

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.

/

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

DATE: OCTOBER 19, 2017

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

	Page 2		Page 3
1	APPEARING ON BEHALF OF CLAIMANT WILLIAM STANSBURY:	1	
2	Peter Feaman, Esq.	2	I N D E X
	PETER M. FEAMAN, P.A.	3	
3	3695 Boynton Beach Boulevard, Suite 9	4	WITNESSES:
	Boynton Beach, Florida, 33436	5	BRIAN O'CONNELL DIRECT CROSS
4		6	By Ms. Crispin 9
5	APPEARING ON BEHALF OF TRUSTEE TED BERNSTEIN:	7	By Mr. Feaman 18
6	Alan B. Rose, Esq.	8	By Mr. Bernstein 24
	PAGE, MRACHEK, FITZGERALD & ROSE, P.A.	9	By Mr. Rose 35
7	505 South Flagler Drive, Suite 600	10	
	West Palm Beach, Florida 33401	11	BRIAN O'CONNELL
8		12	By Mr. Bernstein 41
9	APPEARING ON BEHALF OF PERSONAL REPRESENTATIVE OF	13	
	THE ESTATE:	14	JAMES STAMOS
10		15	By Ms. Crispin 52
11	Brian M. O'Connell, Esq.	16	By Mr. Feaman 55
	Ashley Crispin Ackal, Esq.	17	By Mr. Bernstein 59
12	CIKLIN, LUBITZ & O'CONNELL	18	By Mr. Rose 62
	515 North Flagler Drive, 20th Floor	19	
13	West Palm Beach, Florida 33401	20	
14		21	
15	ELLIOT BERNSTEIN, Pro Se	22	
16		23	
17	---	24	
18	BE IT REMEMBERED, that the following testimony	25	
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	---		
25			

	Page 4		Page 5
1	THE COURT: We have a court call	1	MR. FEAMAN: Peter Feaman on behalf of
2	appearance. Let's see. We have Mr. Stamos on	2	William Stansbury, Claimant.
3	court call but we'll call him when we're ready	3	THE COURT: Thank you very much.
4	for him to testify.	4	Mr. Elliot?
5	Appearances for the record, please.	5	MR. BERNSTEIN: Elliot Bernstein, pro se.
6	MS. CRISPIN: Your Honor, Ashley Crispin	6	Your Honor, can I have my wife sit next to me?
7	on behalf of Brian O'Connell, the Personal	7	I have cough syncope and I faint and fall.
8	Representative of the Estate of Simon	8	She's been next to me 24 hours a day for three
9	Bernstein.	9	months. It's a medical condition that I've
10	THE COURT: Thank you.	10	got.
11	MR. ROSE: Alan Rose, Your Honor, on	11	THE COURT: Yes. That's fine.
12	behalf of Ted Bernstein as Trustee. The only	12	MR. BERNSTEIN: It isn't fine.
13	thing I would -- there might have been another	13	THE COURT: No. I didn't mean to
14	beneficiary that was going to be participating	14	insinuate your condition was fine at all.
15	in court call. I'm not sure. They called this	15	All right. Are we ready to proceed? This
16	morning to see if they could. It was too late	16	is Mr. O'Connell's motion.
17	so they were checking with court call.	17	MS. CRISPIN: Yes, Your Honor, we're ready
18	THE COURT: I didn't get a notification	18	to proceed.
19	but I can call. We'll have to disconnect if	19	MR. BERNSTEIN: Could I ask about your
20	it's -- well, generally speaking, we don't have	20	jurisdiction to hear this prior to the hearing
21	the witnesses listed until we receive a court	21	or during the hearing?
22	call but we can call and see if the beneficiary	22	THE COURT: No. I have jurisdiction. I
23	is there. I didn't get a notification though.	23	will announce I have jurisdiction to hear this.
24	we have someone else appearing. I'm not sure	24	So we'll continue. Thank you.
25	who that is.	25	MS. CRISPIN: Your Honor, I'll call Mr.

<p>1 O'Connell to the stand.</p> <p>2 MR. FEAMAN: If it please the Court, I'd</p> <p>3 just like to put a statement on the record if I</p> <p>4 could before we actually begin the testimony.</p> <p>5 THE COURT: Yes. Mr. O'Connell -- do you</p> <p>6 mind if he sits there?</p> <p>7 MR. FEAMAN: No, not at all.</p> <p>8 On behalf of Mr. Stansbury, Your Honor, we</p> <p>9 just -- even though you have already denied our</p> <p>10 motion, our amended motion to specially</p> <p>11 sequence this hearing behind another one, we</p> <p>12 just want to reiterate our position that this</p> <p>13 hearing should not go forward at this time</p> <p>14 until the propriety of Mr. Ted Bernstein's</p> <p>15 position as successor trustee be determined by</p> <p>16 the Court one way or the other. I'm mindful</p> <p>17 that Your Honor has already denied that request</p> <p>18 but I wanted to put it on the record so there</p> <p>19 wouldn't be any construction of waiver or</p> <p>20 anything like that.</p> <p>21 THE COURT: Fair enough.</p> <p>22 MR. BERNSTEIN: Your Honor, could I put</p> <p>23 something on the record? We were told that my</p> <p>24 two adult children were going to be notified of</p> <p>25 this hearing as necessary parties by Mr. Rose.</p>	Page 6	Page 7
<p>1 documents or trusts regarding that.</p> <p>2 THE COURT: All right. That is so noted.</p> <p>3 Obviously it's a public court file. They can</p> <p>4 get the -- I don't have a notice of appearance</p> <p>5 but --</p> <p>6 MR. BERNSTEIN: But she's asking for the</p> <p>7 full records.</p> <p>8 THE COURT: That would be a different</p> <p>9 hearing. Okay. Are we ready to proceed?</p> <p>10 MR. ROSE: Just for the record, I dispute</p> <p>11 what he just said. The only thing I would just</p> <p>12 say, just so you know where we stand, my</p> <p>13 client's position is he's in favor of the</p> <p>14 settlement. I think Mr. Feaman --</p> <p>15 THE COURT: Thank you. I mean thank you</p> <p>16 for your position.</p> <p>17 MR. ROSE: Mr. Feaman, I think his client</p> <p>18 advised us both on several occasions is taking</p> <p>19 no position with regard to settlement. The</p> <p>20 only person objecting is Elliot Bernstein.</p> <p>21 THE COURT: Okay. Thank you.</p> <p>22 All right. You may proceed.</p> <p>23 THEREUPON,</p> <p>24 BRIAN M. O'CONNELL, ESQ.,</p> <p>25 called as a witness in his behalf, having been first</p>	Page 8	Page 9

<p>1 a little over three years, almost three and a half 2 years.</p> <p>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?</p> <p>7 A I'm familiar with that litigation, yes.</p> <p>8 Q Okay. For how long have you been familiar 9 with the litigation?</p> <p>10 A Pretty much since my appointment.</p> <p>11 Q So since June or so of 2014?</p> <p>12 A Yes.</p> <p>13 Q And has the estate entered an appearance 14 in that litigation?</p> <p>15 A It has.</p> <p>16 Q And you have counsel in your role as 17 personal representative?</p> <p>18 A I do.</p> <p>19 Q And who is that?</p> <p>20 A James Stamos.</p> <p>21 Q And has that always been the counsel 22 that's represented the estate and thus you?</p> <p>23 A To my knowledge, yes.</p> <p>24 Q And can you just give me generally what 25 the nature of that litigation is?</p>	<p>Page 10</p> <p>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.</p> <p>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?</p> <p>10 A Oh, absolutely.</p> <p>11 Q And tell me what the position of the 12 insurance trust is to the best of your knowledge as 13 a litigant.</p> <p>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.</p> <p>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?</p> <p>22 A Ted Bernstein.</p> <p>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?</p>
<p>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.</p> <p>4 Q Now, did there come a time when you had 5 made the decision to explore settlement in the case?</p> <p>6 A Correct.</p> <p>7 Q And when was that?</p> <p>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.</p> <p>13 Q And can you take a look at what I've 14 marked as Exhibit 1?</p> <p>15 A Yes.</p> <p>16 Q And is this your motion for approval of 17 the settlement agreement?</p> <p>18 A It is.</p> <p>19 Q And have you signed it and read the facts 20 that are alleged in the motion?</p> <p>21 A I have.</p> <p>22 Q And do you believe that they're true to 23 the best of your knowledge?</p> <p>24 A I do.</p> <p>25 Q Okay. One of the attachments to the</p>	<p>Page 12</p> <p>1 motion is the actual proposed settlement agreement?</p> <p>2 A Correct.</p> <p>3 Q And you signed that agreement, correct?</p> <p>4 A I did.</p> <p>5 Q And is it contingent on this Court's 6 approval?</p> <p>7 A It is.</p> <p>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?</p> <p>11 A I am seeking the Court's approval, yes.</p> <p>12 Q Why?</p> <p>13 A That's a contingency under the agreement.</p> <p>14 Q And why do you believe that the settlement 15 agreement should be approved by this Court?</p> <p>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.</p> <p>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</p>

<p>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?</p> <p>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.</p> <p>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.</p> <p>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</p>	<p>Page 14</p> <p>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.</p> <p>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?</p> <p>19 A Roughly.</p> <p>20 Q Okay. And can you share that with the 21 Court?</p> <p>22 A Well, you have right now a \$708,000 23 recovery, in the way of a settlement.</p> <p>24 Q Okay. And have you computed sort of what 25 that mathematically is?</p>
<p>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.</p> <p>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?</p> <p>8 A Payment of some fees.</p> <p>9 Q Savings of fees or...?</p> <p>10 A Payment of fees being, I guess, 11 eliminated.</p> <p>12 Q Okay.</p> <p>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.</p> <p>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?</p> <p>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</p>	<p>Page 16</p> <p>1 the balance going to him towards fees.</p> <p>2 Q And that would be a best-day scenario?</p> <p>3 A Best day.</p> <p>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?</p> <p>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.</p> <p>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?</p> <p>20 A Correct.</p> <p>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.</p> <p>25 THE COURT: Thank you. So admitted. You</p>

<p>1 may proceed.</p> <p>2 MR. FEAMAN: By the way, Your Honor, by</p> <p>3 not objecting to the admission, I just want to</p> <p>4 make it clear to the Court that agreement</p> <p>5 contemplates a payment to my client, Mr.</p> <p>6 Stansbury, of a certain amount of money.</p> <p>7 Mr. Stansbury does not agree that that amount</p> <p>8 of money is all he would be entitled to.</p> <p>9 MR. BERNSTEIN: And I object to the</p> <p>10 settlement being entered because the parties</p> <p>11 that are named in there aren't all here.</p> <p>12 THE COURT: So noted. So admitted.</p> <p>13 MS. CRISPIN: I have nothing further for</p> <p>14 Mr. O'Connell on direct.</p> <p>15 THE COURT: Mr. Rose?</p> <p>16 MR. ROSE: No questions.</p> <p>17 THE COURT: Mr. Feaman?</p> <p>18 MR. FEAMAN: Just a few, Your Honor.</p> <p>19 MR. ROSE: Can I reserve, Your Honor?</p> <p>20 THE COURT: You may.</p> <p>21 CROSS EXAMINATION</p> <p>22 BY MR. FEAMAN:</p> <p>23 Q Mr. O'Connell, you stated that settlement</p> <p>24 discussions started about six to eight months ago,</p> <p>25 is that correct?</p>	Page 18	<p>1 A In earnest. Again, prior to that, there</p> <p>2 had been some general, call them discussions, but</p> <p>3 things got more serious let's say.</p> <p>4 Q Six or eight months ago from today or from</p> <p>5 when the settlement agreement was signed?</p> <p>6 A Probably from when the settlement</p> <p>7 agreement was entered into.</p> <p>8 Q All right. And, in fact, there was a</p> <p>9 formal mediation by telephone in May of 2017, this</p> <p>10 year, correct?</p> <p>11 A Correct. That was sort of the drive to</p> <p>12 get it across the finish line.</p> <p>13 Q But it didn't settle at the mediation,</p> <p>14 correct?</p> <p>15 A No.</p> <p>16 Q But at that point, things began to really</p> <p>17 ramp up in terms of serious settlement discussions,</p> <p>18 is that correct?</p> <p>19 A That's true.</p> <p>20 Q So that in June of 2017, then is it fair</p> <p>21 to say that you were very close to settling; in</p> <p>22 fact, since you signed this on July 5th, you</p> <p>23 probably had an agreement prepared in June for</p> <p>24 circulation, I would imagine, is that correct?</p> <p>25 MR. ROSE: Objection, relevance.</p>	Page 19
<p>1 MS. CRISPIN: Objection, relevance.</p> <p>2 THE COURT: Sustained.</p> <p>3 MR. FEAMAN: The relevance is I'm laying a</p> <p>4 predicate for when we come back for fees, Your</p> <p>5 Honor.</p> <p>6 THE COURT: It's not relevant for today</p> <p>7 though.</p> <p>8 BY MR. FEAMAN:</p> <p>9 Q With regard to those settlement</p> <p>10 negotiations, Mr. Stansbury in the May, June time</p> <p>11 frame, he was not involved in the negotiations,</p> <p>12 correct?</p> <p>13 A Not to my knowledge.</p> <p>14 Q And, in fact, to your knowledge, I was not</p> <p>15 involved, correct?</p> <p>16 A I don't believe you were, sir.</p> <p>17 Q And to your knowledge, nobody from my</p> <p>18 office was involved, correct?</p> <p>19 A I don't recall anyone from your office</p> <p>20 being involved.</p> <p>21 Q Okay. And you mentioned Ben Brown was the</p> <p>22 first one that intervened, he was allowed by the</p> <p>23 Court. Do you recall that that was actually at the</p> <p>24 behest of Mr. Stansbury's motion, is that correct?</p> <p>25 MR. ROSE: Objection, relevance to the</p>	Page 20	<p>1 issues today.</p> <p>2 THE COURT: Sustained. We're just</p> <p>3 approving the settlement.</p> <p>4 THE WITNESS: Mr. Feaman, I just want --</p> <p>5 with regard to some of the questions about your</p> <p>6 firm's involvement, you and I had discussions</p> <p>7 as the case was evolving about there might be a</p> <p>8 settlement and some generalities like that. So</p> <p>9 I wanted to give a hundred percent. To</p> <p>10 distinguish, you weren't physically say on the</p> <p>11 phone or attending an in-person mediation but I</p> <p>12 know you were --</p> <p>13 BY MR. FEAMAN:</p> <p>14 Q But we were never involved in discussing</p> <p>15 numbers, were we?</p> <p>16 A Not specific numbers, I don't recall that.</p> <p>17 Just more we were trying to settle it, here's what</p> <p>18 was transpiring with the case, and I know</p> <p>19 Mr. Stansbury had some conversation with Mr. Stamos.</p> <p>20 Q Okay. Now, the settlement negotiations,</p> <p>21 when they were in earnest in May and June, was</p> <p>22 Mr. Rose involved in those?</p> <p>23 A I think he was to some extent and I have</p> <p>24 to answer it that way because the telephone</p> <p>25 mediation was a mediation literally where the</p>	Page 21

Page 22	Page 23
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.	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 Q That's fine. And who was Mr. Rose 7 representing? 8 A I'm not sure.	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?
9 MR. ROSE: Objection as to relevance.	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.
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.	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.
14 MR. FEAMAN: Well, we previously raised 15 the issue of conflict, Your Honor.	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.
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.	21 THE COURT: Answer what you can without 22 drawing on any privilege.
20 MR. FEAMAN: Not on the merits of the --	23 THE WITNESS: Sure.
21 THE COURT: Yes, so that will discontinue 22 the questions.	24 A I think it was a good case as in the 25 probabilities were more in favor of the estate, but

Page 24	Page 25
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.	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 MR. FEAMAN: Thank you.	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?
10 THE COURT: Mr. Elliot?	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 --
11 MR. BERNSTEIN: Your Honor, can I stay 12 here? Just so I don't fall up there.	17 MR. BERNSTEIN: I'd like to enter that 18 summary judgment as evidence, please.
13 THE COURT: Absolutely.	19 MS. CRISPIN: I haven't seen it.
14 MR. BERNSTEIN: Thank you.	20 MR. BERNSTEIN: Anybody else need it?
15 CROSS EXAMINATION	21 There is two of them. Can somebody give 22 Brian the copy I gave, maybe his attorney for 23 Brian as a witness?
16 BY MR. BERNSTEIN:	24 THE COURT: No. His attorney right now is 25 reviewing it. Do you have an extra copy for
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?	

Page 26	Page 27
1 Mr. O'Connell?	1 BY MR. BERNSTEIN:
2 MR. BERNSTEIN: If I don't give one to the	2 Q Have you seen this document?
3 judge.	3 A In the past, yes.
4 THE COURT: You're supposed to bring one	4 Q And are you aware that in the second
5 for everybody.	5 summary judgment -- in the first summary judgment,
6 MR. BERNSTEIN: I didn't know how many	6 I'm a party to the action and in the second one, I'm
7 people were here.	7 dismissed from the complaint based on the fact that
8 THE BAILIFF: These are the extra copies.	8 I'm not a beneficiary with standing in my father's
9 MR. BERNSTEIN: So here's one for the	9 estate?
10 judge and I need one.	10 MR. ROSE: Objection, relevance to today.
11 THE COURT: Mr. Elliot, be mindful of your	11 MR. BERNSTEIN: It's all going to be
12 time. I'm keeping track of how long everybody	12 relevant to today's settlement.
13 has spoken. So you have about four more	13 BY MR. BERNSTEIN:
14 minutes.	14 Q Judge Blakey in this, if you go to the
15 MR. BERNSTEIN: What?	15 first order --
16 THE COURT: Yes, you have about four more	16 THE COURT: He's disputing the settlement
17 minutes with this witness. Go ahead, ask your	17 so he gets to talk about --
18 question.	18 BY MR. BERNSTEIN:
19 MR. BERNSTEIN: Okay. He needs one of	19 Q The date is on the top, 3-15-16.
20 these too. That's the second summary judgment.	20 A I see it, yes.
21 Do you need it?	21 Q Do you see on Page 4, the last two
22 THE COURT: I don't know what it is.	22 paragraphs, can you read that?
23 MR. BERNSTEIN: It's a summary judgment in	23 A Does that start, while the above sources?
24 the Illinois court.	24 Q Right.
25 THE COURT: Thank you.	25 A While the above sources do provide some
Page 28	Page 29
1 evidence that the trust was created --	1 that Ted is the trustee?
2 Q Which trust, the 1995 trust?	2 A I'm saying Ted claims to be the trustee.
3 A The '95 trust.	3 Q No. In your pleading, you said you
4 Q Okay. Just to be clear.	4 entered into the settlement with Ted Bernstein as
5 A That evidence is far from dispositive of	5 trustee, a factual assertion, that he was trustee of
6 the issue. In fact, the intervenor has presented	6 a trust, but yet now you're stating there there is
7 argument and evidence casting material doubt on	7 no trust and you're not sure of the terms and one of
8 whether, one, the trust was actually created and,	8 those terms would be Ted Bernstein, is that correct?
9 two, the terms of the trust are as explained by the	9 MR. ROSE: Objection --
10 plaintiffs.	10 THE COURT: Hold on. You know the rules
11 Want me to keep going?	11 if I hear an objection. Mr. Rose?
12 Q Well, let me ask you a real quick	12 MR. ROSE: Objection, argumentative.
13 question. Are you the intervenor?	13 MS. CRISPIN: Join.
14 A No.	14 THE COURT: Sustained.
15 Q You're not?	15 BY MR. BERNSTEIN:
16 A The estate is, not me.	16 Q Okay. Did you argue that the trust was
17 Q So you're representing the estate?	17 actually created?
18 A Yes, me as personal representative, not me	18 A Did the estate argue that it was created?
19 individually. That's what I thought you were	19 Q Yes.
20 asking.	20 A In the summary judgment or in the case?
21 Q So, in fact, the estate has made the	21 Q These are -- this is from the intervenor
22 argument that this trust does not exist?	22 stating that the trust wasn't actually created.
23 A Correct.	23 A That was the legal position we took, ergo
24 Q And there are no terms that are	24 there was a dispute.
25 applicable, so how can you be saying that you know	25 Q And you took the assertion that the terms

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

	Page 34	Page 35
1	MR. ROSE: It's already been --	1 that I was not a beneficiary of my father's estate
2	THE COURT: Overruled. You can answer the	2 with standing?
3	question.	3 A I recall your being dismissed but I'd have
4	A Are you a beneficiary of the tangible	4 to review the --
5	personal property of the estate? Yes.	5 Q Go ahead. It's right there.
6	BY MR. BERNSTEIN:	6 MR. BERNSTEIN: It's the bigger thicker
7	Q Okay. So I'm a beneficiary of the estate	7 judgment, Your Honor, for your edification.
8	with standing?	8 MR. ROSE: I object to relevance.
9	THE COURT: Of tangible personal property.	9 THE COURT: Sustained. Okay. Redirect?
10	BY MR. BERNSTEIN:	10 MR. BERNSTEIN: Your Honor, what just
11	Q Whatever property, I'm a beneficiary,	11 happened? I'm a little slow.
12	correct?	12 THE COURT: I sustained the objection.
13	A You're a beneficiary of the tangible	13 Okay. Mr. Rose?
14	personal property.	14 CROSS EXAMINATION
15	THE COURT: Last question.	15 BY MR. ROSE:
16	MR. BERNSTEIN: I need to finish --	16 Q Mr. O'Connell, is it fair to say that
17	THE COURT: No. Last question,	17 Judge Blakey also denied the estate's motion for
18	Mr. Elliot.	18 summary judgment?
19	MR. BERNSTEIN: This is just --	19 A He did.
20	THE COURT: I'm sorry. What was that?	20 Q The first motion for summary judgment was
21	MR. BERNSTEIN: I'm rushing through.	21 filed by the Illinois plaintiff, this insurance
22	THE COURT: Okay. Last question.	22 trust, correct?
23	BY MR. BERNSTEIN:	23 A Correct.
24	Q Mr. O'Connell, are you aware that Judge	24 Q And that was denied?
25	Blakey dismissed me on summary judgment claiming	25 A Correct.

	Page 36	Page 37
1	Q And on the strength of that, the estate	1 the fee is going to be about \$680,000?
2	moved for summary judgment, correct?	2 A Correct.
3	A And that was denied.	3 Q A million dollars minus 680, \$700,000 fee
4	Q And part of the evidence that was	4 and some costs, I assume, your best case is a
5	submitted contrary to your claim was an affidavit of	5 million?
6	Mr. Spallina?	6 A Under a contingency arrangement, that's
7	A Correct.	7 the math I did too.
8	Q And it's Mr. Spallina's testimony, if it	8 Q Because someone has to pay for you,
9	was believed, that Simon Bernstein discussed the	9 Mr. O'Connell's time to fly to Chicago, sit through
10	terms of the 1995 insurance trust and Simon	10 a trial, however long it takes, to interact with Mr.
11	Bernstein intended that trust to give all the money,	11 Stamos?
12	correct?	12 A Correct.
13	A That was his testimony per his affidavit.	13 Q And you still have to pay back
14	Q And if you take the litigation all the way	14 Mr. Stansbury for whatever he's incurred?
15	to the end, there's a chance that you would lose and	15 A Yes.
16	end up with nothing?	16 Q And in your view, the settlement is in the
17	A There's always that chance; hence we	17 best interest taking everything into account
18	settled.	18 including all the questions you were asked by all
19	Q If Mr. Spallina's affidavit is believed by	19 the parties?
20	the judge, that would be strong evidence against	20 A Yes.
21	your position?	21 MR. ROSE: Nothing further.
22	A It would be and that would be one of the	22 MR. BERNSTEIN: Can I ask more after that?
23	key points, is that believable or not.	23 THE COURT: No. It goes back to Ms.
24	Q And if you hire Mr. Stamos at a 40 percent	24 Crispin.
25	contingency, my math on a million seven says that	25 MR. BERNSTEIN: Do I get another shot at

1 that?
 2 THE COURT: No.
 3 MS. CRISPIN: I have nothing further for
 4 this witness.
 5 THE COURT: Okay. You may step down.
 6 Everybody has a copy of the proposed
 7 settlement, correct, the motion?
 8 Mr. Elliot, did you want these two orders
 9 in evidence? You didn't actually --
 10 MR. BERNSTEIN: I do.
 11 THE COURT: I will mark them as a
 12 composite exhibit for you.
 13 MR. BERNSTEIN: Thank you. So that would
 14 be 1?
 15 THE COURT: Elliot's Composite Exhibit 1.
 16 MR. BERNSTEIN: Okay. Thank you.
 17 THE COURT: You're welcome.
 18 All right. Next witness?
 19 MS. CRISPIN: Mr. Stamos, please.
 20 THE COURT: All right. Let me call.
 21 Mr. Stamos? Hello?
 22 MR. SIMON: This is Adam Simon.
 23 THE COURT: All right.
 24 MR. ROSE: I believe he's one of the
 25 counsel in --

1 THE COURT: I don't know.
 2 MS. CRISPIN: That's not Mr. Stamos.
 3 THE COURT: I know. Is Mr. Stamos
 4 available? He's not on court call. Is anyone
 5 calling Mr. Simon?
 6 MR. SIMON: Mr. Simon is on the phone.
 7 THE COURT: I know. I'm not sure why.
 8 MR. ROSE: I think he's counsel of record
 9 in the Illinois case for the trust.
 10 MR. SIMON: I'm just listening.
 11 MR. BERNSTEIN: And I might want to ask
 12 him questions since he's there.
 13 MS. CRISPIN: Judge, can I use my phone to
 14 call?
 15 THE COURT: Yes.
 16 Go ahead. Ask some questions,
 17 Mr. Bernstein.
 18 Do you have a notary public there? Did
 19 you arrange to have a notary public for him if
 20 you wish to call him as a witness?
 21 MR. BERNSTEIN: I'm not his lawyer.
 22 THE COURT: I know, but if you wish to
 23 call a witness by telephone, you need to
 24 arrange that they have a notary public so they
 25 can be sworn in.

1 MR. BERNSTEIN: He's the counsel.
 2 THE COURT: I know, but he still needs a
 3 notary public because he's not in front of me
 4 to swear him in.
 5 MR. BERNSTEIN: So, no. I didn't know
 6 that he was going to be here.
 7 THE COURT: All right. Next witness, Ms.
 8 Crispin? Oh, you're on the phone. Sorry.
 9 MS. CRISPIN: Your Honor, I don't have
 10 anyone after Mr. Stamos.
 11 THE COURT: Any witnesses, Mr. Rose?
 12 MR. ROSE: No.
 13 THE COURT: Any witnesses, Mr. Feaman?
 14 MR. FEAMAN: No, Your Honor.
 15 THE COURT: Call your first witness, Mr.
 16 Elliot.
 17 MR. BERNSTEIN: I'm waiting for
 18 Mr. Stamos.
 19 THE COURT: No. We're waiting and for
 20 court efficiency, call your first witness.
 21 MR. BERNSTEIN: Brian O'Connell.
 22 THE COURT: You can call him for about
 23 eight minutes.
 24 MR. O'CONNELL: He's calling in now, Your
 25 Honor.

1 THE COURT: All right. He'll call in to
 2 court call. In the meantime, go ahead and get
 3 back on the stand. I told him he has about
 4 eight minutes and we'll have Mr. Stamos -- if
 5 you're on the phone with Mr. Stamos, you can
 6 tell him to be ready by ten to three.
 7 MS. CRISPIN: Okay.
 8 (Mr. O'Connell resumed the stand.)
 9 THE COURT: You're still under oath.
 10 Go ahead. It's all you.
 11 DIRECT EXAMINATION
 12 BY MR. BERNSTEIN:
 13 Q Are you aware of a 2000 insurance trust
 14 that was executed that the policy in question has
 15 been assigned to in the year 2000?
 16 MS. CRISPIN: Asked and answered.
 17 THE COURT: Sustained. You already asked
 18 him that.
 19 MR. BERNSTEIN: No, a 2000 insurance
 20 policy.
 21 THE COURT: Oh, overruled. Thank you.
 22 BY MR. BERNSTEIN:
 23 Q That supersedes a 1995 trust?
 24 A You'd have to show me a document.
 25 Q Okay. Here.

	Page 42		Page 43
1	MR. STAMOS: Hello?	1	by Ben Brown and you actually argued -- can you
2	THE COURT: Mr. Stamos?	2	answer that question?
3	MR. STAMOS: Yes, ma'am.	3	A I see Bates stamps at the bottom.
4	THE COURT: Okay. This is the judge. I'm	4	Q So these would be part of your record,
5	going to ask you to just hang on while we	5	correct?
6	complete the testimony of another witness.	6	A I'm not sure. I'd have to look on my
7	MR. STAMOS: Okay. How long will that be,	7	record to be sure.
8	how long do you think?	8	Q And you're aware that the state has argued
9	THE COURT: About eight minutes.	9	in Illinois Federal Court that this 2000 trust
10	MR. STAMOS: All right. I will step away	10	supercedes the '95 trust, thereby rendering it moot,
11	from my desk for five minutes and I'll pick up	11	the '95 trust you're entering into settlement with,
12	then, okay?	12	is that correct?
13	THE COURT: Sounds good.	13	A I'd have to see some more documents. If
14	MR. STAMOS: Thank you.	14	you're talking about -- has there been something in
15	BY MR. BERNSTEIN:	15	writing submitted taking that position?
16	Q Mr. O'Connell, have you seen that trust	16	Q Yeah. Your summary judgment arguments
17	before?	17	rely on this 2000 trust superseding -- in that 2000
18	A Sitting here today, I don't recall it but	18	trust, can you read from Page 1, the trust, the
19	it's possible in the volume of documents in this	19	first paragraph and the Number 1?
20	case that I could have, but I couldn't tell you	20	MR. ROSE: Objection. The document is not
21	definitively.	21	in evidence, hearsay.
22	Q Do you notice that it's Bates stamped by	22	THE COURT: Sustained.
23	Tescher & Spallina, the former attorneys who	23	MR. BERNSTEIN: Can I submit it as
24	committed forgery and fraud in this matter that you	24	evidence?
25	replaced and those documents were transferred to you	25	THE COURT: Objections?

	Page 44		Page 45
1	MR. ROSE: Authenticity.	1	action on behalf of the estate that this 2000
2	THE COURT: Sustained.	2	document superseded the 1995 trust?
3	MR. BERNSTEIN: It's Bates stamped.	3	MS. CRISPIN: Asked and answered. He said
4	THE COURT: It doesn't matter. Sustained.	4	he needed further documentation to see it in
5	MR. BERNSTEIN: It's been submitted into	5	writing.
6	the record.	6	THE COURT: Sustained.
7	THE COURT: Sustained.	7	BY MR. BERNSTEIN:
8	MR. BERNSTEIN: We can't enter this?	8	Q In a recent similar case to this with
9	THE COURT: No. I sustained the	9	allegations of fraud in the Bivens case, are you
10	objection. It's an evidentiary objection.	10	aware of the Oliver Bivens case?
11	MR. BERNSTEIN: Okay. Am I allowed to ask	11	MR. ROSE: Objection, relevance,
12	him questions about this document?	12	materiality.
13	THE COURT: If you ask a question and	13	THE COURT: Sustained.
14	there's an objection, I'll entertain it. I	14	BY MR. BERNSTEIN:
15	can't tell you how to proceed.	15	Q Have you been charged with breach of
16	MR. BERNSTEIN: Okay.	16	fiduciary duties and negligence recently and found
17	BY MR. BERNSTEIN:	17	guilty by a jury of your peers in a federal court?
18	Q Can you read the first paragraph and	18	MR. ROSE: Objection, relevance.
19	Number 1 of that document?	19	MS. CRISPIN: Argumentative.
20	MR. ROSE: Objection, hearsay. The	20	THE COURT: I have to overrule those
21	document is not in evidence.	21	objections because it would go to bias.
22	THE COURT: Sustained.	22	MS. CRISPIN: Your Honor, he used the word
23	MR. BERNSTEIN: Okay.	23	charged. That was my problem for the
24	BY MR. BERNSTEIN:	24	argumentative.
25	Q You argued in Illinois in the federal	25	THE COURT: Okay. With regard to the word

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

Page 50	Page 51
1 that. Follow up, Ms. Crispin?	1 number? Do you have a commission number?
2 MS. CRISPIN: None.	2 MS. VASQUEZ: No.
3 THE COURT: You may step down,	3 THE COURT: In Florida we do. That's the
4 Mr. O'Connell.	4 only reason I'm asking.
5 We're ready to proceed. Do you have a	5 All right. Do you know the gentleman in
6 notary public there with you, Mr. Stamos?	6 front of you?
7 MR. STAMOS: Yes. It will just take one	7 MS. VASQUEZ: Yes, I do.
8 second, Your Honor.	8 THE COURT: Do you know him personally or
9 THE COURT: Thank you.	9 has he produced identification?
10 MR. STAMOS: She's present. Okay. Shall	10 MS. VASQUEZ: Personally.
11 we begin?	11 THE COURT: All right. Who is the
12 THE COURT: May I speak with the notary,	12 gentleman in front of you?
13 please?	13 MS. VASQUEZ: James Stamos.
14 MR. STAMOS: Yes.	14 THE COURT: All right. Would you please
15 MS. VASQUEZ: I'm here.	15 ask him to raise his right hand?
16 THE COURT: Hello. This is Judge	16 MS. VASQUEZ: Raise your right hand.
17 Rosemarie Scher. What is your name, ma'am?	17 THE COURT: And swear or affirm to tell
18 MS. VASQUEZ: My name Denise Vasquez.	18 the truth?
19 THE COURT: Are you a notary public in the	19 MS. VASQUEZ: Do you swear or affirm to
20 State of Illinois?	20 tell the truth?
21 MS. VASQUEZ: Yes, I am.	21 MR. STAMOS: Yes, I do.
22 THE COURT: When does your commission	22 THE COURT: Excellent. Ms. Vasquez, thank
23 expire?	23 you so much for serving the Court.
24 MS. VASQUEZ: October 31st, 2021.	24 Mr. Stamos, you are on. Ms. Crispin will
25 THE COURT: In Illinois, do you have a	25 begin her questioning.

Page 52	Page 53
1 MR. STAMOS: Thank you.	1 A I'm a litigator. I do principally
2 DIRECT EXAMINATION	2 professional liability defense as well as commercial
3 BY MS. CRISPIN:	3 litigation.
4 Q Mr. Stamos, can you hear me?	4 Q And you're aware of the settlement
5 A I can.	5 agreement that was reached between the parties in
6 Q This is Ashley Crispin. We've met before.	6 this matter, correct?
7 I represent Brian O'Connell. We share a client.	7 A Yes, I am.
8 A Yes.	8 Q And you reviewed the settlement agreement
9 Q And I'm going to be asking you some	9 before it was executed by Mr. O'Connell, correct?
10 questions. Your full name, please?	10 A Yes. I think I might have suggested some
11 A James J. Stamos. Middle name is John.	11 changes.
12 Q And you currently represent who in the	12 Q But you reviewed the final version before
13 pending litigation Simon Bernstein Irrevocable	13 Mr. O'Connell executed it, correct?
14 Insurance Trust, et al, vs. Heritage Union Life	14 A Yes, I did.
15 Insurance Company, et al?	15 Q And it's contingent on this Court, meaning
16 A I represent the estate.	16 the Probate Court in Palm Beach County's approval,
17 Q And currently the fiduciary position is	17 correct?
18 held by Mr. O'Connell as personal representative,	18 A That's my understanding.
19 correct?	19 Q Now, without drawing on your
20 A That's my understanding.	20 attorney-client communications with Mr. O'Connell,
21 Q And how long have you been representing	21 are you able to give the Court an analysis of the
22 the estate in this litigation?	22 settlement?
23 A Since 2015, if I'm correct. I think it	23 A I think I can without breaching
24 was the summer of 2015.	24 confidentiality.
25 Q And your primary area of practice?	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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>16 MS. CRISPIN: Nothing further.</p> <p>17 THE COURT: Questions?</p> <p>18 MR. ROSE: I'll reserve. For now I don't 19 have any questions.</p> <p>20 THE COURT: Mr. Feaman?</p> <p>21 CROSS EXAMINATION</p> <p>22 BY MR. FEAMAN:</p> <p>23 Q Mr. Stamos, this is Peter Feaman. Do you 24 recall that I represent Bill Stansbury?</p> <p>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?</p> <p>3 MR. ROSE: Objection, relevance.</p> <p>4 THE COURT: Sustained.</p> <p>5 BY MR. FEAMAN:</p> <p>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?</p> <p>9 A Yes, I did.</p> <p>10 Q And there was a telephonic mediation in 11 May. Did you attend?</p> <p>12 A I did.</p> <p>13 Q And who attended at that mediation?</p> <p>14 MR. ROSE: Objection for the same reasons.</p> <p>15 You limited his questioning since he has no 16 position.</p> <p>17 THE COURT: Sustained.</p> <p>18 BY MR. FEAMAN:</p> <p>19 Q And did that get the ball rolling in 20 earnest towards settlement?</p> <p>21 MR. ROSE: Same objection.</p> <p>22 MS. CRISPIN: And to the extent it calls 23 for confidential mediation.</p> <p>24 THE COURT: Sustained.</p> <p>25</p>	<p style="text-align: right;">Page 57</p> <p>1 BY MR. FEAMAN:</p> <p>2 Q Did the most serious settlement 3 discussions take place in June of this year?</p> <p>4 MR. ROSE: Same objection.</p> <p>5 THE COURT: Sustained. I don't see the 6 relevance to this hearing.</p> <p>7 BY MR. FEAMAN:</p> <p>8 Q Do you recall whether I was involved at 9 all in those settlement discussions?</p> <p>10 MR. ROSE: Same objection.</p> <p>11 THE COURT: What is the relevance for this 12 hearing, Mr. Feaman?</p> <p>13 MR. FEAMAN: For this hearing?</p> <p>14 THE COURT: For this hearing.</p> <p>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.</p> <p>18 THE COURT: Okay. You've already done 19 that. Thank you. Any other questions?</p> <p>20 BY MR. FEAMAN:</p> <p>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?</p> <p>25 MR. ROSE: Same objection. It sounds like</p>

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

<p>1 CROSS EXAMINATION 2 BY MR. ROSE: 3 Q Mr. Stamos, are you aware that the 4 documents that existed in the office of the 5 insurance company that issued this policy 6 continuously reflected the sole contingent 7 beneficiary being this 1995 life insurance trust? 8 A I'm sorry, who's asking the question just 9 so I know? 10 Q Alan Rose. 11 A Mr. Rose, if you're asking what was in the 12 records of the issuing company, candidly I don't 13 recall. I remember there was some changes, a 14 beneficiary change form as to who it was ultimately. 15 I just don't remember. I'm just blanking as to what 16 actually was contained in the file. 17 MR. ROSE: Nothing further, Your Honor. 18 THE COURT: All right. Did you all give 19 me the original -- I don't think so -- of the 20 verified motion for approval of settlement? 21 I'm just making sure I don't have an original 22 here. It's double sided pages so I don't think 23 so. 24 MS. CRISPIN: I don't believe so, Your 25 Honor.</p>	Page 62	Page 63
<p>1 November 15th. I'm just saying just for the 2 record. 3 MR. FEAMAN: My office gave me an order 4 setting a hearing for November 9th at 1:30. 5 THE COURT: Which hearing is that? Isn't 6 that the hearing I denied already? 7 MR. FEAMAN: No. It's on Mr. Stansbury's 8 request for court intervention under Florida 9 Statute 736.0706 filed back on February 15th of 10 2017, and in communications of my paralegal 11 with your assistant, apparently it gave rise to 12 her preparing an order setting that hearing for 13 November 9th. She created it and gave it to me 14 to confirm that there's a hearing on that date. 15 THE COURT: No, and you know what? 16 MR. FEAMAN: I didn't have any 17 conversation with your office. 18 THE COURT: I understand that and actually 19 it's not a complete shock to me. That's why I 20 asked that. I need to look at that. My 21 assistant is out for six weeks. So if you will 22 hand me that, I need to look at that because in 23 my world, I didn't think that was an issue. 24 MR. ROSE: Just for the record, Your 25 Honor, this is the motion where he's asking</p>	Page 64	Page 65

Page 66

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2 STATE OF FLORIDA
3 COUNTY OF PALM BEACH
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\$	6	all-or-nothing 14:5 15:9 allegations 45:9 alleged 11:3 12:20 allowed 12:1 20:22 44:11 65:14 amended 6:10 amount 15:7 18:6,7 analysis 14:1 23:16 53:21 announce 5:23 apparently 64:11 appearance 4:2 8:4 10:13 Appearances 4:5 appeared 11:24 appearing 4:24 applicable 28:25 appointment 10:10 approach 9:13 14:9 approval 9:5 12:16 13:6,11 17:23 22:18 53:16 62:20 actual 13:1 Adam 38:22 adjudicated 59:8 admission 18:3 admit 17:22 admitted 17:25 18:12 48:13 adult 6:24 7:9,17 advised 8:18 affidavit 36:5,13,19 affirm 51:17,19 agree 18:7 agreement 9:6 12:17 13:1, 3,10,13,15,23,25 14:2 16:19 17:23 18:4 19:5,7,23 53:5,8 ahead 13:9 24:22 26:17 35:5 39:16 41:2,10 aided 31:22 Alan 4:11 46:11,12 62:10	assigned 41:15 60:19 61:16 assistant 64:11,21 65:6 assume 37:4 attachments 12:25 attempting 59:24 attend 17:12 56:11 attended 48:14 56:13 attending 21:11 attorney 25:22,24 46:9 attorney's 14:13 attorney-client 13:22 23:11 53:20 54:11 attorneys 42:23 Authenticity 44:1 aware 10:3 25:9 27:4 34:24 41:13 43:8 45:10 47:12 53:4 59:11,15 61:15 62:3 B back 20:4 37:13,23 41:3 49:1 64:9 BAILIFF 26:8 balance 17:1 ball 56:19 base 54:9,11 based 14:14 27:7 48:12 basically 55:5 basis 13:20 Bates 42:22 43:3 44:3 Beach 53:16 began 19:16 begin 6:4 50:11 51:25 beginnings 12:9 behalf 4:7,12 5:1 6:8 7:17 8:25 11:25 45:1 behest 20:24
\$680,000 37:1	680 37:3		
\$700,000 15:7 37:3	7		
\$708,000 15:22 16:5			
\$75,000 16:13 17:10	736.0706 64:9		
1	9		
1 9:14 12:14 17:24 38:14, 15 43:18,19 44:19	95 28:3 32:13 43:10,11 60:8		
15th 64:1,9	9th 64:4,13		
1995 24:19 28:2 32:17 33:9,16 36:10 41:23 45:2 60:3 61:6 62:7	A		
1:30 64:4	absolutely 11:10 24:13 63:24		
2	accomplish 60:17		
2000 41:13,15,19 43:9,17 45:1 47:9,13 61:15,18	account 37:17		
2014 9:25 10:11	action 9:7 27:6 45:1 49:22		
2015 52:23,24	actual 13:1		
2017 19:9,20 64:10	Adam 38:22		
2021 50:24	adjudicated 59:8		
24 5:8	admission 18:3		
2:30 30:14	admit 17:22		
3	admitted 17:25 18:12 48:13		
3-15-16 27:19	adult 6:24 7:9,17		
31st 50:24	advised 8:18		
4	affidavit 36:5,13,19		
4 27:21	affirm 51:17,19		
40 16:1,3,23 36:24	agree 18:7		
5	agreement 9:6 12:17 13:1, 3,10,13,15,23,25 14:2 16:19 17:23 18:4 19:5,7,23 53:5,8		
50 14:9	ahead 13:9 24:22 26:17 35:5 39:16 41:2,10		
5th 19:22	aided 31:22		
	Alan 4:11 46:11,12 62:10		

believable 36:23	breach 45:15	children 6:24 7:9	confidential 46:8 56:23
believed 36:9,19	breached 46:4,22	circulation 19:24	confidentiality 53:24
Ben 12:1 20:21 43:1	breaching 53:23	claim 16:2 25:7 31:19 36:5 56:8 59:23	confirm 64:14
beneficiaries 7:2 14:3	Brian 4:7 8:24 9:22 25:22, 23 33:15 40:21 52:7	Claimant 5:2	conflict 22:15
beneficiary 4:14,22 11:2,4, 6 27:8 33:21 34:4,7,11,13 35:1 48:10,12,16,17 49:18 57:24 58:9 59:18,22,25 62:7,14	bring 16:23 26:4	claimed 59:17,21	connection 32:9,11
benefit 15:3	brought 56:2 59:11	claiming 11:15,16 34:25 48:11	construction 6:19
benefits 16:7	Brown 12:1 20:21 43:1	claims 29:2 32:16 46:3	contained 62:16
Bernstein 4:9,12 5:5,12,19 6:22 7:11,13,18 8:6,20 9:8, 10,23 10:4 11:4,22 18:9 24:11,14,16,18,24 25:5,17, 20 26:2,6,9,15,19,23 27:1, 11,13,18 29:4,8,15 30:10, 17,22,24 31:3,7,10,12,22 32:7,12,16,24 33:3,8,16,25 34:6,10,16,19,21,23 35:6, 10 36:9,11 37:22,25 38:10, 13,16 39:11,17,21 40:1,5, 17,21 41:12,19,22 42:15 43:23 44:3,5,8,11,16,17, 23,24 45:7,14 46:2,20 47:2,8 48:1,8 49:3,9,12,16 52:13 57:21 58:5,15 59:6, 14 60:7,10,23 61:3,6,14 63:8,11,14 65:11	C	contemplates 18:5	
Bernstein's 6:14	call 4:1,3,15,17,19,22 5:25 19:2 22:1 38:20 39:4,14, 20,23 40:15,20,22 41:1,2 63:8 65:14	clarity 60:14	contingency 13:13 15:1 16:17,19 17:18 36:25 37:6
Berstein 5:5	called 4:15 8:25	clear 18:4 28:4	contingent 13:5 53:15 62:6
best-day 17:2	calling 39:5 40:24	client 8:17 18:5 52:7	continue 5:24
bias 45:21	calls 23:10 33:23 47:21 56:22	client's 8:13	continuously 62:6
bigger 35:6	candidly 59:9 62:12	close 19:21	contrary 36:5
Bill 55:24	capacity 33:17	combination 14:16 15:5	conversation 21:19 64:17
Bivens 45:9,10	case 7:23 12:5 17:5 21:7, 18 23:8,24 24:5,7 25:10 29:20 37:4 39:9 42:20 45:8,9,10 46:7,15 47:24 54:13,21 56:2 58:25 59:1 61:20	comment 22:24	copies 26:8
Blakey 25:9 27:14 34:25 35:17 48:10 59:7	cases 33:6	commercial 53:2	copy 9:7,11,16 25:2,22,25 30:3 31:20 32:8 38:6 60:3 63:22
Blakey's 30:5,6 32:2	casting 28:7	commission 50:22 51:1	correct 10:6 12:6 13:2,3 17:19,20 18:25 19:10,11, 14,18,24 20:12,15,18,24 28:23 29:8 30:3,5 32:4,6,8, 15 34:12 35:22,23,25 36:2, 7,12 37:2,12 38:7 43:5,12 46:23 52:19,23 53:6,9,13, 17
blank 63:16,18,20 65:9	causing 23:1	committed 42:24 46:22	cost 13:18 14:12 16:14
blanking 62:15	cautious 22:5	communications 53:20 64:10	costs 14:13 17:11 37:4
bottom 43:3	caveat 59:1	company 10:6 52:15 62:5, 12	cough 5:7
	challenging 54:16	competing 11:8	counsel 7:22,25 10:16,21 16:14 23:15 38:25 39:8 40:1 47:4 58:7
	chance 36:15,17 63:11	complaint 27:7	County's 53:16
	change 62:14	complete 42:6 64:19	couple 60:15
	changed 16:18	composite 38:12,15	court 4:1,3,10,15,17,18,21 5:3,11,13,22 6:2,5,16,21 7:2,9,12,15 8:2,3,8,15,21 9:1,4,15,16 13:9,15,24 15:21 17:25 18:4,12,15,17,
	charged 16:22 45:15,23 46:1	compound 48:22	
	checking 4:17	promise 55:14 61:11	
	Chicago 37:9 57:23 58:6	promises 61:10	
		promising 61:9	
		computed 15:24	
		concluded 65:21	
		conclusion 33:24 47:22	
		concrete 12:12	
		condition 5:9,14	
		conference 65:10	

20 20:2,6,23 21:2 22:2,10,16,21 23:3,21 24:10,13,22 25:11,24 26:4,11,16,22,24,25 27:16 29:10,14 30:8,13,19,23 31:1,5,6,9 32:19 33:18 34:2,9,15,17,20,22 35:9,12 37:23 38:2,5,11,15,17,20,23 39:1,3,4,7,15,22 40:2,7,11,13,15,19,20,22 41:1,2,9,17,21 42:2,4,9,13 43:9,22,25 44:2,4,7,9,13,22 45:6,13,17,20,25 46:19 47:1,5 48:6,7,13,14,16,23 49:8,10,15,19,24,25 50:3,9,12,16,19,22,25 51:3,8,11,14,17,22,23 53:15,16,21 54:5,16,18,55:17,20 56:4,17,24 57:5,11,14,18 58:2,10,14,17,18 59:4 61:1,12,23,25 62:18 63:1,5,10,13,15,19,24 64:5,8,15,18 65:2,5,16,17,18	day 5:8 17:3 30:20 deals 47:10 decided 48:20 deciding 55:9 decision 12:5 decisions 55:1 default 11:5 defendant 32:23 defense 53:2 definitively 42:21 denied 6:9,17 14:18,19 22:16 24:3 25:13 35:17,24 36:3 64:6 65:2 Denise 50:18 denying 32:2 65:3 depose 60:10 desk 42:11 determine 15:17 60:7 determined 6:15 25:11 32:6,12 56:6 direct 9:18 18:14 41:11 52:2 directly 23:1 disconnect 4:19 disconnecting 63:6 discontinue 22:21 discussed 36:9 48:5 discussing 21:14 discussions 12:9 18:24 19:2,17 21:6 57:3,9,22 dismissed 27:7 34:25 35:3 46:7 49:20 dispositive 7:25 28:5 dispute 8:10 11:1 29:24 disputing 27:16 distinguish 21:10 District 33:18	document 27:2 41:24 43:20 44:12,19,21 45:2 60:19,21 documentation 45:4 documents 8:1 42:19,25 43:13 47:16 62:4 dokey 63:14 dollar 15:7 16:3 dollars 14:7 17:15 37:3 double 62:22 doubt 28:7 33:4 doubts 31:18 drafts 60:15 draw 13:21 23:13 drawing 15:5 23:22 53:19 drive 19:11 driver 15:9 duly 9:1 duties 45:16 46:4	ending 63:10,12 enter 7:23 25:17 44:8 47:14 48:4 entered 9:6 10:13 18:10 19:7 24:18 29:4 32:18 33:7,14 61:5 65:3 entering 13:9 32:13,25 43:11 entertain 44:14 entire 32:21 entitled 10:4 11:17 18:8 55:4 61:18,22 equal 30:15 ergo 24:7 29:23 ESQ 8:24 estate 4:8 9:23 10:13,22 11:5,6,9,16,17,25 13:17 14:3,6 15:18 16:6 17:5,6,17 23:8,25 27:9 28:16,17,21 29:18 30:4 33:15,21,25 34:5,7 35:1 36:1 45:1 46:5 48:10,17 49:19 52:16,22 55:12,13 56:7 57:24 58:9,22 61:5 E earlier 59:1 early 56:6 earnest 19:1 21:21 56:20 easily 17:14 eaten 15:2 edification 35:7 efficiency 40:20 electronic 31:20 eliminated 16:11 Elliot 5:4,5 7:15 8:20 24:10 26:11 33:12 34:18 38:8 40:16 59:4,14 Elliot's 38:15 email 63:23 en 22:3 end 14:20 36:15,16	estate's 35:17 estimate 17:9 estimated 16:14 et al 10:5 52:14,15 evaluated 16:17 events 31:19 evidence 17:22 25:18 28:1,5,7 36:4,20 38:9 43:21,24 44:21 47:15 48:4 60:13 evidentiary 44:10 evolving 21:7 exact 15:6 59:9 EXAMINATION 9:18 18:21 24:15 35:14 41:11 52:2 55:21 59:5 62:1 examined 9:2
Court's 13:5,11 courtroom 48:15 created 28:1,8 29:17,18,22 64:13 creating 31:23 credibility 54:22,24 Crispin 4:6 5:17,25 9:3,11,19 17:21 18:13 20:1 23:10,16,19 25:19 29:13 37:24 38:3,19 39:2,13 40:8,9 41:7,16 45:3,19,22 46:13,23 48:22 50:1,2 51:24 52:3,6 55:16 56:22 62:24 63:3,16,21 CROSS 18:21 24:15 35:14 55:21 59:5 62:1 curator 12:1 D dad's 48:17 date 27:19 64:14 David 31:19,21				

Excellent 51:22	favor 8:13 14:18 23:25	fraud 42:24 45:9	hazy 61:19
Excuse 24:25 47:5	Feaman 5:1 6:2,7 8:14,17 18:2,17,18,22 20:3,8 21:4, 13 22:10,14,20,23 23:5,6	free-standing 11:3	He'll 41:1
excused 63:4,5	24:9 40:13,14 55:20,22,23 56:5,18 57:1,7,12,13,15,20 58:3,4,19 59:2 64:3,7,16 65:6	front 25:14 40:3 51:6,12 54:6 58:13,18	heading 33:13
executed 25:2 41:14 53:9, 13 60:3,14,20	full 8:7 52:10	hear 5:20,23 29:11 52:4 59:20	heard 65:13
exemplars 60:16	function 61:8,20	hearing 5:20,21 6:11,13,25 7:14,19 8:9 25:10 48:14 57:6,12,13,14 59:12 63:10, 25 64:4,5,6,12,14 65:15,21	hearsay 43:21 44:20
exhibit 9:14 12:14 17:23 38:12,15	February 64:9	heart 60:4	
exist 28:22	federal 9:7 25:11 43:9 44:25 45:17 48:16,20 49:24	held 52:18	
existed 33:5 47:19 55:4 62:4	fee 15:1,13,16 16:19 17:18 37:1,3	Heritage 10:5 52:14	
exists 47:12,13,14 60:24	Feel 65:19	hiding 48:6	
expended 14:14	fees 14:14 15:4 16:8,9,10 17:1,11,16 20:4	general 19:2	
expending 15:4	felt 58:25	generalities 21:8	
expense 17:13	fiduciary 11:24 45:16 46:4 52:17	generally 4:20 10:24	
expire 50:23	file 8:3 9:15 62:16	gentleman 51:5,12	
explain 11:8 13:24	filed 35:21 64:9	give 7:25 10:24 21:9 25:21 26:2 36:11 53:21 62:18	
explained 28:9 30:1	fill 63:17	giving 30:14	
explore 12:5	final 53:12	good 23:24 32:1 42:13	
extended 31:8	fine 5:11,12,14 7:16 22:6	granted 24:5 54:17	
extent 13:17 21:23 23:10 56:22	finish 19:12 32:19 34:16	ground 14:8	
extra 17:13 25:25 26:8	firm 46:13,14	guess 16:10 48:25	
F			
fact 14:12,15,24 17:5 19:8, 22 20:14 27:7 28:6,21 32:3 55:5,11 61:6,9	firm's 21:6	guilty 45:17	
factors 14:17 15:5 54:12	Florida 51:3 64:8	H	
facts 12:19 47:22 54:19,20	fly 37:9	half 10:1	
factual 29:5 33:9,11 61:11	Follow 50:1	hand 51:15,16 63:18,22 64:22	
faint 5:7	forgery 42:24	handling 46:5	
fair 6:21 19:20 35:16 65:13	form 62:14	hang 42:5 46:19	
fall 5:7 24:12	formal 19:9	happen 23:2	
familiar 10:7,8	forward 6:13 16:15	happened 35:11	
family 11:5	found 31:20 45:16 47:18 48:9,13 49:18	happening 7:5	
father's 27:8 33:21 35:1 48:10	frame 20:11	hard 31:20	
I			
identification 51:9			
Illinois 9:6 25:10 26:24 35:21 39:9 43:9 44:25 47:24 48:21 49:19,23 50:20,25 60:11			
imagine 19:24			

impression 49:20	John 52:11	limited 56:15	25 22:3 56:10,13,23
in-person 21:11	Join 29:13	listed 4:21	mediator 22:1
inception 46:15	journey 33:6	listening 39:10	medical 5:9
including 37:18	judge 25:9 26:3,10 27:14	literally 21:25	members 11:5
inconsistency 60:18	30:5,6 32:2 34:24 35:17	litigant 11:13	mentioned 20:21 24:2
incurred 17:17 37:14	36:20 39:13 42:4 48:10,15,	litigation 10:4,7,9,14,25	meritorious 24:7 56:8
individually 28:19	20 50:16 54:24 55:8 59:7	11:7,21 12:2 13:17,18,19	merits 22:20,24
information 23:14	judgment 14:17,18 24:3,5	14:4,13,16 23:1 32:21	met 52:6
insinuate 5:14	25:13,14,18 26:20,23 27:5	36:14 52:13,22 53:3 57:23	middle 14:8 52:11
instruct 23:12	29:20 32:3,10 34:25 35:7,	58:7 60:11	midpoint 15:6
insurance 10:5,6 11:2,9,	18,20 36:2 43:16 48:11	litigator 53:1	million 14:7 16:25 36:25
12,20 35:21 36:10 41:13,	54:17 58:24	long 9:24 10:8 12:3 26:12	37:3,5
19 47:11 52:14,15 59:18,	July 19:22	30:11 37:10 42:7,8 52:21	mind 6:6
22 60:1 61:16 62:5,7	June 9:25 10:11 19:20,23	longer 14:16	mindful 6:16 26:11
intended 36:11	20:10 21:21 57:3	looked 17:6	minus 37:3
interact 37:10	jurisdiction 5:20,22,23	lose 36:15	minutes 26:14,17 30:9
interest 13:16 14:2 37:17	jury 45:17 46:21	losing 22:12	40:23 41:4 42:9,11
intervene 12:2		lost 17:5,18 55:12	missing 32:1
intervened 20:22 47:23			mode 14:20
intervenor 28:6,13 29:21	keeping 26:12		moment 59:10
intervention 49:1 64:8	key 36:23	made 12:5,10 28:21 54:18	monetarily 13:24 15:14,15
involved 7:7 17:13 20:11,	kids 55:7	65:13	17:7
15,18,20 21:14,22 22:5,25	kind 24:5	make 18:4 47:16 54:15,25	monetary 16:7 57:24 58:8
57:8,17,21 58:5,7	knowledge 10:23 11:12,19	55:8 61:10	money 18:6,8 36:11 55:4,
involvement 21:6	12:23 20:13,14,17	makes 24:3	12,14
irrelevant 47:24		making 25:8 62:21 63:2	months 5:9 12:9 18:24
irrevocable 10:4 11:20		mark 38:11	19:4
52:13	late 4:16	marked 9:14 12:14	moot 43:10
isolated 12:11	law 46:13	masse 22:3	morning 4:16
issue 22:15 28:6 58:13	lawyer 39:21	material 28:7	motion 5:16 6:10 9:5,11
61:11 64:23	laying 20:3	materiality 45:12	12:16,20 13:1,8 17:22
issued 62:5	leading 58:1	math 15:17 36:25 37:7	20:24 35:17,20 38:7 62:20
issues 21:1 32:3 48:19	left 47:7	mathematically 15:25	64:25
54:15	legal 29:23 33:23 47:21	matter 9:21 13:19 14:19	moved 14:18 36:2
issuing 62:12	liability 53:2	25:10 42:24 44:4 46:6 53:6	moving 30:15
	life 10:5 52:14 62:7	meaning 14:13 53:15	
	light 24:1 55:11	meantime 41:2	N
James 10:20 51:13 52:11		mediation 19:9,13 21:11,	named 18:11

nature 10:25 13:17 14:10 16:18 17:12 55:14 needed 45:4 negligence 45:16 46:4,22 negotiations 20:10,11 21:20 58:6 59:15 net 16:24 nonetheless 54:24 notary 39:18,19,24 40:3 50:6,12,19 noted 8:2 18:12 65:18 notice 8:4 42:22 notification 4:18,23 notified 6:24 7:1 notify 7:3 48:16 November 64:1,4,13 number 43:19 44:19 51:1 54:12,15 numbers 21:15,16	occurred 47:3 October 50:24 offered 31:21 office 20:18,19 31:21 56:1 62:4 64:3,17 Okey 63:14 Oliver 45:10 opening 65:14 operating 15:13 opinion 23:7 58:21 opportunity 65:13 order 22:16 27:15 30:5 32:5 49:2,4 63:15,17 64:3, 12 65:3,9 ordered 65:16 orders 38:8 original 24:23 25:1 62:19, 21	pay 37:8,13 payment 16:8,10 18:5 peers 45:17 pending 10:3 52:13 people 26:7 55:6 percent 11:15,18 14:9 16:1,3,4,23,25 21:9 24:1 36:24 period 12:2 person 8:20 personal 4:7 9:22 10:17 28:18 34:5,9,14 52:18 personally 51:8,10 Peter 5:1 55:23 phone 21:11 30:20 39:6,13 40:8 41:5 65:9 physically 21:10 pick 42:11 piece 48:4 place 57:3 59:12 plaintiff 32:23 35:21 55:2 57:22 58:6 plaintiff's 31:16,17	60:12 61:2 positions 11:8 possession 24:19 posture 14:23 59:10 PR 33:15,25 practice 52:25 precise 55:9 predicate 20:4 prejudice 46:8 prepared 19:23 preparing 64:12 present 22:4 50:10 presented 28:6 60:16 pretrial 65:15 Pretty 10:10 previously 22:14 primary 52:25 principally 53:1 prior 5:20 11:24 12:10 19:1 privilege 13:22 23:11,22 privileged 23:14 pro 5:5 probabilities 23:25 probability 23:8 58:21 probate 11:6 53:16 problem 23:19 33:12 45:23 procedural 59:10 procedures 65:16 proceed 5:15,18 8:9,22 18:1 44:15 50:5 proceeding 11:24 32:9,11 proceeds 11:15,18 14:6,8 15:2 32:22 produced 51:9 product 13:22 23:11 54:11 professional 53:2
O	overruled 24:22 34:2 41:21	overruled 24:22 34:2 41:21	P

promoted 61:21	read 12:19 27:22 30:6 31:13 43:18 44:18	rely 43:17	43:20 44:1,20 45:11,18 46:11,12,24 47:3,21 48:18 55:18 56:3,14,21 57:4,10, 25 60:25 61:24 62:2,10,11, 17 64:24 65:4,20
properly 25:11	ready 4:3 5:15,17 8:9 41:6 50:5	remember 62:13,15	Rosemarie 50:17
property 34:5,9,11,14	real 12:12 28:12 33:21	reminding 30:8	rough 15:17
proposed 13:1 38:6 63:15	realize 55:6	removed 48:11	Roughly 15:19
propounded 9:2	reason 48:2 51:4	rendering 43:10	ruled 59:12
propriety 6:14	reasonable 54:4,5,7,9 55:15	repetitive 46:25	rules 29:10
prove 59:24	reasons 25:13 32:2 56:14	replaced 42:25	rulings 14:15
proven 25:12,15	recall 20:19,23 21:16 35:3 42:18 55:24,25 56:1 57:8 59:9,13 61:17 62:13	reporter 9:4	rushing 34:21
provide 27:25	receive 4:21	represent 7:10 16:3 46:13 52:7,12,16 55:24	S
public 8:3 39:18,19,24 40:3 50:6,19	recent 14:15 45:8	representation 16:18 56:7	Savings 16:9
purposes 23:3	recently 45:16	representative 4:8 9:23 10:17 28:18 52:18	scenario 14:11 15:9 17:2
pursuant 46:8	recognition 61:10	represented 10:22 46:14	Scher 48:15 50:17
pursuing 24:7	recollection 60:17	representing 7:11 22:7 28:17 52:21	Scott 48:3
put 6:3,18,22 14:19,22	record 4:5 6:3,18,23 8:10 39:8 43:4,7 44:6 57:16 64:2,24 65:12	request 6:17 64:8 65:7	search 31:16,18
Q			
question 26:18 28:13 30:16 31:2,9,11 34:3,15, 17,22 41:14 43:2 44:13 47:6,7,25 48:7,24,25 49:7, 9,17 54:23 58:1,2,16,20 60:9 61:13,23,24 62:8	records 8:7 62:12	required 17:10	seeking 13:11 33:18
questioning 51:25 56:15	recovered 16:2,23	res 48:12	sentence 31:13
questions 9:1 18:16 21:5 22:22 33:20 37:18 39:12, 16 44:12 52:10 55:17,19 57:19 59:3 60:11	recovery 15:23	reserve 18:19 55:18	sequence 6:11
quick 28:12 33:21	Redirect 35:9	reserved 30:21	served 7:8
R			
race 24:4	reflect 65:12	resolutions 12:10	serving 9:24 51:23
raise 51:15,16	reflected 62:6	resolves 32:20	set 9:12 30:5,14,18 57:16
raised 22:14	refusing 7:24	respect 17:16	setting 64:4,12
raises 31:18	regard 8:19 20:9 21:5 45:25	results 31:15,17	settle 17:5 19:13 21:17 33:6
ramifications 17:6	reinstated 49:21	resumed 41:8	settled 13:19 33:8 36:18 46:7
ramp 19:17	reiterate 6:12	review 35:4 47:16 49:1,17	settlement 7:5 8:14,19 9:6 12:5,17 13:1,10,14 14:2, 22,24 15:6,10,14,18,23
reached 33:3 53:5	relevance 19:25 20:1,3,25 22:9 24:21 27:10 35:8 45:11,18 46:24 48:18 56:3 57:6,11	reviewed 47:18 53:8,12	16:7 17:23 18:10,23 19:5, 6,17 20:9 21:3,8,20 22:19 24:18 27:12,16 29:4 31:4 32:14,18,20 33:1,4,14
	relevancy 60:25	reviewing 25:25	37:16 38:7 43:11 46:8,9
	relevant 20:6 27:12 48:2	Rose 4:11 6:25 7:24 8:10, 17 18:15,16,19 19:25	47:10,20 49:22 53:4,8,22
	relief 33:18	20:25 21:22 22:6,9 24:21 27:10 29:9,11,12 30:20 33:23 34:1 35:8,13,15	54:8 56:20 57:2,9,22 58:5, 12 59:8,15 60:7 61:5 62:20

Index: settling..transpiring

settling 19:21	split 32:23	success 23:8 58:22	25:5 29:1,2,4,8 32:6,11,16,24 33:2,8,15 57:21 58:560:7,10,22 61:6
share 15:20 52:7	spoken 26:13	successful 15:3	Ted's 32:4
shock 64:19	spring 16:15	successor 6:15	telephone 19:9 21:2439:23
shot 37:25	Stamos 4:2 10:20 16:2021:19 36:24 37:11 38:19,21 39:2,3 40:10,18 41:4,542:1,2,3,7,10,14 46:18,1950:6,7,10,14 51:13,21,2452:1,4,11 55:23 56:6 58:2059:7 61:15 62:3 63:4,6	suggested 53:10	telephonic 56:10
sided 62:22	Stamos' 17:9	summary 14:17,18 24:3,425:13,14,18 26:20,23 27:529:20 32:3,10 34:25 35:18,20 36:2 43:16 48:11 54:17	telling 30:23
sides 55:6	stamped 42:22 44:3	summer 14:21 52:24	ten 17:14 41:6
signed 12:19 13:3 19:5,22	stamps 43:3	summoned 7:7	terms 19:17 28:9,24 29:7,8,25 30:3 36:10 54:4,655:2
similar 45:8	stand 6:1 8:12 41:3,8	supercedes 43:10	Tescher 42:23
Simon 4:8 9:23 10:4 31:20,21,22 36:9,10 38:22 39:5,6,10 52:13	standing 27:8 33:22 34:835:2 48:17 49:18	superseded 45:2	testified 9:2
sir 20:16	standpoint 15:8	supersedes 41:23	testify 4:4
sister 48:3	stands 59:13	superseding 43:17	testimony 6:4 31:22 36:8,13 42:6
sit 5:6 37:9	Stansbury 5:2 6:8 14:1518:6,7 20:10 21:19 37:1455:24	supposed 26:4 60:17	thicker 35:6
sits 6:6	Stansbury's 20:24 64:7	suppressed 48:3	thing 4:13 8:11
sitting 42:18 61:19	start 27:23 33:14	suppressing 48:5	things 17:8,12 19:3,16
situation 14:5 15:1,16,16:17 17:4	started 12:8 18:24	surgery 65:8	thinking 15:10
sketch 22:2 24:6	state 9:20 43:8 50:2059:19	sustained 20:2 21:2 29:1435:9,12 41:17 43:22 44:2,4,7,9,22 45:6,13 46:1 47:148:7 56:4,17,24 57:5	thought 22:11 28:19 30:1854:14,17,21,23 55:3,5,11,13 65:2,3
slightly 54:19	stated 18:23	sustaining 58:10	thousand 14:7 16:25 17:14
slow 35:11	statement 6:3 30:7 65:14	swear 40:4 51:17,19	till 30:13
Smith 46:10,14	states 24:17	switch 14:25	time 6:13 12:3,4 15:1120:10 22:4 26:12 30:11,12,15 31:5 37:9 49:5
sole 62:6	stating 29:6,22 33:10	sworn 9:1 39:25	timing 31:15,17
sort 15:4,9,17,24 19:11	Statute 64:9	syncope 5:7	today 9:12 19:4 20:6 21:122:17 23:4 24:17 27:1033:10 42:18 58:14,18 61:1
sought 47:23	stay 23:4 24:11	T	today's 27:12
sounds 42:13 57:25	step 38:5 42:10 50:3	takes 37:10	told 6:23 30:22 41:3
sources 27:23,25	stood 46:16	taking 8:18 22:12,18 37:1743:15 57:16	top 16:2 17:13 27:19
Spallina 36:6 42:23	strange 47:3	talk 12:11 15:12,14 27:1754:2,3	track 26:12
Spallina's 36:8,19	strength 36:1	talked 16:16	transferred 42:25
speak 7:16,19 50:12	strong 36:20	talking 22:13 43:14 54:7	transpiring 21:18
speaking 4:20	submit 43:23	tangible 34:4,9,13	
speaks 32:5	submitted 36:5 43:15 44:5	Ted 4:12 6:14 11:22 24:18	
specially 6:10			
specific 21:16 24:23			

trial 14:19 16:15,21,22 17:12 23:9 37:10 58:23	verified 9:5 17:22 32:24 62:20
true 12:22 19:19 33:17	verify 33:2
trust 10:5 11:3,9,12,14,20 24:19,20 25:1,4,5,12 28:1, 2,3,8,9,22 29:6,7,16,22 30:1,2 31:16,18,21,23,24 32:1,4,7,13,14,17 33:3,5,9, 16 35:22 36:10,11 39:9 41:13,23 42:16 43:9,10,11, 17,18 45:2 47:9,12,13,22 48:2 52:14 55:3,4,13 57:23 58:8 59:25 60:3,8,13,14, 16,23 61:2,7,16,17,18,21 62:7	version 31:19,20 53:12 versions 31:23 victorious 15:2 victory 16:4 view 37:16 54:19,20 virtue 16:7 volume 42:19
	W
trustee 4:12 6:15 11:14,20 24:19 25:5 29:1,2,5 32:4,7, 12,17,25 33:3,5,8,16 47:23 57:23 58:8 60:8,18,20,23 61:6	waiting 40:17,19 waiver 6:19 wanted 6:18 21:9
trusts 8:1	weeks 64:21
truth 51:18,20	Wicker 46:10,14
twelve 17:14	wife 5:6 William 5:2
U	win 54:14 55:10 58:25
ultimately 62:14	winning 54:21
uncertain 25:16	witnesses 4:21 40:11,13 54:25 55:2 63:3 65:15
uncertainties 13:18	won 16:24 17:17
understand 60:12 61:4 64:18	word 45:22,25
understanding 52:20 53:18 61:8	work 13:22 23:11 54:11
understood 59:23,24	works 14:1 15:15
unexecuted 31:24	world 64:23
Union 10:5 52:14	worth 15:18 24:7
V	wrap 61:12
valid 30:3	writing 43:15 45:5
Vasquez 50:15,18,21,24 51:2,7,10,13,16,19,22	Y
verdict 46:3,6,12,16,21	year 7:24 19:10 41:15 57:3 years 10:1,2