for fees, Your
 5 Honor.

6 THE COURT: It's not relevant for today
 7 though.

8 BY MR. FEAMAN:

9 Q With regard to those settlement
 10 negotiations, Mr. Stansbury in the May, June time
 11 frame, he was not involved in the negotiations,
 12 correct?

13 A Not to my knowledge.

14 Q And, in fact, to your knowledge, I was not
 15 involved, correct?

16 A I don't believe you were, sir.

17 Q And to your knowledge, nobody from my
 18 office was involved, correct?

19 A I don't recall anyone from your office
 20 being involved.

21 Q Okay. And you mentioned Ben Brown was the
 22 first one that intervened, he was allowed by the
 23 Court. Do you recall that that was actually at the
 24 behest of Mr. Stansbury's motion, is that correct?

25 MR. ROSE: Objection, relevance to the

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1 A In earnest. Again, prior to that, there
 2 had been some general, call them discussions, but
 3 things got more serious let's say.

4 Q Six or eight months ago from today or from
 5 when the settlement agreement was signed?

6 A Probably from when the settlement
 7 agreement was entered into.

8 Q All right. And, in fact, there was a
 9 formal mediation by telephone in May of 2017, this
 10 year, correct?

11 A Correct. That was sort of the drive to
 12 get it across the finish line.

13 Q But it didn't settle at the mediation,
 14 correct?

15 A No.

16 Q But at that point, things began to really
 17 ramp up in terms of serious settlement discussions,
 18 is that correct?

19 A That's true.

20 Q So that in June of 2017, then is it fair
 21 to say that you were very close to settling; in
 22 fact, since you signed this on July 5th, you
 23 probably had an agreement prepared in June for
 24 circulation, I would imagine, is that correct?

25 MR. ROSE: Objection, relevance.

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1 issues today.

2 THE COURT: Sustained. We're just
 3 approving the settlement.

4 THE WITNESS: Mr. Feaman, I just want --
 5 with regard to some of the questions about your
 6 firm's involvement, you and I had discussions
 7 as the case was evolving about there might be a
 8 settlement and some generalities like that. So
 9 I wanted to give a hundred percent. To
 10 distinguish, you weren't physically say on the
 11 phone or attending an in-person mediation but I
 12 know you were --

13 BY MR. FEAMAN:

14 Q But we were never involved in discussing
 15 numbers, were we?

16 A Not specific numbers, I don't recall that.
 17 Just more we were trying to settle it, here's what
 18 was transpiring with the case, and I know
 19 Mr. Stansbury had some conversation with Mr. Stamos.

20 Q Okay. Now, the settlement negotiations,
 21 when they were in earnest in May and June, was
 22 Mr. Rose involved in those?

23 A I think he was to some extent and I have
 24 to answer it that way because the telephone
 25 mediation was a mediation literally where the

<p style="text-align: right;">Page 22</p> <p>1 mediator would call one side and then call the other 2 side. It wasn't -- just to sketch it for the Court, 3 it wasn't like an en masse mediation with everyone 4 present at the same time. So I have to be a little 5 cautious as to exactly who was involved in that. 6 Q That's fine. And who was Mr. Rose 7 representing? 8 A I'm not sure. 9 MR. ROSE: Objection as to relevance. 10 THE COURT: Mr. Feaman, do you not want me 11 to approve? Because I thought you weren't 12 taking a position. I'm losing why we're 13 talking about this now. 14 MR. FEAMAN: Well, we previously raised 15 the issue of conflict, Your Honor. 16 THE COURT: Yes, and I denied the order 17 and we're here today and you said you're not 18 taking a position on approval of the 19 settlement. 20 MR. FEAMAN: Not on the merits of the -- 21 THE COURT: Yes, so that will discontinue 22 the questions. 23 MR. FEAMAN: I don't think we're in a 24 position to comment on the merits one way or 25 the other not having been involved in the</p>	<p style="text-align: right;">Page 23</p> <p>1 litigation directly other than causing it to 2 happen. 3 THE COURT: Exactly. So for purposes of 4 today, I ask that you stay on point. 5 MR. FEAMAN: Okay. Thank you. 6 BY MR. FEAMAN: 7 Q Do you have an opinion as to the 8 probability of success by the estate if the case 9 were to go to trial? 10 MS. CRISPIN: To the extent it calls for 11 attorney-client privilege or work product, I'd 12 object and instruct you not to answer. 13 THE WITNESS: I would have to draw on some 14 privileged information, Your Honor, from 15 counsel here. 16 MS. CRISPIN: He asked for analysis. 17 THE WITNESS: I can try to answer it on my 18 own. 19 MS. CRISPIN: I wouldn't have a problem 20 with that. 21 THE COURT: Answer what you can without 22 drawing on any privilege. 23 THE WITNESS: Sure. 24 A I think it was a good case as in the 25 probabilities were more in favor of the estate, but</p>
<p style="text-align: right;">Page 24</p> <p>1 nothing being a hundred percent in light, again, of 2 what I mentioned before. Of course, when we had 3 summary judgment denied, obviously that makes it 4 more of a horse race than it would be if summary 5 judgment were granted, case over. But just to kind 6 of sketch that out for you, it was certainly a 7 meritorious case that was worth pursuing, ergo I 8 did. 9 MR. FEAMAN: Thank you. 10 THE COURT: Mr. Elliot? 11 MR. BERNSTEIN: Your Honor, can I stay 12 here? Just so I don't fall up there. 13 THE COURT: Absolutely. 14 MR. BERNSTEIN: Thank you. 15 CROSS EXAMINATION 16 BY MR. BERNSTEIN: 17 Q Mr. O'Connell, your pleading today states 18 that you entered the settlement with Ted Bernstein 19 as trustee of a 1995 trust. Are you in possession 20 of that trust? 21 MR. ROSE: Objection, relevance. 22 THE COURT: Overruled. Go ahead. 23 A Not an original, to be specific. 24 BY MR. BERNSTEIN: 25 Q Excuse me?</p>	<p style="text-align: right;">Page 25</p> <p>1 A I don't have an original of that trust. 2 Q Do you have an executed copy? 3 A I don't. 4 Q So you've never seen the trust. How do 5 you know Ted Bernstein is the trustee of that trust 6 then? 7 A Because that was the claim that they were 8 making. 9 Q Okay. And are you aware that Judge Blakey 10 in the Illinois case which is hearing this matter 11 properly in the Federal Court has determined that 12 that trust hasn't been proven and it's one of the 13 reasons summary judgment was denied? 14 A I don't have the summary judgment in front 15 of me. When you're saying proven, I'm a little 16 uncertain about -- 17 MR. BERNSTEIN: I'd like to enter that 18 summary judgment as evidence, please. 19 MS. CRISPIN: I haven't seen it. 20 MR. BERNSTEIN: Anybody else need it? 21 There is two of them. Can somebody give 22 Brian the copy I gave, maybe his attorney for 23 Brian as a witness? 24 THE COURT: No. His attorney right now is 25 reviewing it. Do you have an extra copy for</p>

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1 Mr. O'Connell?
 2 MR. BERNSTEIN: If I don't give one to the
 3 judge.
 4 THE COURT: You're supposed to bring one
 5 for everybody.
 6 MR. BERNSTEIN: I didn't know how many
 7 people were here.
 8 THE BAILIFF: These are the extra copies.
 9 MR. BERNSTEIN: So here's one for the
 10 judge and I need one.
 11 THE COURT: Mr. Elliot, be mindful of your
 12 time. I'm keeping track of how long everybody
 13 has spoken. So you have about four more
 14 minutes.
 15 MR. BERNSTEIN: What?
 16 THE COURT: Yes, you have about four more
 17 minutes with this witness. Go ahead, ask your
 18 question.
 19 MR. BERNSTEIN: Okay. He needs one of
 20 these too. That's the second summary judgment.
 21 Do you need it?
 22 THE COURT: I don't know what it is.
 23 MR. BERNSTEIN: It's a summary judgment in
 24 the Illinois court.
 25 THE COURT: Thank you.

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1 evidence that the trust was created --
 2 Q Which trust, the 1995 trust?
 3 A The '95 trust.
 4 Q Okay. Just to be clear.
 5 A That evidence is far from dispositive of
 6 the issue. In fact, the intervenor has presented
 7 argument and evidence casting material doubt on
 8 whether, one, the trust was actually created and,
 9 two, the terms of the trust are as explained by the
 10 plaintiffs.
 11 Want me to keep going?
 12 Q Well, let me ask you a real quick
 13 question. Are you the intervenor?
 14 A No.
 15 Q You're not?
 16 A The estate is, not me.
 17 Q So you're representing the estate?
 18 A Yes, me as personal representative, not me
 19 individually. That's what I thought you were
 20 asking.
 21 Q So, in fact, the estate has made the
 22 argument that this trust does not exist?
 23 A Correct.
 24 Q And there are no terms that are
 25 applicable, so how can you be saying that you know

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1 BY MR. BERNSTEIN:
 2 Q Have you seen this document?
 3 A In the past, yes.
 4 Q And are you aware that in the second
 5 summary judgment -- in the first summary judgment,
 6 I'm a party to the action and in the second one, I'm
 7 dismissed from the complaint based on the fact that
 8 I'm not a beneficiary with standing in my father's
 9 estate?
 10 MR. ROSE: Objection, relevance to today.
 11 MR. BERNSTEIN: It's all going to be
 12 relevant to today's settlement.
 13 BY MR. BERNSTEIN:
 14 Q Judge Blakey in this, if you go to the
 15 first order --
 16 THE COURT: He's disputing the settlement
 17 so he gets to talk about --
 18 BY MR. BERNSTEIN:
 19 Q The date is on the top, 3-15-16.
 20 A I see it, yes.
 21 Q Do you see on Page 4, the last two
 22 paragraphs, can you read that?
 23 A Does that start, while the above sources?
 24 Q Right.
 25 A While the above sources do provide some

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1 that Ted is the trustee?
 2 A I'm saying Ted claims to be the trustee.
 3 Q No. In your pleading, you said you
 4 entered into the settlement with Ted Bernstein as
 5 trustee, a factual assertion, that he was trustee of
 6 a trust, but yet now you're stating there there is
 7 no trust and you're not sure of the terms and one of
 8 those terms would be Ted Bernstein, is that correct?
 9 MR. ROSE: Objection --
 10 THE COURT: Hold on. You know the rules
 11 if I hear an objection. Mr. Rose?
 12 MR. ROSE: Objection, argumentative.
 13 MS. CRISPIN: Join.
 14 THE COURT: Sustained.
 15 BY MR. BERNSTEIN:
 16 Q Okay. Did you argue that the trust was
 17 actually created?
 18 A Did the estate argue that it was created?
 19 Q Yes.
 20 A In the summary judgment or in the case?
 21 Q These are -- this is from the intervenor
 22 stating that the trust wasn't actually created.
 23 A That was the legal position we took, ergo
 24 there was a dispute.
 25 Q And you took the assertion that the terms

<p style="text-align: right;">Page 30</p> <p>1 of the trust are just as what was explained by the</p> <p>2 plaintiffs, not the trust because you don't know the</p> <p>3 terms because we don't have a valid copy, correct?</p> <p>4 A The position that the estate took is</p> <p>5 what's set forth in Judge Blakey's order, correct.</p> <p>6 Q Okay. And then read Judge Blakey's next</p> <p>7 statement.</p> <p>8 THE COURT: I'm just reminding you that</p> <p>9 you have about three more minutes.</p> <p>10 MR. BERNSTEIN: Well, I need some more</p> <p>11 time, Your Honor. This is going to take a long</p> <p>12 time.</p> <p>13 THE COURT: Well, it's going to take till</p> <p>14 2:30 as this was set for an hour and giving</p> <p>15 equal time. So you can keep on moving and ask</p> <p>16 a question.</p> <p>17 MR. BERNSTEIN: Where does it say it was</p> <p>18 set for an hour? I thought it was until five.</p> <p>19 THE COURT: I believe I was asked by</p> <p>20 Mr. Rose on the phone the other day and I said</p> <p>21 you have an hour reserved.</p> <p>22 MR. BERNSTEIN: You never told us that.</p> <p>23 THE COURT: Well, I'm telling you now.</p> <p>24 MR. BERNSTEIN: This is going to take me</p> <p>25 hours.</p>	<p style="text-align: right;">Page 31</p> <p>1 THE COURT: Well, sorry about that. Ask</p> <p>2 the next question.</p> <p>3 MR. BERNSTEIN: This is a serious</p> <p>4 settlement.</p> <p>5 THE COURT: Would you rather take the time</p> <p>6 arguing with the Court or --</p> <p>7 MR. BERNSTEIN: Well, can we get it</p> <p>8 extended?</p> <p>9 THE COURT: No. Ask your next question.</p> <p>10 MR. BERNSTEIN: Okay. I'll ask my next</p> <p>11 question.</p> <p>12 BY MR. BERNSTEIN:</p> <p>13 Q Can you read the next sentence?</p> <p>14 A However -- there?</p> <p>15 Q No. The results and timing of the</p> <p>16 plaintiff's search for the trust.</p> <p>17 A The results and timing of the plaintiff's</p> <p>18 search for the trust raises doubts about their</p> <p>19 version of events. The plaintiffs claim that David</p> <p>20 Simon found a hard copy and electronic version of</p> <p>21 the trust in his office. David Simon has offered</p> <p>22 testimony here that he aided Simon Bernstein in</p> <p>23 creating the trust and that he kept both versions of</p> <p>24 the unexecuted trust.</p> <p>25 Keep going?</p>
<p style="text-align: right;">Page 32</p> <p>1 Q No, that's good. And the missing trust</p> <p>2 was one of Judge Blakey's reasons for denying</p> <p>3 summary judgment, those are still issues of fact, if</p> <p>4 there is a trust, if Ted's the trustee, correct?</p> <p>5 A The order speaks for itself.</p> <p>6 Q Correct. So it's not been determined Ted</p> <p>7 Bernstein is a trustee of any trust because nobody</p> <p>8 has a copy, correct?</p> <p>9 A In connection with this proceeding, the</p> <p>10 summary judgment?</p> <p>11 Q In connection with this proceeding. Ted</p> <p>12 Bernstein hasn't been determined to be the trustee</p> <p>13 of the '95 trust that you are entering into</p> <p>14 settlement with because nobody has the trust,</p> <p>15 correct?</p> <p>16 A Well, Ted Bernstein claims to be the</p> <p>17 trustee of the 1995 trust --</p> <p>18 Q Before you entered into settlement --</p> <p>19 THE COURT: Let him finish.</p> <p>20 A -- and this settlement resolves the</p> <p>21 litigation over -- the entire litigation, who gets</p> <p>22 the proceeds, how much of the proceeds, how they're</p> <p>23 split between the defendant and the plaintiff.</p> <p>24 Q So you haven't verified that Ted Bernstein</p> <p>25 is the trustee that you're entering into the</p>	<p style="text-align: right;">Page 33</p> <p>1 settlement?</p> <p>2 A There's no way to verify whether Ted</p> <p>3 Bernstein is the trustee of the trust. We reached a</p> <p>4 settlement because of the doubt as to whether the</p> <p>5 trust existed or not, who was the trustee, so that</p> <p>6 journey is over. That's why you settle cases.</p> <p>7 Q I'm sorry, you entered in this pleading</p> <p>8 that you settled with Ted Bernstein who is trustee,</p> <p>9 a factual assertion, of a 1995 trust. Are you</p> <p>10 stating that again today here?</p> <p>11 A It's not my factual assertion. I think</p> <p>12 that's the problem we're having, Mr. Elliot.</p> <p>13 Q Well, the heading in your pleading, you</p> <p>14 start out with, This settlement was entered into</p> <p>15 between Brian O'Connell, PR of the estate, and Ted</p> <p>16 Bernstein, trustee of a 1995 trust.</p> <p>17 A That's true, because that's the capacity</p> <p>18 that he was seeking relief from the District Court</p> <p>19 under.</p> <p>20 Q Okay. And I've got some other questions</p> <p>21 real quick. Am I beneficiary of my father's estate</p> <p>22 with standing?</p> <p>23 MR. ROSE: Objection, calls for a legal</p> <p>24 conclusion.</p> <p>25 MR. BERNSTEIN: He's the PR of the estate.</p>

<p style="text-align: right;">Page 34</p> <p>1 MR. ROSE: It's already been --</p> <p>2 THE COURT: Overruled. You can answer the</p> <p>3 question.</p> <p>4 A Are you a beneficiary of the tangible</p> <p>5 personal property of the estate? Yes.</p> <p>6 BY MR. BERNSTEIN:</p> <p>7 Q Okay. So I'm a beneficiary of the estate</p> <p>8 with standing?</p> <p>9 THE COURT: Of tangible personal property.</p> <p>10 BY MR. BERNSTEIN:</p> <p>11 Q Whatever property, I'm a beneficiary,</p> <p>12 correct?</p> <p>13 A You're a beneficiary of the tangible</p> <p>14 personal property.</p> <p>15 THE COURT: Last question.</p> <p>16 MR. BERNSTEIN: I need to finish --</p> <p>17 THE COURT: No. Last question,</p> <p>18 Mr. Elliot.</p> <p>19 MR. BERNSTEIN: This is just --</p> <p>20 THE COURT: I'm sorry. What was that?</p> <p>21 MR. BERNSTEIN: I'm rushing through.</p> <p>22 THE COURT: Okay. Last question.</p> <p>23 BY MR. BERNSTEIN:</p> <p>24 Q Mr. O'Connell, are you aware that Judge</p> <p>25 Blakey dismissed me on summary judgment claiming</p>	<p style="text-align: right;">Page 35</p> <p>1 that I was not a beneficiary of my father's estate</p> <p>2 with standing?</p> <p>3 A I recall your being dismissed but I'd have</p> <p>4 to review the --</p> <p>5 Q Go ahead. It's right there.</p> <p>6 MR. BERNSTEIN: It's the bigger thicker</p> <p>7 judgment, Your Honor, for your edification.</p> <p>8 MR. ROSE: I object to relevance.</p> <p>9 THE COURT: Sustained. Okay. Redirect?</p> <p>10 MR. BERNSTEIN: Your Honor, what just</p> <p>11 happened? I'm a little slow.</p> <p>12 THE COURT: I sustained the objection.</p> <p>13 Okay. Mr. Rose?</p> <p>14 CROSS EXAMINATION</p> <p>15 BY MR. ROSE:</p> <p>16 Q Mr. O'Connell, is it fair to say that</p> <p>17 Judge Blakey also denied the estate's motion for</p> <p>18 summary judgment?</p> <p>19 A He did.</p> <p>20 Q The first motion for summary judgment was</p> <p>21 filed by the Illinois plaintiff, this insurance</p> <p>22 trust, correct?</p> <p>23 A Correct.</p> <p>24 Q And that was denied?</p> <p>25 A Correct.</p>
<p style="text-align: right;">Page 36</p> <p>1 Q And on the strength of that, the estate</p> <p>2 moved for summary judgment, correct?</p> <p>3 A And that was denied.</p> <p>4 Q And part of the evidence that was</p> <p>5 submitted contrary to your claim was an affidavit of</p> <p>6 Mr. Spallina?</p> <p>7 A Correct.</p> <p>8 Q And it's Mr. Spallina's testimony, if it</p> <p>9 was believed, that Simon Bernstein discussed the</p> <p>10 terms of the 1995 insurance trust and Simon</p> <p>11 Bernstein intended that trust to give all the money,</p> <p>12 correct?</p> <p>13 A That was his testimony per his affidavit.</p> <p>14 Q And if you take the litigation all the way</p> <p>15 to the end, there's a chance that you would lose and</p> <p>16 end up with nothing?</p> <p>17 A There's always that chance; hence we</p> <p>18 settled.</p> <p>19 Q If Mr. Spallina's affidavit is believed by</p> <p>20 the judge, that would be strong evidence against</p> <p>21 your position?</p> <p>22 A It would be and that would be one of the</p> <p>23 key points, is that believable or not.</p> <p>24 Q And if you hire Mr. Stamos at a 40 percent</p> <p>25 contingency, my math on a million seven says that</p>	<p style="text-align: right;">Page 37</p> <p>1 the fee is going to be about \$680,000?</p> <p>2 A Correct.</p> <p>3 Q A million dollars minus 680, \$700,000 fee</p> <p>4 and some costs, I assume, your best case is a</p> <p>5 million?</p> <p>6 A Under a contingency arrangement, that's</p> <p>7 the math I did too.</p> <p>8 Q Because someone has to pay for you,</p> <p>9 Mr. O'Connell's time to fly to Chicago, sit through</p> <p>10 a trial, however long it takes, to interact with Mr.</p> <p>11 Stamos?</p> <p>12 A Correct.</p> <p>13 Q And you still have to pay back</p> <p>14 Mr. Stansbury for whatever he's incurred?</p> <p>15 A Yes.</p> <p>16 Q And in your view, the settlement is in the</p> <p>17 best interest taking everything into account</p> <p>18 including all the questions you were asked by all</p> <p>19 the parties?</p> <p>20 A Yes.</p> <p>21 MR. ROSE: Nothing further.</p> <p>22 MR. BERNSTEIN: Can I ask more after that?</p> <p>23 THE COURT: No. It goes back to Ms.</p> <p>24 Crispin.</p> <p>25 MR. BERNSTEIN: Do I get another shot at</p>

<p style="text-align: right;">Page 38</p> <p>1 that?</p> <p>2 THE COURT: No.</p> <p>3 MS. CRISPIN: I have nothing further for</p> <p>4 this witness.</p> <p>5 THE COURT: Okay. You may step down.</p> <p>6 Everybody has a copy of the proposed</p> <p>7 settlement, correct, the motion?</p> <p>8 Mr. Elliot, did you want these two orders</p> <p>9 in evidence? You didn't actually --</p> <p>10 MR. BERNSTEIN: I do.</p> <p>11 THE COURT: I will mark them as a</p> <p>12 composite exhibit for you.</p> <p>13 MR. BERNSTEIN: Thank you. So that would</p> <p>14 be 1?</p> <p>15 THE COURT: Elliot's Composite Exhibit 1.</p> <p>16 MR. BERNSTEIN: Okay. Thank you.</p> <p>17 THE COURT: You're welcome.</p> <p>18 All right. Next witness?</p> <p>19 MS. CRISPIN: Mr. Stamos, please.</p> <p>20 THE COURT: All right. Let me call.</p> <p>21 Mr. Stamos? Hello?</p> <p>22 MR. SIMON: This is Adam Simon.</p> <p>23 THE COURT: All right.</p> <p>24 MR. ROSE: I believe he's one of the</p> <p>25 counsel in --</p>	<p style="text-align: right;">Page 39</p> <p>1 THE COURT: I don't know.</p> <p>2 MS. CRISPIN: That's not Mr. Stamos.</p> <p>3 THE COURT: I know. Is Mr. Stamos</p> <p>4 available? He's not on court call. Is anyone</p> <p>5 calling Mr. Simon?</p> <p>6 MR. SIMON: Mr. Simon is on the phone.</p> <p>7 THE COURT: I know. I'm not sure why.</p> <p>8 MR. ROSE: I think he's counsel of record</p> <p>9 in the Illinois case for the trust.</p> <p>10 MR. SIMON: I'm just listening.</p> <p>11 MR. BERNSTEIN: And I might want to ask</p> <p>12 him questions since he's there.</p> <p>13 MS. CRISPIN: Judge, can I use my phone to</p> <p>14 call?</p> <p>15 THE COURT: Yes.</p> <p>16 Go ahead. Ask some questions,</p> <p>17 Mr. Bernstein.</p> <p>18 Do you have a notary public there? Did</p> <p>19 you arrange to have a notary public for him if</p> <p>20 you wish to call him as a witness?</p> <p>21 MR. BERNSTEIN: I'm not his lawyer.</p> <p>22 THE COURT: I know, but if you wish to</p> <p>23 call a witness by telephone, you need to</p> <p>24 arrange that they have a notary public so they</p> <p>25 can be sworn in.</p>
<p style="text-align: right;">Page 40</p> <p>1 MR. BERNSTEIN: He's the counsel.</p> <p>2 THE COURT: I know, but he still needs a</p> <p>3 notary public because he's not in front of me</p> <p>4 to swear him in.</p> <p>5 MR. BERNSTEIN: So, no. I didn't know</p> <p>6 that he was going to be here.</p> <p>7 THE COURT: All right. Next witness, Ms.</p> <p>8 Crispin? Oh, you're on the phone. Sorry.</p> <p>9 MS. CRISPIN: Your Honor, I don't have</p> <p>10 anyone after Mr. Stamos.</p> <p>11 THE COURT: Any witnesses, Mr. Rose?</p> <p>12 MR. ROSE: No.</p> <p>13 THE COURT: Any witnesses, Mr. Feaman?</p> <p>14 MR. FEAMAN: No, Your Honor.</p> <p>15 THE COURT: Call your first witness, Mr.</p> <p>16 Elliot.</p> <p>17 MR. BERNSTEIN: I'm waiting for</p> <p>18 Mr. Stamos.</p> <p>19 THE COURT: No. We're waiting and for</p> <p>20 court efficiency, call your first witness.</p> <p>21 MR. BERNSTEIN: Brian O'Connell.</p> <p>22 THE COURT: You can call him for about</p> <p>23 eight minutes.</p> <p>24 MR. O'CONNELL: He's calling in now, Your</p> <p>25 Honor.</p>	<p style="text-align: right;">Page 41</p> <p>1 THE COURT: All right. He'll call in to</p> <p>2 court call. In the meantime, go ahead and get</p> <p>3 back on the stand. I told him he has about</p> <p>4 eight minutes and we'll have Mr. Stamos -- if</p> <p>5 you're on the phone with Mr. Stamos, you can</p> <p>6 tell him to be ready by ten to three.</p> <p>7 MS. CRISPIN: Okay.</p> <p>8 (Mr. O'Connell resumed the stand.)</p> <p>9 THE COURT: You're still under oath.</p> <p>10 Go ahead. It's all you.</p> <p>11 DIRECT EXAMINATION</p> <p>12 BY MR. BERNSTEIN:</p> <p>13 Q Are you aware of a 2000 insurance trust</p> <p>14 that was executed that the policy in question has</p> <p>15 been assigned to in the year 2000?</p> <p>16 MS. CRISPIN: Asked and answered.</p> <p>17 THE COURT: Sustained. You already asked</p> <p>18 him that.</p> <p>19 MR. BERNSTEIN: No, a 2000 insurance</p> <p>20 policy.</p> <p>21 THE COURT: Oh, overruled. Thank you.</p> <p>22 BY MR. BERNSTEIN:</p> <p>23 Q That supersedes a 1995 trust?</p> <p>24 A You'd have to show me a document.</p> <p>25 Q Okay. Here.</p>

<p style="text-align: right;">Page 42</p> <p>1 MR. STAMOS: Hello?</p> <p>2 THE COURT: Mr. Stamos?</p> <p>3 MR. STAMOS: Yes, ma'am.</p> <p>4 THE COURT: Okay. This is the judge. I'm</p> <p>5 going to ask you to just hang on while we</p> <p>6 complete the testimony of another witness.</p> <p>7 MR. STAMOS: Okay. How long will that be,</p> <p>8 how long do you think?</p> <p>9 THE COURT: About eight minutes.</p> <p>10 MR. STAMOS: All right. I will step away</p> <p>11 from my desk for five minutes and I'll pick up</p> <p>12 then, okay?</p> <p>13 THE COURT: Sounds good.</p> <p>14 MR. STAMOS: Thank you.</p> <p>15 BY MR. BERNSTEIN:</p> <p>16 Q Mr. O'Connell, have you seen that trust</p> <p>17 before?</p> <p>18 A Sitting here today, I don't recall it but</p> <p>19 it's possible in the volume of documents in this</p> <p>20 case that I could have, but I couldn't tell you</p> <p>21 definitively.</p> <p>22 Q Do you notice that it's Bates stamped by</p> <p>23 Tescher & Spallina, the former attorneys who</p> <p>24 committed forgery and fraud in this matter that you</p> <p>25 replaced and those documents were transferred to you</p>	<p style="text-align: right;">Page 43</p> <p>1 by Ben Brown and you actually argued -- can you</p> <p>2 answer that question?</p> <p>3 A I see Bates stamps at the bottom.</p> <p>4 Q So these would be part of your record,</p> <p>5 correct?</p> <p>6 A I'm not sure. I'd have to look on my</p> <p>7 record to be sure.</p> <p>8 Q And you're aware that the state has argued</p> <p>9 in Illinois Federal Court that this 2000 trust</p> <p>10 supercedes the '95 trust, thereby rendering it moot,</p> <p>11 the '95 trust you're entering into settlement with,</p> <p>12 is that correct?</p> <p>13 A I'd have to see some more documents. If</p> <p>14 you're talking about -- has there been something in</p> <p>15 writing submitted taking that position?</p> <p>16 Q Yeah. Your summary judgment arguments</p> <p>17 rely on this 2000 trust superseding -- in that 2000</p> <p>18 trust, can you read from Page 1, the trust, the</p> <p>19 first paragraph and the Number 1?</p> <p>20 MR. ROSE: Objection. The document is not</p> <p>21 in evidence, hearsay.</p> <p>22 THE COURT: Sustained.</p> <p>23 MR. BERNSTEIN: Can I submit it as</p> <p>24 evidence?</p> <p>25 THE COURT: Objections?</p>
<p style="text-align: right;">Page 44</p> <p>1 MR. ROSE: Authenticity.</p> <p>2 THE COURT: Sustained.</p> <p>3 MR. BERNSTEIN: It's Bates stamped.</p> <p>4 THE COURT: It doesn't matter. Sustained.</p> <p>5 MR. BERNSTEIN: It's been submitted into</p> <p>6 the record.</p> <p>7 THE COURT: Sustained.</p> <p>8 MR. BERNSTEIN: We can't enter this?</p> <p>9 THE COURT: No. I sustained the</p> <p>10 objection. It's an evidentiary objection.</p> <p>11 MR. BERNSTEIN: Okay. Am I allowed to ask</p> <p>12 him questions about this document?</p> <p>13 THE COURT: If you ask a question and</p> <p>14 there's an objection, I'll entertain it. I</p> <p>15 can't tell you how to proceed.</p> <p>16 MR. BERNSTEIN: Okay.</p> <p>17 BY MR. BERNSTEIN:</p> <p>18 Q Can you read the first paragraph and</p> <p>19 Number 1 of that document?</p> <p>20 MR. ROSE: Objection, hearsay. The</p> <p>21 document is not in evidence.</p> <p>22 THE COURT: Sustained.</p> <p>23 MR. BERNSTEIN: Okay.</p> <p>24 BY MR. BERNSTEIN:</p> <p>25 Q You argued in Illinois in the federal</p>	<p style="text-align: right;">Page 45</p> <p>1 action on behalf of the estate that this 2000</p> <p>2 document superseded the 1995 trust?</p> <p>3 MS. CRISPIN: Asked and answered. He said</p> <p>4 he needed further documentation to see it in</p> <p>5 writing.</p> <p>6 THE COURT: Sustained.</p> <p>7 BY MR. BERNSTEIN:</p> <p>8 Q In a recent similar case to this with</p> <p>9 allegations of fraud in the Bivens case, are you</p> <p>10 aware of the Oliver Bivens case?</p> <p>11 MR. ROSE: Objection, relevance,</p> <p>12 materiality.</p> <p>13 THE COURT: Sustained.</p> <p>14 BY MR. BERNSTEIN:</p> <p>15 Q Have you been charged with breach of</p> <p>16 fiduciary duties and negligence recently and found</p> <p>17 guilty by a jury of your peers in a federal court?</p> <p>18 MR. ROSE: Objection, relevance.</p> <p>19 MS. CRISPIN: Argumentative.</p> <p>20 THE COURT: I have to overrule those</p> <p>21 objections because it would go to bias.</p> <p>22 MS. CRISPIN: Your Honor, he used the word</p> <p>23 charged. That was my problem for the</p> <p>24 argumentative.</p> <p>25 THE COURT: Okay. With regard to the word</p>

<p style="text-align: right;">Page 46</p> <p>1 charged, sustained.</p> <p>2 BY MR. BERNSTEIN:</p> <p>3 Q Is there a verdict that claims you</p> <p>4 breached fiduciary duties and negligence in the</p> <p>5 handling of an estate?</p> <p>6 A There was a verdict but the matter has</p> <p>7 been settled and the case has been dismissed with</p> <p>8 prejudice pursuant to a confidential settlement.</p> <p>9 Q Who was your attorney in that settlement?</p> <p>10 A Wicker, Smith.</p> <p>11 Q Was it Alan Rose?</p> <p>12 A Alan Rose came in after the verdict to</p> <p>13 represent the law firm while Ms. Crispin and I were</p> <p>14 represented by the Wicker, Smith firm as we had been</p> <p>15 from the inception of the case.</p> <p>16 Q So the verdict stood?</p> <p>17 A No.</p> <p>18 MR. STAMOS: Hello ?</p> <p>19 THE COURT: Hang out for me, Mr. Stamos.</p> <p>20 BY MR. BERNSTEIN:</p> <p>21 Q So there was a jury verdict that you had</p> <p>22 breached and committed negligence with Ashley</p> <p>23 Crispin, correct?</p> <p>24 MR. ROSE: Objection, relevance and</p> <p>25 repetitive.</p>	<p style="text-align: right;">Page 47</p> <p>1 THE COURT: Sustained.</p> <p>2 MR. BERNSTEIN: By the way, Your Honor,</p> <p>3 something strange here has occurred. Mr. Rose</p> <p>4 is O'Connell's counsel.</p> <p>5 THE COURT: Excuse me. Do you have a</p> <p>6 question for this witness? You have one</p> <p>7 question left.</p> <p>8 BY MR. BERNSTEIN:</p> <p>9 Q If there is a 2000 trust, would it not be</p> <p>10 a necessary party to any settlement if it deals with</p> <p>11 the same insurance policy?</p> <p>12 A I'm not aware that that trust exists, the</p> <p>13 2000 trust exists.</p> <p>14 Q If it exists? Since I can't enter it into</p> <p>15 evidence.</p> <p>16 A I'd have to review the documents to make</p> <p>17 sure.</p> <p>18 Q But after you reviewed them, if you found</p> <p>19 that it existed, would it be a necessary part to any</p> <p>20 settlement?</p> <p>21 MR. ROSE: Objection, calls for a legal</p> <p>22 conclusion and the facts are that trust and no</p> <p>23 trustee has intervened or sought to do anything</p> <p>24 in the Illinois case so it's an irrelevant</p> <p>25 question.</p>
<p style="text-align: right;">Page 48</p> <p>1 MR. BERNSTEIN: Your Honor, that's really</p> <p>2 relevant because the reason this trust is</p> <p>3 suppressed is because my sister, Pam Scott --</p> <p>4 I'd like to enter another piece of evidence</p> <p>5 where they discussed suppressing this and</p> <p>6 hiding it from the court.</p> <p>7 THE COURT: Sustained. Last question.</p> <p>8 BY MR. BERNSTEIN:</p> <p>9 Q When you found out that I was a</p> <p>10 beneficiary of my father's estate and Judge Blakey</p> <p>11 removed me on summary judgment claiming that I was</p> <p>12 not a beneficiary based on res judicata from this</p> <p>13 court, when you found out again and admitted in</p> <p>14 court at the first hearing that I attended with</p> <p>15 Judge Scher here in the courtroom that I was a</p> <p>16 beneficiary, did you notify the federal court that I</p> <p>17 was a beneficiary with standing in my dad's estate?</p> <p>18 MR. ROSE: Objection, relevance,</p> <p>19 argumentative, and I think these issues are the</p> <p>20 ones that were decided by the federal judge in</p> <p>21 Illinois.</p> <p>22 MS. CRISPIN: Objection, compound.</p> <p>23 THE COURT: I'll let him answer the</p> <p>24 question. He either did or he didn't.</p> <p>25 A I guess to answer your question, I'd have</p>	<p style="text-align: right;">Page 49</p> <p>1 to go back and review your intervention and review</p> <p>2 the order and --</p> <p>3 BY MR. BERNSTEIN:</p> <p>4 Q The order is there.</p> <p>5 A It would take some time to do it to say</p> <p>6 whether that would be --</p> <p>7 Q Well, let me ask you a question.</p> <p>8 THE COURT: No, that was it.</p> <p>9 MR. BERNSTEIN: It's the same question.</p> <p>10 THE COURT: Then it's been asked and</p> <p>11 answered.</p> <p>12 MR. BERNSTEIN: Well, let me help him</p> <p>13 answer what he said, Your Honor. Would that be</p> <p>14 okay?</p> <p>15 THE COURT: That would be okay.</p> <p>16 BY MR. BERNSTEIN:</p> <p>17 Q The question is, after a review, if you</p> <p>18 found that I was a beneficiary with standing in the</p> <p>19 estate and the Illinois court was under the</p> <p>20 impression that I was not and had dismissed me,</p> <p>21 would I need to be reinstated as a party in that</p> <p>22 action who would be a party to this settlement?</p> <p>23 A That would be between you and the Illinois</p> <p>24 federal court using that hypothetical.</p> <p>25 THE COURT: Okay. That about does it for</p>

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1 that. Follow up, Ms. Crispin?
 2 MS. CRISPIN: None.
 3 THE COURT: You may step down,
 4 Mr. O'Connell.
 5 We're ready to proceed. Do you have a
 6 notary public there with you, Mr. Stamos?
 7 MR. STAMOS: Yes. It will just take one
 8 second, Your Honor.
 9 THE COURT: Thank you.
 10 MR. STAMOS: She's present. Okay. Shall
 11 we begin?
 12 THE COURT: May I speak with the notary,
 13 please?
 14 MR. STAMOS: Yes.
 15 MS. VASQUEZ: I'm here.
 16 THE COURT: Hello. This is Judge
 17 Rosemarie Scher. What is your name, ma'am?
 18 MS. VASQUEZ: My name Denise Vasquez.
 19 THE COURT: Are you a notary public in the
 20 State of Illinois?
 21 MS. VASQUEZ: Yes, I am.
 22 THE COURT: When does your commission
 23 expire?
 24 MS. VASQUEZ: October 31st, 2021.
 25 THE COURT: In Illinois, do you have a

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1 MR. STAMOS: Thank you.
 2 DIRECT EXAMINATION
 3 BY MS. CRISPIN:
 4 Q Mr. Stamos, can you hear me?
 5 A I can.
 6 Q This is Ashley Crispin. We've met before.
 7 I represent Brian O'Connell. We share a client.
 8 A Yes.
 9 Q And I'm going to be asking you some
 10 questions. Your full name, please?
 11 A James J. Stamos. Middle name is John.
 12 Q And you currently represent who in the
 13 pending litigation Simon Bernstein Irrevocable
 14 Insurance Trust, et al, vs. Heritage Union Life
 15 Insurance Company, et al?
 16 A I represent the estate.
 17 Q And currently the fiduciary position is
 18 held by Mr. O'Connell as personal representative,
 19 correct?
 20 A That's my understanding.
 21 Q And how long have you been representing
 22 the estate in this litigation?
 23 A Since 2015, if I'm correct. I think it
 24 was the summer of 2015.
 25 Q And your primary area of practice?

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1 number? Do you have a commission number?
 2 MS. VASQUEZ: No.
 3 THE COURT: In Florida we do. That's the
 4 only reason I'm asking.
 5 All right. Do you know the gentleman in
 6 front of you?
 7 MS. VASQUEZ: Yes, I do.
 8 THE COURT: Do you know him personally or
 9 has he produced identification?
 10 MS. VASQUEZ: Personally.
 11 THE COURT: All right. Who is the
 12 gentleman in front of you?
 13 MS. VASQUEZ: James Stamos.
 14 THE COURT: All right. Would you please
 15 ask him to raise his right hand?
 16 MS. VASQUEZ: Raise your right hand.
 17 THE COURT: And swear or affirm to tell
 18 the truth?
 19 MS. VASQUEZ: Do you swear or affirm to
 20 tell the truth?
 21 MR. STAMOS: Yes, I do.
 22 THE COURT: Excellent. Ms. Vasquez, thank
 23 you so much for serving the Court.
 24 Mr. Stamos, you are on. Ms. Crispin will
 25 begin her questioning.

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1 A I'm a litigator. I do principally
 2 professional liability defense as well as commercial
 3 litigation.
 4 Q And you're aware of the settlement
 5 agreement that was reached between the parties in
 6 this matter, correct?
 7 A Yes, I am.
 8 Q And you reviewed the settlement agreement
 9 before it was executed by Mr. O'Connell, correct?
 10 A Yes. I think I might have suggested some
 11 changes.
 12 Q But you reviewed the final version before
 13 Mr. O'Connell executed it, correct?
 14 A Yes, I did.
 15 Q And it's contingent on this Court, meaning
 16 the Probate Court in Palm Beach County's approval,
 17 correct?
 18 A That's my understanding.
 19 Q Now, without drawing on your
 20 attorney-client communications with Mr. O'Connell,
 21 are you able to give the Court an analysis of the
 22 settlement?
 23 A I think I can without breaching
 24 confidentiality.
 25 Q Okay. Can you do that, please?

<p style="text-align: right;">Page 54</p> <p>1 A Let me ask you something. Tell me exactly 2 what you'd like me to talk about. I'm not sure 3 whether you want me to talk about whether it's 4 reasonable or its terms. 5 Q Exactly, if it's reasonable. The Court 6 has the terms in front of it so now we're just 7 talking about whether or not it was a reasonable 8 settlement. 9 A Yes. I think it is reasonable. I base 10 that on, and I don't think this is an 11 attorney-client or work product assessment, I base 12 it on a number of factors. The first being that I 13 believe that it's a case that we would be able to 14 win, that we should be able to win, but I thought 15 that there were a number of issues that could make 16 that challenging. One was that the Court had not 17 granted summary judgment for us when I thought the 18 Court should have which made me think that perhaps 19 his view of the facts would be slightly different 20 than our view of the facts. 21 I also thought that our winning the case 22 was really going to come down to a credibility 23 question and while I thought we had a much better 24 credibility argument, nonetheless the judge was 25 going to have to look at the witnesses and make</p>	<p style="text-align: right;">Page 55</p> <p>1 decisions about whether he was going to believe the 2 witnesses for the plaintiff in terms of why they 3 thought the trust was -- frankly why they thought 4 the trust existed and was entitled to money. And I 5 thought the fact that there were basically the same 6 people on both sides, I mean I realize they're 7 different, they're the parents and they're the kids, 8 might make it less certain that the judge would be 9 as precise as he might otherwise be in deciding 10 exactly who should win. 11 I thought that in light of the fact that 12 if we lost, the estate would have no money from the 13 trust and I thought the estate probably would want 14 to have some money, that a compromise of this nature 15 was reasonable. 16 MS. CRISPIN: Nothing further. 17 THE COURT: Questions? 18 MR. ROSE: I'll reserve. For now I don't 19 have any questions. 20 THE COURT: Mr. Feaman? 21 CROSS EXAMINATION 22 BY MR. FEAMAN: 23 Q Mr. Stamos, this is Peter Feaman. Do you 24 recall that I represent Bill Stansbury? 25 A I do. I recall that well.</p>
<p style="text-align: right;">Page 56</p> <p>1 Q Do you recall that it was our office that 2 first brought you into the case? 3 MR. ROSE: Objection, relevance. 4 THE COURT: Sustained. 5 BY MR. FEAMAN: 6 Q Mr. Stamos, you determined early on in 7 your representation of the estate that the estate 8 had a very meritorious claim, didn't you? 9 A Yes, I did. 10 Q And there was a telephonic mediation in 11 May. Did you attend? 12 A I did. 13 Q And who attended at that mediation? 14 MR. ROSE: Objection for the same reasons. 15 You limited his questioning since he has no 16 position. 17 THE COURT: Sustained. 18 BY MR. FEAMAN: 19 Q And did that get the ball rolling in 20 earnest towards settlement? 21 MR. ROSE: Same objection. 22 MS. CRISPIN: And to the extent it calls 23 for confidential mediation. 24 THE COURT: Sustained. 25</p>	<p style="text-align: right;">Page 57</p> <p>1 BY MR. FEAMAN: 2 Q Did the most serious settlement 3 discussions take place in June of this year? 4 MR. ROSE: Same objection. 5 THE COURT: Sustained. I don't see the 6 relevance to this hearing. 7 BY MR. FEAMAN: 8 Q Do you recall whether I was involved at 9 all in those settlement discussions? 10 MR. ROSE: Same objection. 11 THE COURT: What is the relevance for this 12 hearing, Mr. Feaman? 13 MR. FEAMAN: For this hearing? 14 THE COURT: For this hearing. 15 MR. FEAMAN: As to whether -- while we're 16 taking no position, I want to set the record 17 that we were not involved. 18 THE COURT: Okay. You've already done 19 that. Thank you. Any other questions? 20 BY MR. FEAMAN: 21 Q Was Ted Bernstein involved in the 22 settlement discussions as the plaintiff in the 23 Chicago litigation or as the trustee for the trust 24 as the only monetary beneficiary of this estate? 25 MR. ROSE: Same objection. It sounds like</p>

<p style="text-align: right;">Page 58</p> <p>1 it's a question leading toward a position.</p> <p>2 THE COURT: Could you ask the question</p> <p>3 again, Mr. Feaman?</p> <p>4 BY MR. FEAMAN:</p> <p>5 Q Was Ted Bernstein involved in settlement</p> <p>6 negotiations as a plaintiff in the Chicago</p> <p>7 litigation that you're counsel involved in or as</p> <p>8 trustee for the trust that's the only monetary</p> <p>9 beneficiary of this estate?</p> <p>10 THE COURT: I am sustaining the objection</p> <p>11 because, again, you've taken no position in</p> <p>12 approving the settlement and I know this goes</p> <p>13 to another issue you have that's not in front</p> <p>14 of the Court today.</p> <p>15 MR. BERNSTEIN: Can I ask that same</p> <p>16 question?</p> <p>17 THE COURT: No, you can't. It's not in</p> <p>18 front of the Court today.</p> <p>19 BY MR. FEAMAN:</p> <p>20 Q My last question, Mr. Stamos, is do you</p> <p>21 have an opinion as to what the probability of</p> <p>22 success by the estate would have been if you had</p> <p>23 gone to trial?</p> <p>24 A Well, my judgment was that we were likely</p> <p>25 to win the case. I felt that we were likely to win</p>	<p style="text-align: right;">Page 59</p> <p>1 the case with the caveat that I described earlier.</p> <p>2 MR. FEAMAN: Thank you. No further</p> <p>3 questions.</p> <p>4 THE COURT: Mr. Elliot?</p> <p>5 CROSS EXAMINATION</p> <p>6 BY MR. BERNSTEIN:</p> <p>7 Q Hi, Mr. Stamos. Has Judge Blakey</p> <p>8 adjudicated this settlement yet?</p> <p>9 A Not -- candidly, I don't recall the exact</p> <p>10 procedural posture at this moment. I know it's been</p> <p>11 brought before him, I know he's aware that this</p> <p>12 hearing has to take place. As to what he has ruled</p> <p>13 on it, I don't recall where it stands with him.</p> <p>14 Q Okay. Was I, Elliot Bernstein, at any</p> <p>15 settlement negotiations you're aware of?</p> <p>16 A I don't know the answer to that.</p> <p>17 Q Okay. Is it claimed that I'm a</p> <p>18 beneficiary of the insurance policy?</p> <p>19 A I'm sorry, state that again. I couldn't</p> <p>20 hear you.</p> <p>21 Q Is it claimed by the plaintiffs that I'm a</p> <p>22 beneficiary of the insurance policy?</p> <p>23 A That wasn't how I understood the claim. I</p> <p>24 understood that they were attempting to prove that a</p> <p>25 particular trust was the beneficiary of the</p>
<p style="text-align: right;">Page 60</p> <p>1 insurance policy.</p> <p>2 Q Okay. Have you ever seen that particular</p> <p>3 trust, an executed copy of the 1995 trust that's at</p> <p>4 the heart of this?</p> <p>5 A No.</p> <p>6 Q Okay. So then would you be able to</p> <p>7 determine in this settlement that Ted Bernstein is</p> <p>8 the trustee of the '95 trust?</p> <p>9 A I don't know the answer to that question.</p> <p>10 Q Did you depose Ted Bernstein on these very</p> <p>11 questions in the Illinois litigation?</p> <p>12 A Yeah. The position, as I understand it,</p> <p>13 was that the trust -- there was no evidence that the</p> <p>14 trust was ever executed and there was no clarity</p> <p>15 because there were a couple of drafts that were</p> <p>16 being presented as being exemplars of what the trust</p> <p>17 was supposed to accomplish. But my recollection is</p> <p>18 there's an inconsistency as to who the trustee would</p> <p>19 be. I never saw any document that assigned anyone</p> <p>20 as the trustee because I never saw an executed</p> <p>21 document.</p> <p>22 Q So then it couldn't be certain that Ted</p> <p>23 Bernstein is the trustee of the trust that nobody</p> <p>24 knows exists?</p> <p>25 MR. ROSE: Objection, relevancy, not</p>	<p style="text-align: right;">Page 61</p> <p>1 before the Court today.</p> <p>2 A Our position was that there was no trust.</p> <p>3 BY MR. BERNSTEIN:</p> <p>4 Q Okay. And you understand that this</p> <p>5 settlement is being entered into between the estate</p> <p>6 and Ted Bernstein as trustee in fact of the 1995</p> <p>7 trust?</p> <p>8 A My understanding is that is a function of</p> <p>9 the fact that we are compromising and one of the</p> <p>10 compromises is to make that recognition, so it's a</p> <p>11 compromise of a factual issue.</p> <p>12 THE COURT: All right. We need to wrap</p> <p>13 this up. One last question.</p> <p>14 BY MR. BERNSTEIN:</p> <p>15 Q Mr. Stamos, are you aware of the 2000</p> <p>16 insurance trust that this policy was assigned to?</p> <p>17 A I recall there being a trust that was</p> <p>18 entitled a 2000 trust. I have to tell you I'm a</p> <p>19 little hazy as I'm sitting here as to what exactly</p> <p>20 the function it had in the case. I know that it was</p> <p>21 never promoted by anyone as a trust that was</p> <p>22 entitled to the funds from the policy.</p> <p>23 THE COURT: Last question. That was it.</p> <p>24 MR. ROSE: May I have my one question?</p> <p>25 THE COURT: Yes.</p>

<p style="text-align: right;">Page 62</p> <p>1 CROSS EXAMINATION</p> <p>2 BY MR. ROSE:</p> <p>3 Q Mr. Stamos, are you aware that the</p> <p>4 documents that existed in the office of the</p> <p>5 insurance company that issued this policy</p> <p>6 continuously reflected the sole contingent</p> <p>7 beneficiary being this 1995 life insurance trust?</p> <p>8 A I'm sorry, who's asking the question just</p> <p>9 so I know?</p> <p>10 Q Alan Rose.</p> <p>11 A Mr. Rose, if you're asking what was in the</p> <p>12 records of the issuing company, candidly I don't</p> <p>13 recall. I remember there was some changes, a</p> <p>14 beneficiary change form as to who it was ultimately.</p> <p>15 I just don't remember. I'm just blanking as to what</p> <p>16 actually was contained in the file.</p> <p>17 MR. ROSE: Nothing further, Your Honor.</p> <p>18 THE COURT: All right. Did you all give</p> <p>19 me the original -- I don't think so -- of the</p> <p>20 verified motion for approval of settlement?</p> <p>21 I'm just making sure I don't have an original</p> <p>22 here. It's double sided pages so I don't think</p> <p>23 so.</p> <p>24 MS. CRISPIN: I don't believe so, Your</p> <p>25 Honor.</p>	<p style="text-align: right;">Page 63</p> <p>1 THE COURT: I don't believe so either.</p> <p>2 I'm just making sure. All right. Any other</p> <p>3 witnesses, Ms. Crispin?</p> <p>4 MR. STAMOS: Am I excused, Your Honor?</p> <p>5 THE COURT: Yes, you are excused. Thank</p> <p>6 you very much, Mr. Stamos. I'm disconnecting</p> <p>7 you.</p> <p>8 MR. BERNSTEIN: Can I call him as a</p> <p>9 witness?</p> <p>10 THE COURT: No. The hearing is ending.</p> <p>11 MR. BERNSTEIN: I didn't get a chance --</p> <p>12 it's ending now?</p> <p>13 THE COURT: It is.</p> <p>14 MR. BERNSTEIN: Okey dokey.</p> <p>15 THE COURT: Do you have a proposed order?</p> <p>16 MS. CRISPIN: Your Honor, I have a blank</p> <p>17 order here. I can fill it out here or I can</p> <p>18 hand Your Honor the blank one.</p> <p>19 THE COURT: Okay. Thank you. I'll take</p> <p>20 the blank one. Thank you very much.</p> <p>21 MS. CRISPIN: Your Honor, I'm just going</p> <p>22 to hand one copy because I know Your Honor will</p> <p>23 furnish it via email.</p> <p>24 THE COURT: Absolutely. All right,</p> <p>25 everyone. I have as our next hearing</p>
<p style="text-align: right;">Page 64</p> <p>1 November 15th. I'm just saying just for the</p> <p>2 record.</p> <p>3 MR. FEAMAN: My office gave me an order</p> <p>4 setting a hearing for November 9th at 1:30.</p> <p>5 THE COURT: Which hearing is that? Isn't</p> <p>6 that the hearing I denied already?</p> <p>7 MR. FEAMAN: No. It's on Mr. Stansbury's</p> <p>8 request for court intervention under Florida</p> <p>9 Statute 736.0706 filed back on February 15th of</p> <p>10 2017, and in communications of my paralegal</p> <p>11 with your assistant, apparently it gave rise to</p> <p>12 her preparing an order setting that hearing for</p> <p>13 November 9th. She created it and gave it to me</p> <p>14 to confirm that there's a hearing on that date.</p> <p>15 THE COURT: No, and you know what?</p> <p>16 MR. FEAMAN: I didn't have any</p> <p>17 conversation with your office.</p> <p>18 THE COURT: I understand that and actually</p> <p>19 it's not a complete shock to me. That's why I</p> <p>20 asked that. I need to look at that. My</p> <p>21 assistant is out for six weeks. So if you will</p> <p>22 hand me that, I need to look at that because in</p> <p>23 my world, I didn't think that was an issue.</p> <p>24 MR. ROSE: Just for the record, Your</p> <p>25 Honor, this is the motion where he's asking</p>	<p style="text-align: right;">Page 65</p> <p>1 you --</p> <p>2 THE COURT: I thought I denied it. I</p> <p>3 thought I entered an order denying it.</p> <p>4 MR. ROSE: If you haven't, we ask you to.</p> <p>5 THE COURT: Let me look at it and,</p> <p>6 Mr. Feaman, I'm sure at some point my assistant</p> <p>7 did a request for this, but like I said, she</p> <p>8 just had surgery. So let me take this, let me</p> <p>9 take the other blank order. I have a phone</p> <p>10 conference. Thank you very much.</p> <p>11 MR. BERNSTEIN: Your Honor, I just want</p> <p>12 the record to reflect that I wasn't given a</p> <p>13 fair opportunity to be heard. I made no</p> <p>14 opening statement, was not allowed to call</p> <p>15 witnesses and there were no pretrial hearing</p> <p>16 procedures ordered by the Court or even</p> <p>17 followed by the Court.</p> <p>18 THE COURT: So noted. Thank you so much.</p> <p>19 Feel better.</p> <p>20 MR. ROSE: Thank you, Your Honor.</p> <p>21 (The hearing was concluded.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

STATE OF FLORIDA
COUNTY OF PALM BEACH

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